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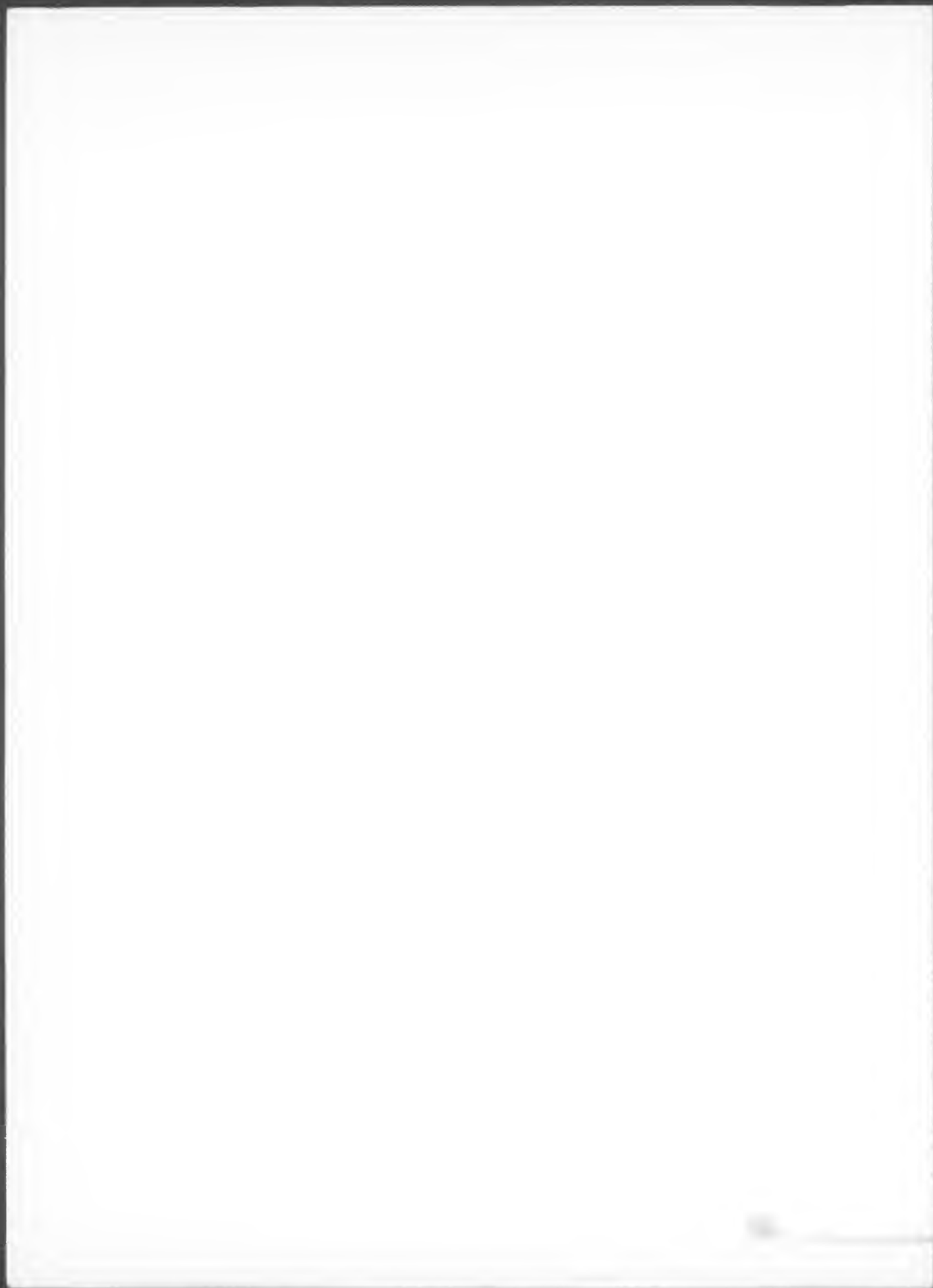
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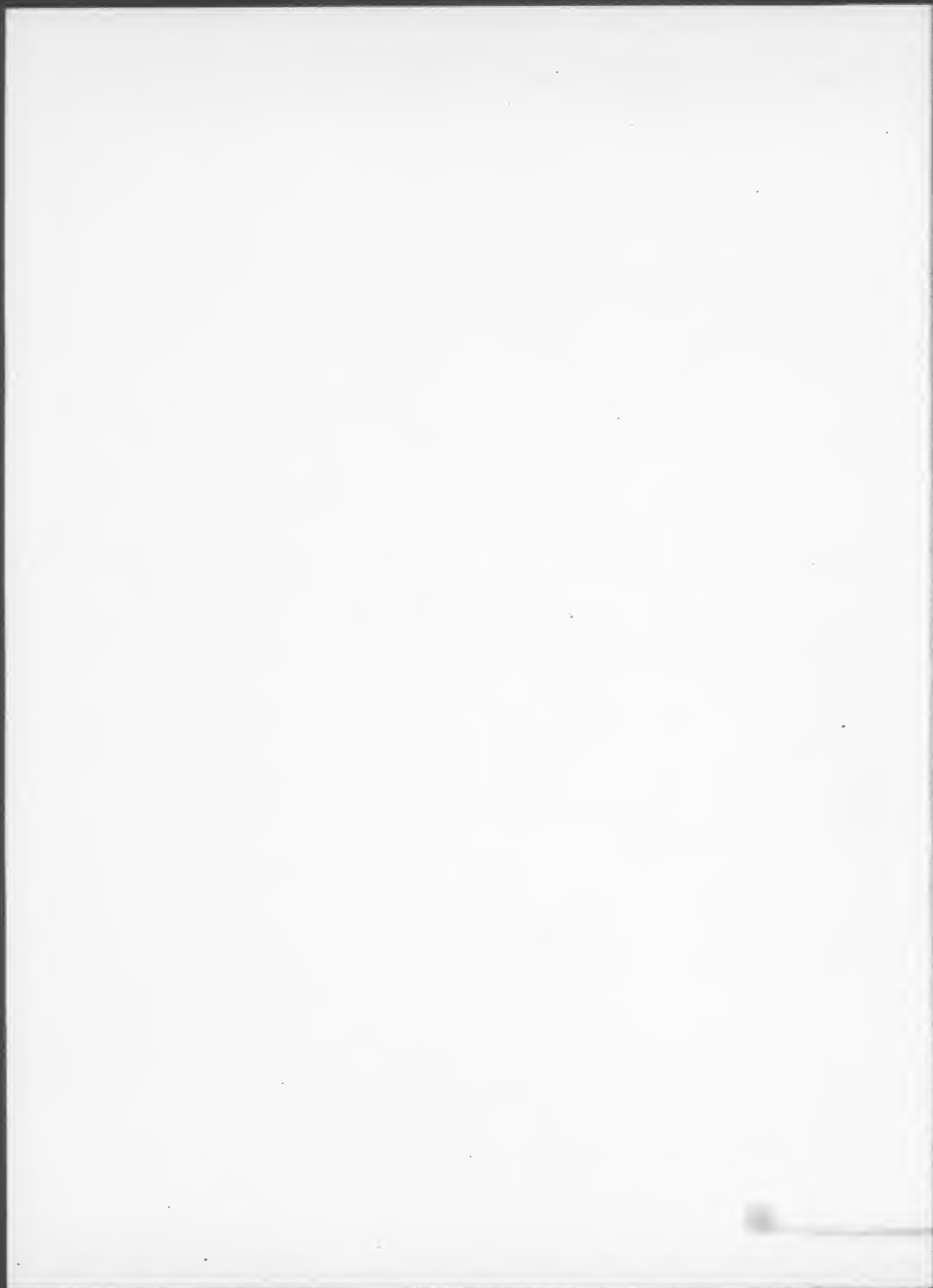
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560-AH26

Livestock Assistance Program; American Indian Livestock Feed Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correcting amendments.

SUMMARY: This document corrects the final regulations published on March 31, 2005, and May 25, 2005, that provided the regulations for the 2003–2004 Livestock Assistance Program (LAP), and American Indian Livestock Feed Program (AILFP). This correction clarifies that all eligible cattle must be intended for food use.

EFFECTIVE DATE: March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Virgil Ireland, Livestock Program Manager, Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–5103; e-mail: Virgil.Ireland@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule corrects regulations published in the *Federal Register* on March 31, 2005 (70 FR 16394), and May 25, 2005 (70 FR 29920), that provided the regulations at 7 CFR part 1439 for, respectively, the 2003–2004 Livestock Assistance Program, and the American

Indian Livestock Feed Program. Those rules, in §§ 1439.102 and 1439.903, defined “Eligible livestock” for AILFP, and “Livestock” for LAP as follows:

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; swine; elk; and reindeer.

By stating that equine animals must be “used for food or used directly in the production of food,” the definition can be misconstrued as implying that the other livestock in the definition do not have to be used for food or directly in the production of food, which was not intended. When the final rules were published they were administered such that all other livestock in the definition in addition to equine animals, also must be used for food or directly in the production of food. This is the only interpretation that has been in use since these regulations were published in the *Federal Register*. This document corrects the subject definitions to state that more explicitly, so that the definition conforms with the Commodity Credit Corporation’s long-standing interpretation.

List of Subjects in 7 CFR Part 1439

Agricultural commodities, Disaster assistance, Indian tribes, Livestock, Livestock feed.

■ Accordingly, 7 CFR part 1439 is amended as set forth below:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

■ 1. The authority citation for part 1439 continues to read as follows:

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114 Stat. 358; Sec’s. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549; Pub. L. 108–7, 117 Stat. 11; Sec 101 of Division B, Pub. L. 108–324, 118 Stat. 1220; Sec. 785 of Division A, Pub. L. 108–447, 118 Stat. 2809.

Subpart B—2003–2004 Livestock Assistance Program

■ 2. In § 1439.102, in alphabetical order remove the definition of “Livestock” and add “Eligible livestock” to read as follows:

§ 1439.102 Definitions.

* * * * *

Eligible livestock means only those animals produced specifically for food for human consumption, or used directly for the production of food for human consumption, or for the production of fiber, as determined by the Deputy Administrator, and includes beef and dairy cattle, buffalo, and beefalo, maintained on the same basis as beef cattle, equine animals, sheep, goats, swine, elk, and reindeer. Animals maintained for recreational purposes, hunting, or for show, are not eligible under any circumstances.

Subpart I—American Indian Livestock Feed Program

■ 3. In § 1439.903, revised the definition of “Eligible livestock” to read as follows:

§ 1439.903 Definitions.

* * * * *

Eligible livestock means only those animals produced specifically for food for human consumption, or used directly for the production of food for human consumption, or for the production of fiber, as determined by the Deputy Administrator, and includes beef and dairy cattle, buffalo, and beefalo, maintained on the same basis as beef cattle, equine animals, sheep, goats, swine, elk, and reindeer. Animals maintained for recreational purposes, hunting, or for show, are not eligible under any circumstances.

* * * * *

Signed at Washington, DC, on February 24, 2006.

Michall W. Yost,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–1927 Filed 3–2–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-NE-42-AD; Amendment 39-14501; AD 2006-05-04]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF34-1A, -3A, -3A1, -3A2, -3B, and -3B1 turbofan engines. That AD currently requires a onetime inspection, and if necessary replacing certain fan disks for electrical arc-out indications. That AD also reduces the life limit of certain fan disks. This AD requires the same actions and adds one disk part number (P/N) and serial number (SN) to the affected fan disks. This AD results from an error in the first part number and serial number listed in Table 1 of the original AD. We are issuing this AD to prevent rupture of the fan disk due to cracks that initiate at an electrical arc-out, which could result in an uncontained failure of the engine.

DATES: This AD becomes effective April 7, 2006. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of May 31, 2001 (66 FR 27017, May 16, 2001).

ADDRESSES: You can get the service information identified in this AD from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594-6323; fax (781) 594-0600.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone 781-238-7148; fax 781-238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with

a proposed airworthiness directive (AD). The proposed AD applies to GE CF34-1A, -3A, -3A1, -3A2, -3B, and -3B1 turbofan engines. We published the proposed AD in the *Federal Register* on August 23, 2005 (70 FR 49215). That action proposed to require the same actions as AD 2001-10-03, and add one disk P/N and SN to the affected fan disks.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that one GE CF34-1A, -3A, -3A1, -3A2, -3B, and -3B1 turbofan engine of U.S. registry would be affected by this AD. We also estimate that it will take approximately six work hours per engine to perform the actions, and that the average labor rate is \$65 per work hour. Required parts will cost approximately \$140,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$140,390.

Special Flight Permits Paragraph Removed

Paragraph (f) of the current AD, AD 2001-10-03, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA-2004-8460, Amendment 39-9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2000-NE-42-AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12229 (66 FR 27017, May 16, 2001) and by adding a new airworthiness directive, Amendment 39–14501, to read as follows:

2006–05–04 General Electric Company:
Amendment 39–14501. Docket No. 2000–NE–42–AD.

Effective Date

(a) This AD becomes effective April 7, 2006.

Affected ADs

(b) This AD supersedes AD 2001–10–03.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. These engines are installed on, but not limited to, Bombardier, Inc. Canadair airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from an error in the first part number (P/N) and serial number (SN) listed in Table 1 of the original AD. We are issuing this AD to prevent rupture of the fan disk due to cracks that initiate at an

electrical arc-out, which could result in an uncontained failure of the engine.

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

Removal of Certain Fan Disks From Service

(f) On disk P/Ns 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06, that are listed by P/N and SN in the following Table 1 of this AD and that have fewer than 8,000 cycles-since-new (CSN) on the effective date of this AD, replace fan disk P/Ns before accumulating 8,000 CSN:

TABLE 1.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS

Disk part No.	Disk serial No.
6078T57G02	GAT6306N
6078T00G01	GAT3860G
6078T57G02	GAT1924L
5922T01G04	GAT9599G
6078T57G04	GEE05831
6078T57G04	GEE06612
6078T57G04	GEE06618
6078T57G04	GEE06974
6078T57G04	GEE06980
6078T57G05	GEE143FY
6078T57G05	GEE1453G
6078T57G05	GEE14452
6078T57G05	GEE145NA

TABLE 2.—FAN DISK INSPECTION COMPLIANCE TIMES

Fan disk operating CSN	Inspect
(1) Fewer than 8,000 CSN on effective date of this AD	Before accumulating 8,000 CSN or by the next hot section inspection after the effective date of this AD, whichever the occurs earlier.
(2) 8,000 CSN or more on the effective date of this AD	Within 120 days after the effective date of this AD.

Definitions

(i) For the purposes of this AD, the following definitions apply:

(1) A serviceable fan disk is defined as a fan disk that has been inspected as specified in paragraph (h) of this AD and is not listed in Table 1 of this AD.

(2) Cycles-since-new for fan disk P/N 5922T01G04 or 5922T01G05 is defined as total cycles accrued since new as P/N 6078T57G02 or 6078T57G03, added to total cycles accrued after modification from P/N 6078T57G02 or 6078T57G03.

Alternative Methods of Compliance

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

Related Information

(k) None.

Material Incorporated by Reference

(l) You must use the General Electric Alert Service Bulletins listed in Table 3 of this AD to perform the inspections required by this AD. The Director of the Federal Register previously approved the incorporation by reference of the documents listed in Table 3

TABLE 1.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS—Continued

Disk part No.	Disk serial No.
6078T57G04	GEE08086
6078T57G04	GEE09287
6078T57G04	GEE09337
6078T57G05	GEE12720
6078T57G05	GEE14214
6078T57G05	GEE142YT
6078T57G05	GEE146GT

(g) For disks with SNs listed in Table 1 of this AD that have 8,000 CSN or more on the effective date of this AD, replace the disk within 30 days after the effective date of this AD.

Inspection of All Other Fan Disks

(h) Inspect all other fan disks, P/Ns 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 in accordance with paragraphs 3.A.(1) through 3.E.(2) of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) CF34–BJ 72–A0088, Revision 1, dated October 30, 2000 or paragraphs 3.A.(1) through 3.A.(2)(f) of the Accomplishment Instructions of GE ASB CF34–AL 72–A0103, dated August 4, 2000. Use the compliance times specified in the following Table 2:

of this AD as of May 31, 2001 (66 FR 27017, May 16, 2001) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 3.—INCORPORATION BY REFERENCE

Alert Service Bulletin No.	Page No.	Revision	Date
CF34-BJ 72-A0088 Total Pages: 15	All	1	October 30, 2000.
CF34-AL 72-A0103 Total Pages: 78	All	Original	August 4, 2000.

Issued in Burlington, Massachusetts, on February 24, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06-1958 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-23026; Airspace Docket No. 05-AAL-39]

Revision of Class E Airspace; Sand Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sand Point, AK to provide adequate controlled airspace to contain aircraft executing three new Standard Instrument Approach Procedures (SIAPs), one revised SIAP, and a revised Departure Procedure (DP). This rule results in revised Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Sand Point, AK.

EFFECTIVE DATE: 0901 UTC, June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

History

On Thursday, December 20, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Sand Point, AK (70 FR 75438). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing three new SIAPs, one revised SIAP, and one revised DP for the Sand Point Airport. The new approaches are (1) Area Navigation

(Global Positioning System) (RNAV (GPS)) Runway (RWY) 13, original; (2) Non-directional Beacon (NDB)/Distance Measuring Equipment (DME) RWY 13, original; and (3) NDB/DME RWY 31, original. The revised SIAP is the NDB RWY 13, Amendment 1. The unnamed revised DP is published in the front of the U.S. Terminal Procedures Alaska Vol 1. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Sand Point Airport area is modified by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Sand Point, Alaska. This Class E airspace is modified to accommodate aircraft executing three new SIAPs, one revised SIAP, and one revised DP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Sand Point Airport, Sand Point, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Sand Point Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Sand Point, AK [Revised]

Sand Point Airport, AK
(Lat. 55°18'54" N., long. 160°31'22" W.)
Borland NDB/DME
(Lat. 55°18'56" N., long. 160°31'06" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sand Point Airport and within 3 miles each side of the 172° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 13.9 miles south of the airport and within 5 miles either side of the 318° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport; and that airspace within 5 miles either side of the 324° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport, and that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the Borland NDB/DME.

* * * * *

Issued in Anchorage, AK, on February 24, 2006.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. 06-2007 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-2771]

RIN 1117-AA98

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating two pharmaceutical preparations as exempt anabolic steroid products under the Controlled Substances Act. This

action is part of the ongoing implementation of the Anabolic Steroids Control Act of 1990.

DATES: This rule is effective March 3, 2006. Written comments must be postmarked, and electronic comments must be sent, on or before April 3, 2006.

ADDRESSES: To ensure proper handling of comments, please reference Docket No. DEA-277 on all written and electronic correspondence. Written comments sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be sent electronically to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided at that site. DEA will accept attachments to electronic comments in Microsoft Word, Word Perfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

The Anabolic Steroids Control Act (ASCA) of 1990 (Title XIX of Pub. L. 101-647) placed anabolic steroids into Schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney General to the Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)), who in turn, re delegated this

authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR part 0, Appendix to Subpart R, section 7(g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of Title 21 of the Code of Federal Regulations. An application which was in conformance with § 1308.33 of Title 21 of the Code of Federal Regulations was received and was forwarded to the Secretary of Health and Human Services for evaluation. The purpose of this rule is to identify two products which the Deputy Assistant Administrator, Office of Diversion Control, finds meet the exempt anabolic steroid product criteria.

Anabolic Steroid Products Being Added to the List of Products Exempted From Application of the CSA

DEA received a letter dated January 12, 2004, written to the DEA on behalf of Pharmaceuticals International Inc. (PII), and an application to exempt from control under the CSA two products each containing esterified estrogens and methyltestosterone. In a letter dated April 1, 2004, DEA provided a copy of this application to the Department of Health and Human Services (DHHS) along with a request for evaluation and a recommendation. In a letter dated September 22, 2005, the Assistant Secretary of Health for DHHS recommended that both Essian™ and Essian™ H.S. be exempted from control under the CSA based on their similarity to the products, Estratest® and Estratest® H.S., respectively, both of which have been exempted from control under the CSA.

DEA agrees with DHHS regarding the similarity of these products to products which have already been exempted from the regulatory controls of the Controlled Substances Act. Further, after reviewing several law enforcement databases, DEA has not found evidence of significant abuse or trafficking of these types of products.

The Deputy Assistant Administrator, having reviewed the application, recommendation of the Secretary, and other relevant information, finds that Essian and Essian™ H.S. have no significant potential for abuse. Information on these products is given below.

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Essian™ H.S.	Pharmaceutics International Inc.	Tablets ..	Esterfied Estrogens Methyltestosterone	0.625mg/Tablet. 1.25mg/Tablet.
Essian™	Pharmaceutics International Inc.	Tablets ..	Esterfied Estrogens Methyltestosterone	1.25mg/Tablet. 2.5mg/Tablet.

Therefore, the Deputy Assistant Administrator hereby orders that the above anabolic steroid products be added to the list of products excluded from application of certain controls of the CSA and referenced in 21 CFR 1308.34.

Interested persons are invited to submit their comments to this interim rule. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

Regulatory Certifications

Regulatory Flexibility Act

The granting of exemption status relieves persons who handle the exempted products in the course of legitimate business from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Executive Order 12866

The Deputy Assistant Administrator has determined that this is not a "significant rule," as that term is used in Executive Order 12866. This rule exempts the identified steroid products from the regulatory controls that apply to controlled substances. Therefore, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own law. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$115,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of

the Administrative Procedure Act (5 U.S.C. 553), including Notice of Proposed Rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). Further, the Administrative Procedure Act permits an agency to make this rule effective upon the date of publication if the rule is "a substantive rule which grants or recognizes an exemption or relieves a restriction" (5 U.S.C. 553(d)(1)). As the rule adds two anabolic steroid products to the list of products exempted from regulatory control under the Controlled Substances Act and provides a benefit to the affected public, DEA finds that this rule meets the criteria set forth in 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(1) for an exception to the usual notice and comment process.

Part 1308 Schedules of Controlled Substances

Pursuant to the authority vested in the Attorney General by section 1903 of the Anabolic Steroids Control Act of 1990, delegated to the Administrator of the Drug Enforcement Administration pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control pursuant to 28 CFR part 0, Appendix to subpart R, section 7(g), the Deputy Assistant Administrator hereby orders that the following compounds, mixtures, or preparations containing anabolic steroids be exempted from application of sections 302 through 309 and sections 1002 through 1004 of the Controlled Substances Act (21 U.S.C. 822-829 and 21 U.S.C. 952-954) and 21 CFR 1301.13, 1301.71 through 1301.76 for administrative purposes only and be included in the list of products described in 21 CFR 1308.34.

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Essian™ H.S.	Pharmaceutics International Inc.	Tablets ..	Esterfied Estrogens Methyltestosterone	0.625mg/Tablet. 1.25mg/Tablet.
Essian™	Pharmaceutics International Inc.	Tablets ..	Esterfied Estrogens Methyltestosterone	1.25mg/Tablet. 2.5mg/Tablet.

Dated: February 27, 2006.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control.

[FR Doc. 06-2032 Filed 3-2-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596-AC43

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising the transition language contained in the 2005 planning rule (70 FR 1023). This final rule modifies the transition language to allow the Tongass National Forest to revise its land management plan either under the 2005 Rule or the planning regulations in effect before November 9, 2000. The preamble of this rule includes a discussion of the public comments received on the proposed rule published January 4, 2006 (71 FR 307), and the Department's responses to the comments.

EFFECTIVE DATE: This rule is effective March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Cherie Shelley, Director, Ecosystem Planning, Alaska Region, Forest Service, USDA at (907) 586-8887; or Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA at (202) 205-1019.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department of Agriculture published a final planning rule (70 FR 1023) governing the development of land management plans required by the National Forest Management Act. The 2005 planning regulations provide for a transition period from the previous planning regulations (1982 planning rule) to the new regulations (2005 planning rule). Specifically, § 219.14 of the 2005 planning rule allows plans to be amended under either the 1982 planning rule or the 2005 planning rule during the transition period; however, newly initiated revisions may only use the 2005 planning rule.

On August 5, 2005, the Ninth Circuit Court of Appeals issued a decision in *Natural Resources Defense Council v.*

U.S. Forest Service, 421 F.3d 797, that found defects in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. The court's analysis of the 1997 forest plan was made in the context of the 1982 planning regulations. Thus, the agency wishes to have the option of using the 1982 planning regulations during the remand. For this unique situation, this final rule amends 36 CFR 219.14(d)(1) to allow the Tongass National Forest land management plan to be revised using either the 1982 planning rule or the 2005 planning rule.

Summary of Public Comments and the Department's Responses

The proposed rule was published in the **Federal Register** on January 4, 2006, for a 30-day public comment period (71 FR 307). The Forest Service received eight comments on the proposed rule, one from an individual, one from an Alaska Native tribe, and six from environmental organizations. All comments were considered in reaching a decision on the final rule. All comments received supported the proposed rule and encouraged the Forest Service to use the 1982 planning rule instead of the 2005 planning rule in revising the Tongass Land Management Plan to respond to the decision of the Ninth Circuit. The Department appreciates the support for the proposed rule and the flexibility it will provide. The Forest Service will decide to use either the 1982 or 2005 planning rule in revising the Tongass Land Management Plan, and will take the comments received on the proposed rule into account in making that decision.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule makes a technical change to the transition language of the 2005 planning rule, to allow the Tongass National Forest to use either the current planning regulations or the regulations in effect before November 9, 2000, for its next land management plan revision. An initial small entities flexibility assessment has been made, which indicates that the final rule will impose no additional requirements on the affected public, which includes small businesses, small not-for-profit organizations, or small units of government. Accordingly, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

No Environmental Impact

This final rule allows the Tongass National Forest to use either the existing planning regulations or the planning regulations in effect before November 9, 2000, for the next revision of its land management plan to respond to the court's order. As such, the final rule has no direct and immediate effects regarding the occupancy and actual use of the Tongass National Forest. Section 31.12 (2) of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The 2005 planning regulations are a Service-wide program process. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule allows the Tongass National Forest to use either the regulations currently in

place or the planning regulations in effect before November 9, 2000, for the next revision of its land management plan to respond to the court's order. This plan is a programmatic document that provides guidance and information for future project-level resource management decisions. The revised plan may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of such designations on energy supply, distribution, or use will be considered at the time such designations are proposed.

Controlling Paperwork Burdens on the Public

This final rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The Department has made an assessment that the rule conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that the final rule does not have Federalism implications.

Consultation With Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of private property. This final rule only allows the Tongass National Forest to use either the existing planning regulations or the regulations

in effect before November 9, 2000, for its next plan revision.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. After adoption of this final rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) the final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture amends subpart A of part 219 of title 36 of the Code of Federal Regulations as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

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

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

■ 2. Amend § 219.14 by revising paragraph (d)(1) to read as follows:

§ 219.14 Effective dates and transition.

* * * * *

(d)(1) Plan development and plan revisions initiated after January 5, 2005 must conform to the requirements of

this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

* * * * *

Dated: February 22, 2006.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 06–2021 Filed 3–2–06; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0014; FRL–8039–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Documents Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of revised citations, editions, and corrected addresses to documents which are incorporated by reference in Virginia's SIP-approved regulations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 2, 2006 without further notice, unless EPA receives adverse written comment by April 3, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–VA–0014 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: frankford.harold@epa.gov.
C. Mail: EPA–R03–OAR–2005–VA–0014, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2005-VA-0014. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. 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 <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814-2108, or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 25, 2005 and October 25, 2005, the Commonwealth of Virginia submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of revised citations, editions, and corrected addresses to technical documents which are incorporated by reference in Virginia's SIP regulations.

II. Summary of SIP Revisions

A. Description of Submittals

On August 25, 2005, Virginia submitted revised citations, editions, and corrected addresses to technical documents which are incorporated by reference in Virginia's regulations. The document citations are listed in Virginia Regulation 9 VAC 5-20-21. The referenced publications include documents such as "Code for Motor Fuel Dispensing Facilities and Repair Garages," "Standard for Tank Vehicles and Flammable and Combustible Liquids," and "Flammable and Combustible Liquids Code" by the National Fire Protection Association (NFPA); "Atmospheric Emissions from Sulfuric Acid Manufacturing Processes" by the Environmental Protection Agency; and "Test for Pour Point of Petroleum Oils" by the American Society for Testing and Materials (ASTM). Virginia has also updated the citations, editions and addresses of documents prepared by EPA, ASTM, NFPA, the U.S. Government Printing Office (GPO), and American Petroleum Institute (API). In addition, Virginia has revised rules in 9 VAC 5, Chapter 40, Articles 5 (Synthesized Pharmaceutical Products Manufacturing Operations), 21 (Sulfuric Acid Production Units), and 37 (Petroleum Liquid Storage and Transfer Operations) which cross-reference the documents that are listed in Regulation 9 VAC 5-20-21. The submittal also contains an updated reference to the July 1, 2002 Code of Federal Regulations (CFR) which Virginia cites in its State regulations.

On October 25, 2005, Virginia submitted an additional revision to the provision in 9 VAC 5-20-21.B. This revision states that any reference to the CFR in Virginia's SIP-approved regulations means those CFR provisions which are in effect as of July 1, 2004.

B. EPA Evaluation

EPA has determined that these SIP revisions incorporate the most up-to-date version of technical documents that are referenced in Virginia's air pollution control regulations, thus ensuring the proper implementation of the air pollution control regulations which

comprise the SIP. EPA's approval of the revisions to 9 VAC 5-20-21.B is for those provisions of the CFR which implement control programs for air pollutants related to the national ambient air quality standards (NAAQS) and regional haze.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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

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

because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

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

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

IV. Final Action

EPA is approving revisions to the Virginia SIP submitted by the Commonwealth of Virginia on August 25, 2005 and October 25, 2005. These revisions consist of revised citations, editions, and corrected addresses to documents that are incorporated by reference in Virginia's SIP-approved regulations. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 2, 2006 without further notice unless EPA receives adverse comment by April 3, 2006. If EPA

receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action approving the revisions to Virginia rule 9 VAC 5-20-21 that update the technical documents and CFR provisions which are incorporated by reference may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 22, 2006.

William Early,
Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In Section 52.2420, the tables in paragraphs (c) and (e) are amended:

■ a. In paragraph (c) by revising the entries for State citations 5-40-460, 5-40-2930, 5-40-5210, and 5-40-5230 for Chapter 40.

■ b. In paragraph (e) by adding entries for Documents Incorporated by Reference after the existing entries.

■ The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Chapter 40 Existing Stationary Sources [Part IV]				
Part II Emission Standards				
Article 5 Emission Standards for Synthesized Pharmaceutical Products Manufacturing Operations (Rule 4-5)				
5-40-460	Control Technology Guidelines.	2/1/02	3/3/06 [Insert page number where the document begins].	
Article 21 Emission Standards for Sulfuric Acid Production Units (Rule 4-21)				
5-40-2930	Monitoring	2/1/02	3/3/06 [Insert page number where the document begins].	
Article 37 Emission Standards for Petroleum Liquid Storage and Transfer Operations (Rule 4-37)				
5-40-5210	Definitions	2/1/02	3/3/06 [Insert page number where the document begins].	
5-40-5230	Control Technology Guidelines.	2/1/02	3/3/06 [Insert page number where the document begins].	

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Documents Incorporated by Reference (9 VAC 5-20-21, Sections D., E. (introductory sentence), E.2 (all paragraphs), E.3.b, E.4.a.(1) and (2), E.4.b., E.5. (all paragraphs), and E.7. (all paragraphs)).	Statewide	8/25/05	3/3/06 [Insert page number where the document begins].	State effective date is 2/1/00.
Documents Incorporated by Reference (9 VAC 5-20-21, Section B).	Statewide	10/25/05	3/3/06 [Insert page number where the document begins].	State effective is 3/9/05; approval is for those provisions of the CFR which implement control programs for air pollutants related to the national ambient air quality standards (NAAQS) and regional haze.

[FR Doc. 06-1943 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2005-VA-0016; FRL-8040-1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to the Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the amendments of the Commonwealth's existing ambient air quality standards. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

EFFECTIVE DATE: This final rule is effective on April 3, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-VA-0016. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 6, 2006 (71 FR 892), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the amendments to the Commonwealth's existing ambient air quality standards, 9 VAC 5 Chapter 30. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on September 26, 2005.

II. Summary of SIP Revision

The Commonwealth's SIP revision incorporates the 1997 national ambient air quality standards (NAAQS) for the 8-hour ozone and PM_{2.5} into the Virginia Regulations for the Control and Abatement of Air Pollution: 9 VAC 5 Chapter 30, Ambient Air Quality Standards. The other SIP revisions incorporated into 9 VAC 5 Chapter 30, are amendments to the ambient air quality standards for sulfur dioxide, carbon monoxide, ozone (1-hour), PM₁₀,

nitrogen dioxide, and lead to make the state regulation consistent with 40 CFR part 50.

Other specific requirements of Regulation 9 VAC 5 Chapter 30 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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

prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

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

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

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

of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the amendments to the existing air quality standards, 9 VAC 5 Chapter 30, as a revision to the Virginia SIP submitted on September 26, 2005.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the amendments of Virginia's ambient air quality standards, may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: February 22, 2006
 William Early,
 Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 30 to read as follows:

§ 52.2420 Identification of plan.

* * * * *
 (c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Chapter 30 Ambient Air Quality Standards [Part III]				
5-30-10	General	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-30	Sulfur oxides (sulfur dioxide).	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-40	Carbon Monoxide	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-50	Ozone (1-hour)	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-55	Ozone (8-hour)	9/8/04	3/3/06 [Insert page number where the document begins].	Added Section.
5-30-60	Particulate Matter (PM ₁₀).	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-65	Particulate Matter	9/8/04	3/3/06 [Insert page number where the document begins].	Added Section.
5-30-70	Nitrogen dioxide	9/8/04	3/3/06 [Insert page number where the document begins].	
5-30-80	Lead	9/8/04	3/3/06 [Insert page number where the document begins].	

* * * * *
 [FR Doc. 06-1944 Filed 3-2-06; 8:45 am]
 BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[MT 980-0777-XG]

RIN 1004-AB85

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Proper Offices for Recording of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to execution and

filing of forms in order to reflect that the Montana State Office of the Bureau of Land Management (BLM) is removing its post office box from the list of State Office addresses and Areas of Jurisdiction included in the Code of Federal Regulations. The public will continue to direct personal, messenger, express mail, direct filing, and other delivery by the United States Postal Services to the same street address as before. This rule will have no impact or cost to the public.

DATES: Effective March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Diane Williams, Regulatory Affairs Group, (202) 452-5030. Persons who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; Attention: RIN 1004-AB85.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Matters

I. Background

This final rule reflects the administrative action of removing the Montana State Office post office box from the list of State Office addresses and Areas of Jurisdiction included in the Code of Federal Regulations. The street address for the personal filing of documents relating to public lands in Montana, North Dakota and South Dakota remains the same, and this rule makes no other changes in filing requirements. The BLM has determined that this rule has no substantive impact on the public, nor does it impose any costs; it merely updates an address included in the Code of Federal Regulations for the convenience of the public. Therefore, the Department of the Interior, for good cause, finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public comment procedures are unnecessary and that the rule may take effect upon publication.

II. Procedural Matters

Regulatory Planning and Review
(Executive Order 12866)

This final rule is an administrative action to remove a post office box from the address of one of the BLM State Offices. This rule is not subject to review by the Office of Management and Budget under Executive Order 12866. This final regulation will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This final regulation will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final regulation does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does it raise novel legal or policy issues.

National Environmental Policy Act

This final rule is a purely administrative regulatory action having

no effect upon the public or the environment. It has been determined that the rule is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), pursuant to 516 Departmental Manual, Chapter 2, Appendix 1.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. Since this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). It will not have an annual effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

The BLM has determined that the final rule is not significant under the Unfunded Mandates Reform Act of 1995 because it will not 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.

Further, the final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not

cause a taking of private property. No private property rights would be affected by a rule that merely removes a post office box from an address for the Montana State Office. The Department therefore certifies that this final rule is not governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public, does not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that the rule does not include policies that have tribal implications. This final rule is a purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely removing the post office box from the BLM Montana State Office address included in the Code of Federal Regulations.

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

In accordance with the Executive Order 13211, the BLM has determined that the final rule is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this final rule is administrative in

nature, merely removing the post office box from the BLM Montana State Office address included in the Code of Federal Regulations. This final rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; has no effect on local participation in the Federal decision-making process; and provides that agency programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author

The principal author of this rule is Diane O. Williams, Regulatory Affairs Group (WO 630).

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure; Archives and records; Public lands.

Dated: February 23, 2006.

Julie A. Jacobson,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 by amending paragraph (a) by revising the address of the Bureau of Land Management, Montana State Office, to read as following:

§ 1821.10 Where are BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Montana State Office, 5001 Southgate Drive, Billings, Montana 59101-4669—

Montana, North Dakota and South Dakota.

* * * * *

[FR Doc. 06-1991 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-85-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 591, 592 and 594

[Docket No. NHTSA-2000-8159; Notice 4]

RIN 2127-AJ63

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Response to Petitions for Reconsideration.

SUMMARY: This document responds to two petitions for reconsideration of the October 4, 2005 final rule that amended regulations pertaining to the importation by registered importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The petitioners contend that certification to the Theft Prevention Standard can not be accomplished after the original manufacture of a vehicle and object to a provision in the rule that requires registered importers to certify that either the vehicle is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured or as modified prior to importation. The agency is denying the petitions. This document also denies a petition for an emergency stay by one of the petitioners.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590; Telephone: (202) 366-3151. For legal issues, you may contact Michael Goode, Office of Chief Counsel, Telephone: (202) 366-5263.

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 2000, NHTSA published a Notice of Proposed Rulemaking (NPRM) proposing extensive amendments to the agency's regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. 65 FR 69810. On August 24, 2004, we published a final rule (69 FR 52070), and on October 4, 2005, we amended several provisions of that final rule in response to a petition for reconsideration (70 FR 57793). One of the amendments in the October 4, 2005 rule required RIs to certify for each nonconforming vehicle that they import that either the vehicle is not required to comply with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541) or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. 49 CFR 592.6(d)(1)(ii); see 70 FR at 57801.

The National Insurance Crime Bureau (NICB)¹ submitted a petition for reconsideration objecting to this provision, based on the contention that NHTSA has no authority to allow any entity other than the original manufacturer to certify compliance with the Theft Prevention Standard. The North American Export Committee² also filed a petition in support of NICB's petition. In addition, on November 3, 2005, NICB filed a petition for an emergency stay of the effective date of the final rule. We are denying the petitions for reconsideration and the petition for a stay for the reasons discussed below.

II. Discussion

A. Theft Prevention Regulations

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) (Pub. L. 98-547, 98 Stat. 2754) added Title VI, "Theft Prevention," to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), 15 U.S.C. 1901 *et seq.* (1982 & Supp.V 1987).³ The Theft Act required the

¹ NICB states it is a non-profit organization that receives support from approximately 1,000 property/casualty insurance companies. The NICB works with insurers and law enforcement agencies to facilitate the identification, detection, and prosecution of insurance criminals.

² The North American Export Committee states it is an entity composed of law enforcement organizations, insurance and vehicle-related business representatives in the U.S., Canada, and Mexico.

³ Pub. L. 92-513, 86 Stat. 947. The Cost Savings Act, as amended, was repealed in the course of the

Secretary of Transportation to issue rules to address the problem of vehicle theft. See 15 U.S.C. 2022 (Supp. V 1987). In a rulemaking conducted in 1985, NHTSA promulgated the Theft Prevention Standard pursuant to a delegation from the Secretary. 50 FR 43166 (Oct. 24, 1985). This rule set forth the performance criteria for affixing to or inscribing on covered major parts⁴ of "high theft" line passenger motor vehicles identifying numbers, which generally are vehicle identification numbers (VINs). The Theft Prevention Standard was codified at 49 CFR part 541 (1986).

In the rulemaking on the Theft Prevention Standard, NHTSA discussed the question of who may certify compliance with the Standard. Section 606(c)(1) of the Cost Savings Act, 15 U.S.C. 2026(c)(1) (Supp. V 1987), provided that:

Every manufacturer of a motor vehicle subject to the standard * * * and every manufacturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle Theft Prevention Standard.

The Theft Act did not define manufacturer, although the term was defined in the Cost Savings Act. 15 U.S.C. 1901(7) (1982 & Supp. V 1987).

The NPRM on the Theft Prevention Standard proposed that only original vehicle manufacturers be allowed to certify compliance with the theft standard. See 50 FR at 19737-40. The agency noted that this would have the effect of prohibiting direct importers⁵ from importing any high theft vehicle into the United States. As defined in the preamble, a direct importer is a person

that obtains foreign vehicles not originally manufactured for sale in the United States, brings those vehicles into the United States and modifies those vehicles so that they may be certified as being in compliance with U.S. vehicle safety, emissions, and bumper standards. 50 FR at 19738 (May 10, 1985); see also 50 FR at 43166 and 43181 (Oct. 24, 1985). NHTSA explained that:

This proposal was based upon the Theft Act's prohibition against importing non-complying vehicles into the U.S., together with the Theft Act's ambiguity as to whether persons besides the original manufacturer should be allowed to certify compliance. The proposal was also based upon the agency's tentative conclusion that limiting certification authority would enhance the security of the marking technologies and the enforcement of this Theft Prevention Standard.

50 FR 43167

In their comments on the NPRM, generally, original manufacturers supported the proposed limitation on who could certify vehicles and importers opposed it. 50 FR at 43182. The importers argued that if Congress had intended to limit certification authority to original manufacturers, it would have done so explicitly. *Id.* A group of importers suggested a number of methods by which importers could be allowed to certify compliance without sacrificing enforcement. *Id.* The Department of Justice, which had enforcement authority under the Act (15 U.S.C. 2028 (Supp. V 1987)) supported the position of the direct importers. *Id.*

In the final rule establishing the Theft Prevention Standard, NHTSA allowed direct imports of high theft vehicles. 50 FR at 43167, 43181-87. The rule's definitions section stated:

Statutory terms. All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section. [49 CFR 541.4(a) (1986)].

One such term was "manufacturer", which was defined as: "any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale." 15 U.S.C. 1901(7) (1982 & Supp. V 1987).

In the Theft Prevention Standard, NHTSA specified requirements for passenger cars not originally manufactured to comply with U.S. vehicle safety and bumper standards. See 49 CFR 541.5(a) and (b)(3) (1986). These were explained in the preamble

to the rule. 50 FR at 43183-85. NHTSA also established requirements for replacement parts subject to marking requirements which were not originally manufactured for sale in the United States. 49 CFR 541.6(a).

The agency's analysis of who may certify conformity to the Theft Prevention Standard began with the definition of the term "manufacturer" in section 2(7) of the Cost Savings Act, 15 U.S.C. 1901(7) (1982 & Supp. V 1987), which, as quoted above, included "any person importing motor vehicles or motor vehicle equipment for resale." 50 FR at 43181.

We concluded that, for various reasons, the Cost Savings Act's broad definition of "manufacturer" applies to use of that term in the Theft Act, which added Title VI to the Cost Savings Act. 50 FR at 43182. Although the new Title VI on theft prevention did not state a definition of "manufacturer," we noted that, in the Theft Act, Congress amended the Cost Savings Act to make its general definitions in section 2 apply to the Theft Act unless Title VI provided a different definition.⁶ (See the introductory clause to 49 U.S.C. 32101 for the current version of that language in recodified form.) For example, in Title VI, Congress provided a definition for "passenger motor vehicle" that differed from that already found in the Cost Savings Act, making the Title VI definition applicable for Theft Act purposes. (Compare the Cost Savings Act definition, now found at 49 U.S.C. 32101(10), with that in the Theft Act, now found in 49 U.S.C. 33101(10).) However, Title VI did not contain such a new and uniquely limited definition of "manufacturer," meaning that the definition of that term for Theft Act purposes was provided by the Cost Savings Act's definition of the term in section 2(7), which included any person importing motor vehicles or motor vehicle equipment for resale. This indicated that if Congress had wanted to exclude direct importers from the definition of manufacturer, it presumably would have done so explicitly. 50 FR at 43182.

We also noted that the House Report expressly stated that the legislation was designed to "minimize regulation of the domestic and foreign motor vehicle manufacturing industry including the aftermarket motor vehicle industry" and it would be inconsistent with this goal to force a part of the industry out of that business. *Id.* citing H.R. Rep. No. 89-

1994 recodification of various laws pertaining to the Department of Transportation and was reenacted and recodified without substantive change as 49 U.S.C. 32101 *et seq.* (Pub. L. 103-272, 108 Stat. 745). See 108 Stat. 1034 (Cost Savings Act, as amended); 108 Stat. 1076 (Theft Prevention title); 108 Stat. 1379-1400 (repeals).

⁴ Currently, the list of major parts includes: engine, transmission, hood, fenders, side and rear doors (including sliding and cargo doors and deck lids, tailgates, or hatchbacks, whichever is present), bumpers, quarter panels, and pickup boxes and/or cargo boxes. See 49 CFR 541.5.

⁵ This term was used before the term registered importer was employed. The term registered importer has been used since the enactment of the Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100-562, 102 Stat. 2818), which amended the National Traffic and Motor Vehicle Safety Act and has been recodified at 49 U.S.C. 30141 *et seq.* Section 30141(c) provides for registration of importers. Both before and after the 1988 amendments, the National Traffic and Motor Vehicle Safety Act, as amended, required that a vehicle not originally manufactured to conform to safety standards be bonded for entry into the U.S. and be modified to meet all applicable safety standards.

⁶ 15 U.S.C. 1901 (Supp. V 1987) provided: "Definitions for the purpose of this chapter [of the United States Code] [except subchapter V and except as provided in section 2021 of this title].":

1087 at 2 (1984). We recognized that the language of certain portions of Title VI seemed to indicate that Congress did not contemplate certification by direct importers. For example, we noted that Congress did not explicitly provide for importing vehicles not conformed to the theft standard under bond, as it had done for the safety, emissions, and bumper standards. 50 FR at 43182. As we explained, however, since there is no bonding provision under Title VI of the Cost Savings Act to assure conformity following importation, as exists under the Vehicle Safety Act, all vehicles subject to the theft standard must be certified as complying with the requirements of the Theft Prevention Standard before they are imported. *Id.* at 43181.

The preamble to the theft prevention rule also considered whether the policy goals underlying the Theft Act would be better served by allowing or prohibiting certification of compliance by direct importers. After examining the matter, the agency adopted a final rule that allows all entities that are "manufacturers" within the meaning of the Cost Savings Act to certify compliance with the requirements of the Theft Prevention Standard. *Id.* at 43183. We stated that this is consistent with existing practice under the National Traffic and Motor Vehicle Safety Act of 1966 as amended (Vehicle Safety Act)⁷, the Clean Air Act, and Title I of the Cost Savings Act.

In 1992, Congress enacted The Anti Car Theft Act of 1992, which amended the Theft Act, Public Law 102-519, 106 Stat 3384. During this legislative activity, Congress considered the coverage of the Theft Act. It expanded the application of the Theft Prevention Standard to include multipurpose passenger vehicles and light duty trucks.⁸ However, Congress did not question the definition of manufacturer, as interpreted in the agency's 1985 rule.

B. Registered Importer Rule Amendments

On November 20, 2000, NHTSA published an NPRM proposing extensive amendments to the agency's regulations pertaining to the importation by RIs of vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper and theft

prevention standards. 65 FR 69810. As noted above, before this rulemaking, the agency had interpreted the Theft Act as allowing vehicles not originally manufactured to conform to the Theft Prevention Standard to be brought into conformance before entry into the United States, but not allowing post-entry conformance.

In the registered importer rulemaking, one proposed amendment was to permit RIs to bring a vehicle into compliance with the Theft Prevention Standard after the vehicle's entry into the United States. 69 FR at 69817. In its comments, NICB objected to this proposed provision.

The final RI rule did not adopt the proposal to allow post-entry conformance of imported vehicles to the Theft Prevention Standard. 69 FR 52070, 52078-79 (Aug. 24, 2004). Our decision not to adopt the proposal was based upon the prohibition against importing vehicles that do not conform to the Theft Prevention Standard in 49 U.S.C. 33114(a)(1). Unfortunately, the text of the rule inadvertently went beyond precluding post-entry conformance to the Theft Prevention Standard, and precluded conformance following the original production of the vehicle. 69 FR at 52096.

A petition for reconsideration of the final RI rule by Mr. Philip Trupiano of Auto Enterprises, Inc., an RI, requested the agency to expressly permit the importation of a motor vehicle modified prior to importation to comply with the Theft Prevention Standard. 70 FR at 57797. In response, NHTSA amended the RI rule to require the RI to certify that the vehicle complies with parts marking requirements of the Theft Prevention Standard as manufactured or as modified prior to importation unless the vehicle is not required to comply. 49 CFR 592.6(d)(1)(ii), 70 FR 57801 (Oct. 4, 2005). We explained:

The agency did not intend to preclude the importation of vehicles that are modified to comply with the Theft Prevention Standard prior to importation. However, the text of the provision adopted by the agency in 49 CFR 592.6(d)(1) inadvertently went beyond this intent by prohibiting the importation of a vehicle that was not originally manufactured to comply with the parts marking requirements of the Theft Prevention Standard. Because we did not intend to preclude the importation of vehicles that are modified to comply with the Theft Prevention Standard prior to importation, we are amending section 592.6(d)(1). As amended, the section excludes vehicles that do not comply with the Theft Prevention Standard at the time of importation, as opposed to those that were not originally manufactured to comply with that standard. [70 FR at 57798]

C. NICB's Petition for Reconsideration

In its petition for reconsideration, NICB argues that a person may not import a motor vehicle subject to the Theft Prevention Standard unless the manufacturer that produced the new vehicle produced it in conformance with the Theft Prevention Standard. Petition at 4 *et seq.* NICB asserts that the Theft Act explicitly rules out subsequent modification of the vehicle or its components to comply with the standard. *Id.* at 4.

The petitioner points out that the Theft Prevention Standard is defined as a minimum performance standard for identifying major parts of new motor vehicles and major replacement parts by inscribing or affixing numbers or symbols on those parts. *Id.* at 4-5. In addition, the petitioner asserts that allowing RIs to certify compliance with the Theft Prevention Standard will result in a proliferation of stolen vehicles entering the U.S., causing financial loss and increased highway deaths and injuries. *Id.* at 6-8. NICB requests that 49 CFR 592.6(d)(1)(ii) be repealed. *Id.* at 9.

D. Response to NICB Petition

In our view, the question whether a vehicle may be conformed to the Theft Prevention Standard after its original manufacture but before its importation into the United States, and thus the validity of 49 CFR 592.6(d)(1)(ii), was resolved over twenty years ago when the Theft Prevention Standard was adopted. Most of the arguments raised by NICB were rejected in 1985. The NICB petition does not mention the resolution of the issue in 1985.

A focal point, as it was in the 1985 rulemaking, is the meaning of the word "manufacturer" in the former Title VI of the Cost Savings Act, the Theft Act. As interpreted in 1985, the definition of manufacturer in the Cost Savings Act applies to the Theft Act. We adhere to that interpretation in light of the language and subject matter of the Act. Congress has long been aware that vehicles are imported into the United States. In 1966, in the Vehicle Safety Act, Congress established the definition of manufacturer to include persons involved in manufacturing and assembling vehicles and importers of vehicles for resale. In 1972, Congress enacted the Cost Savings Act, which contained the same definition of a manufacturer. In the next decade, Congress added the Theft Act as a new subtitle VI to the Cost Savings Act. Congress amended the definitions provision at the outset of the Cost

⁷ The National Traffic and Motor Vehicle Safety Act, as amended, was repealed in the course of the 1994 recodification of various laws pertaining to the Department of Transportation and was reenacted and recodified without substantive change as 49 U.S.C. 30101 *et seq.* Pub. L. 103-272, 108 Stat. 745, 941-973; 1379-1400 (repeals).

⁸ 106 Stat 3393. See 49 U.S.C. § 33101(10).

Savings Act⁹ so that it applied to all subtitles of the Act except the subtitle involving fuel economy (subtitle V) and as provided in 15 U.S.C. 2021, 15 U.S.C. 1901 (1982 and Supp. V 1987). See fn 6 *infra*. As noted above, Congress changed one of the definitions in the Cost Savings Act for the purposes of the Theft Act, that of the term "passenger motor vehicle", but not the definition of manufacturer, which reflects that Congress did not want to do so. It makes eminent sense for the same definition of manufacturer to apply to numerous aspects of motor vehicle regulation, including safety, bumpers, emissions, and theft prevention.¹⁰

Observing that the Theft Act provides for enforcement against manufacturers, NICB suggests that the regulation at issue leaves NHTSA without enforcement authority. Petition at 5. As noted above, under both the Vehicle Safety Act and the Theft Act, as interpreted by NHTSA, the term manufacturer includes importers. The regulation at issue requires the RI to certify that the vehicle complies with parts marking requirements of the Theft Prevention Standard as manufactured or as modified prior to importation unless the vehicle is not required to comply. 49 CFR 592.6(d)(1)(ii). In addition, the declaration furnished to Customs by the RI upon entry of the vehicle provides for the RI to certify that the vehicle conforms with applicable Federal Theft Prevention Standards. HS-7 form, Box 3. The government has more than ample authority to enforce these provisions, including inspection of imported vehicles, revocation of an RI's license, and fines and penalties for noncompliance. See *e.g.*, 49 U.S.C. 30141(c)(4), 30165, and 30166; 18 U.S.C. 1001; 49 CFR 592.6 and 592.7.

NICB also refers to a provision in the Theft Act stating that a person may not "manufacture for sale, sell, offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, a motor vehicle subject to a standard prescribed under section 33102 or 33013 of this title unless it conforms to the standard." 49 U.S.C. 33114. Petitioner argues that NHTSA's regulation ignores congressional commands. Petition at 4. This argument ignores the fact that the Theft Act prohibition refers to the Theft Prevention Standard, which provides that motor vehicles not originally

manufactured in conformance with the standard may be brought into compliance with the standard prior to importation. Thus, the RI regulation at issue is consistent with the Standard and does not undermine the prohibition in 49 U.S.C. 33114.

The petitioner notes that the Theft Prevention Standard is defined as a minimum performance standard for identifying major parts of new motor vehicles and major replacement parts by inscribing or affixing numbers or symbols on those parts. 49 U.S.C. 33101. The reference to new motor vehicles reflects a general distinction between new and used vehicles in regulatory statutes regarding vehicles. For example, many of the central provisions of the Vehicle Safety Act, as amended, apply to new vehicles, rather than used vehicles. See *e.g.*, 49 U.S.C. 30111, 30112(a), (b)(1); but see 49 U.S.C. 30122 (make inoperative provision applies to all vehicles). Vehicles imported by registered importers do not neatly fall in either category. Although used, in numerous respects they are regulated like new vehicles and the RI must conform them to the requirements in effect when the vehicles originally were manufactured. The vehicles imported by RIs are subject to the prohibition on the sale of noncompliant vehicles in section 30112(a) when released, and the RIs are the vehicles' manufacturers for various purposes, such as certifying compliance and conducting recalls. See, *e.g.*, 49 U.S.C. 30118. There are no comparable requirements regarding used vehicles. NICB also notes that the Theft Act refers to parts that manufacturers install. Petition at 4. NHTSA addressed this in 1985. See also 50 FR 43181.

NICB also argues that U.S. authorities cannot monitor parts marking operations that occur in foreign countries, as allowed under the new rule. *Id.* at 5. The petitioner asserts that this fact explains why Congress allowed vehicles that were not parts marked to be imported if they were labeled for export only. This argument ignores the 1985 Theft Prevention Standard and the fact that U.S. authorities have the authority to inspect the vehicles when they are awaiting release by NHTSA. See 49 U.S.C. 30166; 49 CFR 591.6(e). In any event, the exception from compliance with U.S. standards for vehicles that are for export only does not support the argument that conformance of vehicles to the Theft Prevention Standard after their original manufacture is precluded. There was a similar exemption from safety standards in the Vehicle Safety Act, 15 U.S.C. 1397(b)(5); see § 1397(b)(3) (1982), see also 49 U.S.C. 30112(b)(3) (2000). The

Vehicle Safety Act did not preclude post-original manufacture conformity to safety standards and similarly the provision in the Theft Act did not do so.

Further, NICB argues that permitting parts marking before importation is inconsistent with NHTSA's RI regulatory system. *Id.* at 6. NICB bases its argument in part on 49 CFR 591.2 under which, it claims, nonconforming vehicles must be brought into conformity with the bumper and safety standards "before they are imported." This argument lacks merit; the phrase "before importation" is not in the regulation. Similarly, NICB erroneously asserts that RIs by definition include only importers of vehicles not originally manufactured to conform to all applicable safety standards and not importers of vehicles that do not comply with the theft standard. This argument ignores the fact that over twenty years ago, NHTSA promulgated the Theft Prevention Standard, which allowed the importation of vehicles not originally manufactured to conform to the Theft Prevention Standard if conformed before importation. The preamble expressly recognized that vehicles are imported by direct (registered) importers. 50 FR at 63166, 43181-85. As explained in the preamble to the RI rule NPRM, prior to the RI rule amendments NHTSA implemented the prohibition on importation of vehicles that do not comply with the Theft Prevention Standards through the agency's certification regulation. See 65 FR at 69817. In the RI rule, the agency furthered the implementation of the Theft Act requirement through the RI rule. In view of the fact that RIs import vehicles, this is a sound approach to implementation.

The petitioner also advances policy arguments asserting that allowing RIs to certify compliance to the Theft Prevention Standard before importation will allow car thieves outside of the U.S. to place VINs from damaged vehicles, such as vehicles that have been totaled or submerged in water, on stolen vehicles from outside the U.S. Petition at 6-8. NICB argues that this will impose financial losses on American consumers and increase highway deaths and injuries. *Id.*

NICB's policy arguments ignore the fact that for twenty years vehicles not originally manufactured to comply with the Theft Prevention Standard have been allowed entry into the United States after being conformed to the Theft Prevention Standard. Also, NICB merely offers sweeping generalities to support its views. In fact, the vehicles imported through the registered importer program are a very small percentage of the total

⁹ The Theft Act provided "Section 2 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901) is amended by inserting 'and except as provided in section 601 of this Act [the Theft Act]' immediately after 'title V'". 98 Stat. 2767.

¹⁰ We note that NICB refers to these programs together in one sentence. Petition at 3.

number of registered vehicles. In the United States, there are over 230,000,000 registered vehicles. In 2005, about 12,700 vehicles were imported into the U.S. by RIs. Approximately 99 percent of the imported vehicles not originally manufactured to meet U.S. standards were imported from Canada. A portion of these imported vehicles have not been high theft line vehicles subject to the Theft Prevention Standard. Of those that were, based upon our experience in program administration, a considerable fraction of the motor vehicles manufactured for the Canadian market are parts-marked to the U.S. Theft Prevention Standard. In addition, some portion of these Canadian vehicles were equipped with anti-theft devices identical or similar to ones installed in vehicles granted an exemption by NHTSA pursuant to 49 CFR part 543. Furthermore, effective September 2007, Canada Motor Vehicle Safety Standard 114 will require that all vehicles with a gross vehicle weight rating (GVWR) of less than 10,000 lbs, except emergency vehicles, be equipped with anti-theft immobilization devices. An estimated 85 percent of all model year 2006 Canadian vehicles are equipped with such devices. Thus, there is a relatively small subset of vehicles imported yearly into the U.S. that were not originally manufactured to comply with the U.S. Theft Prevention Standard and do not have an anti-theft device. We are not aware of problems associated with RIs' importation of vehicles that are subject to and do not comply with the Theft Prevention Standard. Since the practice of allowing pre-importation conformity has worked for 20 years, we decline to change it.

E. NICB's Petition for an Emergency Stay

On November 3, 2005, NICB filed a petition for an emergency stay of the effective date (November 3, 2005) of 49 CFR 592.6(d)(1)(ii) amended by the October 4, 2005 final rule. The petitioner asserts that the American public and importers will suffer irreparable harm. The petition requests that NHTSA stay the effective date of the provision until the agency has had time to consider its petition for reconsideration. This is moot. Accordingly, the petition is denied.

Issued: February 28, 2006.

Jacqueline Glassman,
Deputy Administrator.

[FR Doc. 06-2003 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 060111007-6053-02; I.D. 010906A]

RIN 0648-AT56

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule; annual management measures for Pacific halibut fisheries and approval of Catch Sharing Plan; changes to the Catch Sharing Plan and to sport fishing management in Area 2A.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A and implementing regulations for 2006, and announces approval of the Area 2A CSP. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC).

EFFECTIVE DATE: March 5, 2006.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting either the International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145-2009, or Sustainable Fisheries Division, Alaska Region, NMFS P.O. Box 21668, Juneau, AK 99802-1668, or Sustainable Fisheries Division, NMFS Northwest Region, 7600 Sand Point Way, NE., Seattle, WA 98105. This final rule also is accessible via the Internet at the Government Printing Office's Web site at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907-586-7425, e-mail at bubba.cook@noaa.gov, or Jamie Goen, 206-526-4646, e-mail at jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut

fishery in 2006 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2006 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. These management measures are effective until superseded by the 2007 management measures, which NMFS will publish in the **Federal Register**.

The IPHC held its annual meeting in Bellevue, Washington, January 17-20, 2006, and adopted regulations for 2006. The substantive changes to the previous IPHC regulations (70 FR 9242, February 25, 2005) include:

1. New commercial fishery opening date of March 5;
2. Opening dates for the Area 2A commercial non-tribal directed halibut fishery;
3. Adoption of the revised Area 2A CSP.
4. A new possession limit on land for Washington, Oregon, and California. The IPHC recommended catch limits for 2006 to the governments of Canada and the United States totaling 69,860,000 lbs. (31,688.5 mt) The IPHC staff reported on the assessment of the Pacific halibut stock in 2005. The assessment indicated healthy halibut stocks in Areas 3A through 2A, but indicated declines in Areas 3B and throughout Area 4 requiring lower catch rates. Recruitment of 1994 and 1995 year classes appeared relatively strong in all areas except Area 4B, which showed lower recruitment levels for the same year classes. IPHC staff also reported that recoveries of PIT-tagged halibut in the Bering Sea and Gulf of Alaska remain low, providing insufficient information to reliably estimate exploitable biomass in those areas.

Based on recommendations by the IPHC staff, the IPHC adopted a harvest rate of 22.5 percent as the baseline harvest rate for Areas 3A, 2C, 2B, and 2A. Reduced recruitment and a new assessment of productivity in Areas 4B and 4CDE indicated an appropriate harvest rate of 15 percent. Thus, as a

precautionary measure, the IPHC adopted catch limits based on a 15-percent harvest rate for Areas 4B and 4CDE while additional research is conducted during 2006.

This action also implements the CSP for regulatory Area 2A. This plan was developed by the PFMF under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and to adopt such regulations as may be necessary to implement the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the PFMF's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-treaty commercial, and non-treaty sport fisheries in and off Washington, Oregon, and California.

Catch Sharing Plan (CSP) for Area 2A

For 2006, PFMF recommended changes to the CSP to modify the Pacific halibut fisheries in Area 2A in 2006 and beyond pursuant to recommendations from the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW). These changes to the CSP will: (1) Decrease the days open per week in the Washington North Coast subarea; (2) specify the opening date for the June fishery in the Washington North Coast subarea as the first Thursday after June 17; (3) revise the Washington South Coast subarea season to reopen the northern nearshore area on Fridays and Saturdays if insufficient quota remains to open the entire subarea for another fishing day; (4) revise the definition of the northern nearshore area in the Washington South Coast subarea; (5) increase the Oregon contribution to the Columbia River subarea allocation by taking it from the Oregon Central Coast subarea allocation; (6) split the Columbia River subarea season into an early and late season; (7) prohibit retention of groundfish, except sablefish and Pacific cod, when Pacific halibut are onboard the vessel in the Columbia River subarea; (8) allow an increase in the daily bag limit to two fish after Labor Day for the Oregon central coast; (9) increase the Oregon possession limit on land from two daily limits to three

daily limits statewide. NMFS published a proposed rule to implement the PFMF's recommended changes to the CSP, and to implement the 2006 Area 2A sport fishing season regulations on January 30, 2006, (71 FR 4876).

This final rule announces approval of revisions to the Area 2A CSP and implements the Area 2A CSP and management measures for 2006. These halibut management measures are effective until superceded by the 2007 halibut management measures that will be published in the **Federal Register**.

Portions of the Catch Sharing Plan and regulations regarding flexible inseason management provisions, fishery election in Area 2A and the Area 2A non-Treaty commercial fishery closed areas, generally do not change from year to year. These regulations have been published with the annual halibut management measures, however, this year they are being moved from the annual halibut management measures into codified regulatory language at 50 CFR part 300, subpart E.

Comments and Responses

NMFS accepted comments on the proposed rule to implement the 2006 Area 2A CSP through February 14, 2006, and received one letter of comment apiece from WDFW and ODFW, plus one e-mail comment from a member of the public.

Comment 1: The WDFW held a public meeting on January 25, 2006, to review the results of the 2005 Puget Sound halibut fishery, and to develop season dates for the 2006 sport halibut fishery. Based on the 2006 Area 2A total allowable catch of 1.38 million pounds (626 mt.) the halibut quota for the Puget Sound sport fishery is 68,607 lb (31.1 mt.) Applying WDFW's Fishing Equivalent Day (FED) method for estimating the Puget Sound fishery's season length, and applying the highest catch per FED in the past five years, there are 87 FEDs available for the Eastern Region and 87 FEDs available for the Western Region in 2006. We also had requests from the Washington public, however, to open the Eastern Region of Puget Sound earlier in April, when the halibut catch rate tends to be higher. Therefore, we are recommending setting the Puget Sound fishing season with fewer FEDs for the Eastern Region at 84 FEDs and 87 FEDs for the Western Region, as follows: Eastern Region to be open April 9 through June 18, 2006; Western Region to be open May 25 through August 5, 2006. WDFW also requests that NMFS change the CSP and adopt the IPHC-recommended changes to the possession limits on land for Washington, Oregon, and California.

Response: NMFS agrees with WDFW's recommended Puget Sound season dates and has implemented them via this final rule. NMFS also agrees with the IPHC-recommended Area 2A possession limits on land, which the IPHC developed at its 2006 annual meeting in concert with WDFW and ODFW. These limits are part of this final rule.

NMFS will not change the Area 2A CSP at this time. Changes to the Area 2A CSP for the following year are recommended annually through the PFMF process at its September and November meetings. The IPHC then reviews the PFMF-recommended changes to the Area 2A catch sharing plan at its annual meeting. NMFS approves and implements the Area 2A CSP through a proposed and final rulemaking. The Area 2A CSP covers fishing in U.S. waters off the coast of Washington, Oregon, and California. According to the Area 2A CSP, "all sport fishing in Area 2A is managed on a 'port of landing' basis, whereby any halibut landed into a port will count toward the quota for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch." NMFS understands that WDFW would like to clarify regulations concerning fish caught in Canadian waters and landed into Washington ports to aid enforcement. The IPHC adopted clarifying regulations at their annual meeting in 2006 per WDFW's request. The IPHC-adopted language is consistent with the Area 2A CSP, although the Area 2A CSP and the IPHC regulations do not specifically address fish caught in Canadian waters and possessed on land in Washington. Therefore, in response to WDFW's request, and after consultation with WDFW and IPHC staff, NMFS is promulgating a regulation under the Halibut Act that is in addition to the IPHC regulations. NMFS will revise paragraph (10) in Section 25. "Sport Fishing for Halibut," to read as follows: "(10) The possession limit on land in Washington for halibut caught in: (a) U.S. waters off the coast of Washington is two halibut; and (b) Canadian waters off the coast of British Columbia is three halibut."

Comment 2: The ODFW held a public meeting to gather comments on the open dates for the Spring recreational all-depth fishery in Oregon's Central Coast sub-area. Since 2003, the number of open fishing days that could be accommodated in the Spring fishery has been roughly constant. The catch limit for this sub-area's Spring season will be 175,474 lb (79.6 mt) in 2006, based on the IPHC's 2006 recommendations for

Area 2A. Given the relatively constant effort pattern in recent years, and the expectation of a somewhat higher catch limit than in 2005, ODFW recommends setting a Central Coast all-depth fishery of 15 days, with 9 additional back-up dates, in case the sub-area's Spring quota is not taken in the initial 15 days. We recommend the following days for the Spring fishery, within this sub-area's parameters for a Thursday-Saturday season: regular open days of May 11-13, 18-20, and 25-27, June 1-3, and 8-10; back-up open days of June 22-24, and July 6-8, and 20-22. For the Summer fishery in this sub-area, we recommend following the CSP's parameters of opening the first Friday in August, with open day to occur every other Friday-Sunday, unless modified inseason within the parameters of the CSP. Under the CSP, the 2006 summer all-depth fishery in Oregon's Central Coast sub-area would occur: August 4-6, and 18-20, September 1-3, and 15-17, and 29-30, and October 1, 13-15, and 27-29. To facilitate rebuilding of yelloweye rockfish off the Oregon coast and to improve enforcement of the Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA.) ODFW also recommends prohibiting any fishing in the YRCA for any species of fish for vessels with halibut onboard. Vessels with halibut onboard would be permitted to traverse the YRCA, as long as they do not fish within the YRCA.

Response: NMFS agrees with ODFW's recommended Central Coast season dates, and with the recommended YRCA regulation, and has implemented them via this final rule. NMFS notes that ODFW's recommendation for the YRCA is a change from the proposed rule. Thus, with this final rule, halibut may not be retained onboard recreational fishing vessels trolling for salmon while those vessels are operating in the closed area.

Comment 3: What is the plan for the 2006 incidental halibut catch allowance in the commercial salmon troll fishery? I would like to request that the season remain the same as last year.

Response: Under the CSP at the 2006 Area 2A TAC level, the salmon troll fishery would be allocated 41,464 lb (18.8 mt) of halibut for incidental catch in 2006. This is more than the allocation for 2005. The PFMC first considers the per-Chinook incidental halibut retention ratio at its March 5-10 meeting in Seattle, WA. At its April 2-7 meeting in Sacramento, CA, the PFMC will finalize its recommendations for that ratio. NMFS will implement the final ratio via its 2006 salmon fishery regulations.

Annual Halibut Management Measures

The annual management measures that follow for the 2006 Pacific halibut fishery are those adopted by the IPHC and approved by the Secretary of State.

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in subarea 2A-1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social, and ceremonial purposes in British Columbia.

(8) Section 25 applies to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Interpretation

(1) In these Regulations;

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) *Authorized clearance personnel* means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) *Commercial fishing* means fishing, other than:

(i) Treaty Indian ceremonial and subsistence fishing as referred to in section 22;

(ii) Customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR part

300, the resulting catch of which is sold or bartered; or is intended to be sold or bartered; and

(iii) Aboriginal groups fishing in British Columbia as referred to in section 24.

(e) *Commission* means the International Pacific Halibut Commission;

(f) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) *Land or offload* with respect to halibut, means the removal of halibut from the catching vessel;

(j) *License* means a halibut fishing license issued by the Commission pursuant to section 4;

(k) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) *Net weight*, with respect to halibut, shall be based on halibut that is gutted, head-off, and without ice and slime;

(m) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) *Overall length* of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) *Person* includes an individual, corporation, firm, or association;

(p) *Regulatory area* means an area referred to in section 6;

(q) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) *Sport fishing* means all fishing other than:

(i) Commercial fishing;

(ii) Treaty Indian ceremonial and subsistence fishing as referred to in section 22;

(iii) Customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300; and

(iv) Aboriginal groups fishing in British Columbia as referred to in section 24.

(s) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) *VMS transmitter* means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.¹

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both.

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) The incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery or the incidental commercial fishery during the sablefish fishery in Area 2A must have its

"Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

- (a) Closed areas;
- (b) Fishing periods;
- (c) Fishing period limits;
- (d) Gear restrictions;
- (e) Recreational bag limits;
- (f) Size limits; or
- (g) Vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, Provincial fishery officials, and the media.

6. Regulatory Areas

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11'54" N. lat., 136°38'24" W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. lat., 155°35'00" W. long.) to Cape Ikolik (57°17'17" N. lat., 154°47'18" W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. lat., 154°08'44" W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29'00" N. lat., 164°20'00" W. long.) and south of 54°49'00" N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00'00" W. long. and south of 56°20'00" N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20'00" N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00'00" W. long., south of 58°00'00" N. lat., and west of 168°00'00" W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00'00" W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00'00" W. long., and south of 65°34'00" N. lat.

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community

¹ Call NOAA Enforcement Division, Alaska Region, at 907-586-7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to December 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed fishery² shall begin at 0800 hours and terminate at 1800 hours local time on June 28, July 12, July 26, August 9, August 23, September 6, and September 20 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery³ is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized

during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 5 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection

at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00'00" N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36'0" N. lat., 164°55'42" W. long.) to a point at 56°20'00" N. lat., 168°30'00" W. long.; thence to a point at 58°21'25" N. latitude, 163°00'00" W. long.; thence to Strogonof Point (56°53'18" N. lat., 158°50'37" W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00'00" N. lat. and 54°49'00" N. lat. are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limit	
	Pounds	Metric tons
2A: directed commercial, and incidental commercial during salmon troll fishery	276,424	125.4
2A: incidental commercial during sablefish fishery	70,000	31.8
2B ⁴	13,220,000	5,995.5
2C	10,630,000	4,820.9
3A	25,200,000	11,428.6
3B	10,860,000	4,925.2
4A	3,350,000	1,519.3
4B	1,670,000	757.4
4C	1,610,000	730.2
4D	1,610,000	730.2
4E	330,000	149.7

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the

directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be

promulgated by NMFS and published in the **Federal Register**.

² The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53'18" N. lat.) under regulations promulgated by NMFS and published in the **Federal Register**.

³ The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53'18" N.

lat.) under regulations promoted by NMFS and published in the **Federal Register**.

⁴ Area 2B includes combined commercial and sport catch limits which will be allocated by DFO.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all IFQs and all CDQs issued by NMFS have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken; no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length, in feet (m)	Vessel class
1-25 (0.3-7.6)	A
26-30 (7.9-9.1)	B
31-35 (9.4-10.7)	C
36-40 (11.0-12.2)	D
41-45 (12.5-13.7)	E
46-50 (14.0-15.2)	F
51-55 (15.5-16.8)	G
56+ (17.1+)	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by:

(a) Hook straightening;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C and 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an

authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its

total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4C or 4D or 4E and lands its total annual halibut catch at a port within Areas 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) The operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800-304-4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations in the Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS, or Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association, or the Alaska Department of Fish and Game (ADF&G) longline-pot logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the state (ADF&G, WDFW, Oregon Department of Fish and Wildlife, or California Department of Fish and Game) vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day

fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of 2 years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the DFO vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be:

(a) Maintained on board the vessel;

(b) Retained for a period of two years by the owner or operator of the vessel;

(c) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) Mailed to the DFO (white copy) within seven days of offloading; and

(f) Mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed. Except that this paragraph shall not prohibit the possession on board a vessel:

(a) Halibut cheeks cut from halibut caught by persons authorized to process

the halibut on board in accordance with NMFS regulations published at 50 CFR part 679;

(b) Fillets from halibut that have been offloaded in accordance with section 17 may be possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload⁵; and

(c) Halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.⁶

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: date of offload; name of vessel; vessel number; scale weight obtained at the time of offloading, including the weight (in pounds) of halibut purchased by the registered buyer, the weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload, vessel number, total weight obtained at the time of offload including the weight (in pounds) of halibut purchased, the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the state fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the

halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date, locality, name of vessel, the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IVQs; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (9).

(14) It shall be unlawful to enter a IPHC license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS

regulations⁷ published at 50 CFR 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's state license number; or

(b) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least 4 inches (10.2 cm) in height and 1/2 inch (.3 cm) in width in a contrasting color visible above the water and shall be maintained in legible condition.

⁵ DFO has more restrictive regulations therefore section 17(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

⁶ DFO did not adopt this regulation therefore section 17 paragraph 3 does not apply to fish caught in Area 2B.

⁷ Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished even if some of the catch occurred earlier in a different area.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain, possess, and dispose of halibut taken with trawl gear only as authorized by the Prohibited Species Donation regulations of NMFS.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) May be retained for personal use; or

(b) May be sold only if the halibut is caught during commercial halibut fishing and it complies with the other commercial fishing provisions of these regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A-1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A-1 includes all waters off the coast of Washington that are north of 46°53'18" N. lat. and east of 125°44'00" W. long., and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in subarea 2A-1 by the treaty Indian tribes.

(4) Commercial fishing for halibut in subarea 2A-1 is permitted with hook and line gear from March 5 through November 15, or until 472,000 lbs (214.1 mt) net weight is taken, whichever occurs first.

(5) Ceremonial and subsistence fishing for halibut in subarea 2A-1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 36,000 lbs (16.3 mt) net weight.

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations

promulgated by the National Marine Fisheries Service and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

24. Aboriginal Groups Fishing for Food, Social, and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social, and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the *Fisheries Act* of Canada and regulations as amended from time to time.

25. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to:

(i) 249,152 lbs (113.0 mt) net weight in waters off Washington; and

(ii) 276,424 lbs (125.4 mt) net weight in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions authorized at 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., there is no quota. This area is managed by setting a season that is projected to result in a catch of 68,607 lb (31 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49.50' W. long., Low Point) is April 9 through June 18 and the fishing season in western Puget Sound (west of 123°49.50' W. long., Low Point) is May 25 through August 5, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31.70' N. lat.), is 119,244 lb (54 mt).

(A) The fishing seasons are:

(1) Commencing on May 9 and continuing 3 days a week (Tuesday, Thursday, and Saturday) until 85,856 lb (39 mt) are estimated to have been taken and the season is closed by the Commission.

(2) From June 22, and continuing thereafter for 2 days a week (Thursday and Saturday) until the overall quota of 119,244 lb (54 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A "C-shaped" yelloweye rockfish conservation area southwest of Cape Flattery is closed to sport fishing for halibut. This area is defined by straight lines connecting all of the following points 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.

(iii) The quota for landings into ports in the area between the Queets River, Washington, (47°31.70' N. lat.) and Leadbetter Point, Washington, (46°38.17' N. lat.), is 53,952 lb (24 mt).

(A) The fishing season commences on May 1 and continues 5 days a week (Sunday through Thursday) in all waters, except that in the area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. (*i.e.*, the Washington South coast, northern nearshore area), the fishing season commences on May 1 and continues 7 days a week. The fishery will continue from May 1 until 53,952 lb (24 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the entire subarea for another fishing day, then any remaining quota may be used to accommodate incidental

catch in the nearshore area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. on Fridays and Saturdays only, or be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) The quota for landings into ports in the area between Leadbetter Point, Washington, (46°38.17' N. lat.) and Cape Falcon, Oregon, (45°46.00' N. lat.), is 21,170 lb (10 mt).

(A) The fishing season commences on May 1, and continues 7 days a week until 14,819 lb (6.7 mt) are estimated to have been taken and the season is closed by the Commission or until July 16, whichever is earlier. The fishery will reopen on August 4 and continue 3 days a week (Friday through Sunday) until 21,170 lb (10 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(v) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.), is 254,310 lb (115 mt).

(A) The fishing seasons are:

(1) The first season (the "inside 40-fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery (20,345 lb (9.2 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00' N. lat., 124°04.49' W. long.;

(2) 45°44.34' N. lat., 124°05.09' W. long.;

(3) 45°40.64' N. lat., 124°04.90' W. long.;

(4) 45°33.00' N. lat., 124°04.46' W. long.;

(5) 45°32.27' N. lat., 124°04.74' W. long.;

(6) 45°29.26' N. lat., 124°04.22' W. long.;

(7) 45°20.25' N. lat., 124°04.67' W. long.;

(8) 45°19.99' N. lat., 124°04.62' W. long.;

(9) 45°17.50' N. lat., 124°04.91' W. long.;

(10) 45°11.29' N. lat., 124°05.19' W. long.;

(11) 45°05.79' N. lat., 124°05.40' W. long.;

(12) 45°05.07' N. lat., 124°05.93' W. long.;

(13) 45°03.83' N. lat., 124°06.47' W. long.;

(14) 45°01.70' N. lat., 124°06.53' W. long.;

(15) 44°58.75' N. lat., 124°07.14' W. long.;

(16) 44°51.28' N. lat., 124°10.21' W. long.;

(17) 44°49.49' N. lat., 124°10.89' W. long.;

(18) 44°44.96' N. lat., 124°14.39' W. long.;

(19) 44°43.44' N. lat., 124°14.78' W. long.;

(20) 44°42.27' N. lat., 124°13.81' W. long.;

(21) 44°41.68' N. lat., 124°15.38' W. long.;

(22) 44°34.87' N. lat., 124°15.80' W. long.;

(23) 44°33.74' N. lat., 124°14.43' W. long.;

(24) 44°27.66' N. lat., 124°16.99' W. long.;

(25) 44°19.13' N. lat., 124°19.22' W. long.;

(26) 44°15.35' N. lat., 124°17.37' W. long.;

(27) 44°14.38' N. lat., 124°17.78' W. long.;

(28) 44°12.80' N. lat., 124°17.18' W. long.;

(29) 44°09.23' N. lat., 124°15.96' W. long.;

(30) 44°08.38' N. lat., 124°16.80' W. long.;

(31) 44°08.30' N. lat., 124°16.75' W. long.;

(32) 44°01.18' N. lat., 124°15.42' W. long.;

(33) 43°51.60' N. lat., 124°14.68' W. long.;

(34) 43°42.66' N. lat., 124°15.46' W. long.;

(35) 43°40.49' N. lat., 124°15.74' W. long.;

(36) 43°38.77' N. lat., 124°15.64' W. long.;

- (37) 43°34.52' N. lat., 124°16.73' W. long.;
- (38) 43°28.82' N. lat., 124°19.52' W. long.;
- (39) 43°23.91' N. lat., 124°24.28' W. long.;
- (40) 43°20.83' N. lat., 124°26.63' W. long.;
- (41) 43°17.96' N. lat., 124°28.81' W. long.;
- (42) 43°16.75' N. lat., 124°28.42' W. long.;
- (43) 43°13.98' N. lat., 124°31.99' W. long.;
- (44) 43°13.71' N. lat., 124°33.25' W. long.;
- (45) 43°12.26' N. lat., 124°34.16' W. long.;
- (46) 43°10.96' N. lat., 124°32.34' W. long.;
- (47) 43°05.65' N. lat., 124°31.52' W. long.;
- (48) 42°59.66' N. lat., 124°32.58' W. long.;
- (49) 42°54.97' N. lat., 124°36.99' W. long.;
- (50) 42°53.81' N. lat., 124°38.58' W. long.;
- (51) 42°50.00' N. lat., 124°39.68' W. long.;
- (52) 42°49.14' N. lat., 124°39.92' W. long.;
- (53) 42°46.47' N. lat., 124°38.65' W. long.;
- (54) 42°45.60' N. lat., 124°39.04' W. long.;
- (55) 42°44.79' N. lat., 124°37.96' W. long.;
- (56) 42°45.00' N. lat., 124°36.39' W. long.;
- (57) 42°44.14' N. lat., 124°35.16' W. long.;
- (58) 42°42.15' N. lat., 124°32.82' W. long.; and
- (59) 42°40.50' N. lat., 124°31.98' W. long.;

(2) The second season (spring season), which is for the "all-depth" fishery, is open on May 11, 12, 13, 18, 19, 20, 25, 26, 27, and June 1, 2, 3, 8, 9, 10. The projected catch for this season is 175,474 lb (80 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: June 22, 23, 24, and July 6, 7, 8, 20, 21, 22. If NMFS decides inseason to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(3) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth"

fishery, will be open on August 4, 5, 6, 18, 19, 20, September 1, 2, 3, 15, 16, 17, 29, 30, and October 1, 13, 14, 15, 27, 28, 29, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, Oregon, totaling 233,965 lb (106 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July if the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 6 and September 3. If after August 6, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday through Sunday, beginning August 11-13, and ending October 27-29. If after September 3, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota; and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 8-10, and ending October 27-29 and may have a bag limit of two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, days the fishery will be open, and the bag limit.

(B) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(C) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(D) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(E) A yelloweye rockfish conservation area off central Oregon, near Stonewall Bank, is closed to sport fishing for halibut. This area is defined by straight lines connecting all of the following points 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.;
- (6) and connecting back to 44°37.46' N. lat.; 124°24.92' W. long.
- (vi) In the area south of Humbug Mountain, Oregon (42°40.50' N. lat.) and off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of 8,293 lb (3.8 mt).
- (A) The fishing season will commence on May 1 and continue 7 days a week until October 31.
- (B) The daily bag limit is one halibut of any size per day per person.
- (c) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.
- (d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.
- (5) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.
- (6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.
- (7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.
- (8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.
- (9) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit.
- (10) The possession limit on land in Washington for halibut caught in:
- (a) U.S. waters off the coast of Washington is two halibut; and
- (b) Canadian waters off the coast of British Columbia is three halibut.
- (11) The possession limit on a vessel for halibut caught in the waters off the

coast of Oregon and California is the same as the daily bag limit.

(12) The possession limit for halibut on land in Oregon is three daily bag limits.

(13) The possession limit for halibut on land in California is two daily bag limits.

(14) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will

be included in the daily bag limit of the person catching the halibut.

(15) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(16) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(17) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the

said vessel are destined for commercial use, sale, trade, or barter.

(18) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

26. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

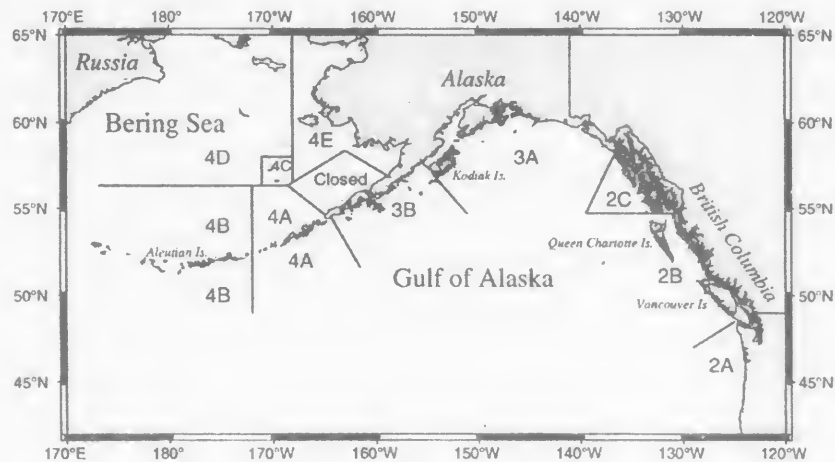


Figure 1. Regulatory areas for the Pacific halibut fishery.

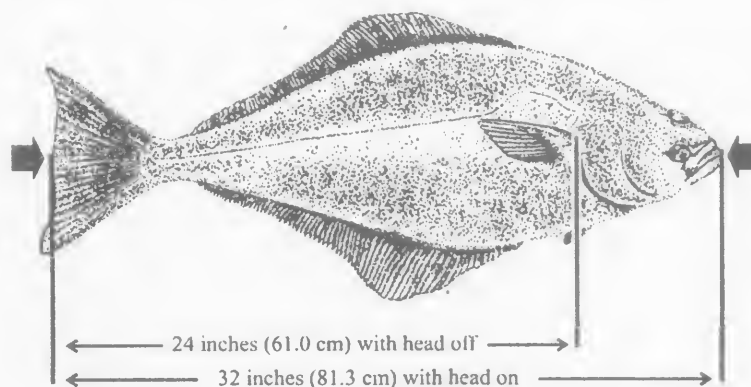


Figure 2. Minimum commercial size.

Classification

IPHC Regulations

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The notice-and-comment and delay-in-effectiveness date requirements of the

Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to this notice of the effectiveness and content of the IPHC regulations because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). Furthermore, no other law

requires prior notice and public comment for this final rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirement to provide a 30-day delay in effectiveness (5 U.S.C. 553(d)) because it is contrary to the public interest to delay the effectiveness date of this rule for 30 days. This final rule must be made effective for the opening of the 2006 Pacific halibut fishing season on March 5, 2006. Delaying the opening of the fishing season is contrary to the public interest because it would cause unnecessary economic burden on fishery participants due to loss of fishing opportunity. Because the annual quotas and management measures are ultimately determined by an international commission, the IPHC, the AA is constrained and cannot publish the final rule until after the IPHC has adopted the annual quotas and management measures for the year. NMFS's implementation of the CSP in Area 2A could not begin until after January 20, 2006, when the IPHC adopted annual quotas and management measures for 2006. There was not enough time between when the IPHC adopted the annual quotas and management measures for 2006 and the scheduled March 5, 2006, start of the fishing season to publish the regulations in the **Federal Register** with enough time for a 30-day delay in effectiveness.

NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. An FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from the NMFS Northwest Region (see **ADDRESSES**) and a summary of the FRFA follows:

This final rule is needed to implement the CSP and annual domestic management measures in Area 2A. The main objective for the Pacific halibut fishery in Area 2A is to manage the fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational, and tribal fishery to target halibut in the manner most appropriate for the users' needs within that fishery. This rule is intended to enhance the conservation of Pacific halibut, to protect yelloweye rockfish and other overfished species from incidental catch in the halibut

fisheries, and to provide greater angler opportunity where available.

The agency received three letters of comment on the proposed rule, but none of the comments received addressed the IRFA.

In determining the potential universe of entities subject to this rule, NMFS considered those entities to which this rule applies. Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the changes to the Plan and annual management measures will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this rule. However, charterboat operations and participants off the coasts of Washington and Oregon are small businesses that are directly regulated and affected by changes made by this rule.

Approximately 750 vessels were issued IPHC licenses to retain halibut in 2005. IPHC issues licenses for: the directed non-tribal commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (215 licenses in 2005); incidental halibut caught in the salmon troll fishery (392 licenses in 2005); and the charterboat fleet (148 licenses issued in 2005). No vessel may participate in more than one of these three separate fisheries per year. Individual recreational anglers and private boats are the only participants not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (Commission) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the Commission estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. Compared with the 148 IPHC licenses in 2005, this estimate suggests that approximately 45 percent of the charterboat fleet participates in the halibut fishery. The Commission has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93

m) in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act (RFA).

For each of the 2006 revisions, NMFS is implementing a CSP or regulatory revision intended to improve flexibility for anglers, or to improve enforceability of halibut regulations. The changes to the CSP and annual domestic Area 2A management measures are expected to result in either no impact at all, or a modest increase in fishing opportunity for commercial and sport halibut fishermen and operators. The 2006 sport fishery management measures implement the CSP by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the CSP's objectives. The commercial fishery management measures will allow the fishery access to a portion of the Area 2A TAC while protecting overfished rockfish species that co-occur with halibut. The measures will be very similar to last year's management measures. The changes to the CSP and domestic management measures are minor changes and are intended to increase flexibility in management and opportunity to harvest available quota. There are no large entities involved in the halibut fisheries; therefore, none of the changes to the CSP and domestic management measures will have a disproportionate negative effect on small entities versus large entities. None of these changes to the CSP will significantly reduce profitability for small entities. In fact, increasing opportunity to harvest available quota and increasing the area available to fishing may increase profitability for some small entities along the West Coast.

This final rule does not impose any new reporting or recordkeeping requirements. This final rule will also not duplicate, overlap, or conflict with other laws or regulations. Consequently, these changes to the CSP and annual domestic Area 2A halibut management measures do not meet any of the RFA tests of having a "significant" economic impact on a "substantial number" of small entities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (See ADDRESSES). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800-662-9825.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 305(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. Government formally recognizes that the 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the CSP, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: February 28, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.63, paragraph (b)(3) is revised, and paragraphs (c) through (g) are added to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(b) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53.30' N. lat. (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.372. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt.) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the directed sablefish fishery north of 46°53.30' N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30' N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

* * * * *

(c) Flexible Inseason Management Provisions for Sport Halibut Fisheries in Area 2A.

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations:

(i) The action is necessary to allow allocation objectives to be met.

(ii) The action will not result in exceeding the catch limit for the area.

(iii) If any of the sport fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

(iv) If any of the sport fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of sport fishing periods;

(ii) Modification of sport fishing bag limits;

(iii) Modification of sport fishing size limits;

(iv) Modification of sport fishing days per calendar week; and

(v) Modification of subarea quotas north of Cape Falcon, Oregon.

(3) Notice procedures. (i) Actions taken under this section will be published in the **Federal Register**.

(ii) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206-526-6667 or 800-662-9825 (May through October) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates. (i) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(ii) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(iii) Any inseason action issued under this section will remain in effect until

the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, Washington.

(d) *Fishery Election in Area 2A.* (1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The sport fishery under Section 24 of the annual domestic management measures and IPHC regulations;

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.372; or

(iii) The incidental catch fishery during the salmon troll fishery as authorized in section 8 of the annual domestic management measures and IPHC regulations.

(2) No person shall fish for halibut in the sport fishery in Area 2A under section 24 of the annual domestic management measures and IPHC regulations from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations and/or retained halibut incidentally taken in the primary sablefish fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

(e) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N. lat. Between the U.S./Canada border and 46°16' N. lat., the eastern boundary of the RCA is the shoreline. Between 46°16' N. lat. and 40°10' N. lat., the RCA is defined along an eastern boundary approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at § 300.63 (f). Between the U.S./Canada border and 40°10' N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at § 300.63 (g).

(f) The 30-fm (55-m) depth contour between 46°16' N. lat. and 40°10' N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00' N. lat., 124°13.05' W.

long;

(2) 46°07.00' N. lat., 124°07.01' W.

long;

(3) 45°55.95' N. lat., 124°02.23' W.

long;

(4) 45°54.53' N. lat., 124°02.57' W.

long;

(5) 45°50.65' N. lat., 124°01.62' W.

long;

(6) 45°48.20' N. lat., 124°02.16' W.

long;

(7) 45°46.00' N. lat., 124°01.86' W.

long;

(8) 45°43.47' N. lat., 124°01.28' W.

long;

(9) 45°40.48' N. lat., 124°01.03' W.

long;

(10) 45°39.04' N. lat., 124°01.68' W.

long;

(11) 45°35.48' N. lat., 124°01.89' W.

long;

(12) 45°29.81' N. lat., 124°02.45' W.

long;

(13) 45°27.96' N. lat., 124°01.89' W.

long;

(14) 45°27.22' N. lat., 124°02.67' W.

long;

(15) 45°24.20' N. lat., 124°02.94' W.

long;

(16) 45°20.60' N. lat., 124°01.74' W.

long;

(17) 45°20.25' N. lat., 124°01.85' W.

long;

(18) 45°16.44' N. lat., 124°03.22' W.

long;

(19) 45°13.63' N. lat., 124°02.70' W.

long;

(20) 45°11.04' N. lat., 124°03.59' W.

long;

(21) 45°08.55' N. lat., 124°03.47' W.

long;

(22) 45°02.82' N. lat., 124°04.64' W.

long;

(23) 45°03.38' N. lat., 124°04.79' W.

long;

(24) 44°58.06' N. lat., 124°05.03' W.

long;

(25) 44°53.97' N. lat., 124°06.92' W.

long;

(26) 44°48.89' N. lat., 124°07.04' W.

long;

(27) 44°46.94' N. lat., 124°08.25' W.

long;

(28) 44°42.72' N. lat., 124°08.98' W.

long;

(29) 44°38.16' N. lat., 124°11.48' W.

long;

(30) 44°33.38' N. lat., 124°11.54' W.

long;

(31) 44°28.51' N. lat., 124°12.03' W.

long;

(32) 44°27.65' N. lat., 124°12.56' W.

long;

(33) 44°19.67' N. lat., 124°12.37' W.

long;

(34) 44°10.79' N. lat., 124°12.22' W.

long;

(35) 44°09.22' N. lat., 124°12.28' W.

long;

(36) 44°08.30' N. lat., 124°12.30' W.

long;

(37) 44°00.22' N. lat., 124°12.80' W.

long;

(38) 43°51.56' N. lat., 124°13.17' W.

long;

(39) 43°44.26' N. lat., 124°14.50' W.

long;

(40) 43°33.82' N. lat., 124°16.28' W.

long;

(41) 43°28.66' N. lat., 124°18.72' W.

long;

(42) 43°23.12' N. lat., 124°24.04' W.

long;

- (43) 43°20.83' N. lat., 124°25.67' W.
long.;
- (44) 43°20.49' N. lat., 124°25.90' W.
long.;
- (45) 43°16.41' N. lat., 124°27.52' W.
long.;
- (46) 43°14.23' N. lat., 124°29.28' W.
long.;
- (47) 43°14.03' N. lat., 124°28.31' W.
long.;
- (48) 43°11.92' N. lat., 124°28.26' W.
long.;
- (49) 43°11.02' N. lat., 124°29.11' W.
long.;
- (50) 43°10.13' N. lat., 124°29.15' W.
long.;
- (51) 43°09.27' N. lat., 124°31.03' W.
long.;
- (52) 43°07.73' N. lat., 124°30.92' W.
long.;
- (53) 43°05.93' N. lat., 124°29.64' W.
long.;
- (54) 43°01.59' N. lat., 124°30.64' W.
long.;
- (55) 42°59.73' N. lat., 124°31.16' W.
long.;
- (56) 42°53.75' N. lat., 124°36.09' W.
long.;
- (57) 42°50.00' N. lat., 124°38.39' W.
long.;
- (58) 42°49.37' N. lat., 124°38.81' W.
long.;
- (59) 42°46.42' N. lat., 124°37.69' W.
long.;
- (60) 42°46.07' N. lat., 124°38.56' W.
long.;
- (61) 42°45.29' N. lat., 124°37.95' W.
long.;
- (62) 42°45.61' N. lat., 124°36.87' W.
long.;
- (63) 42°44.28' N. lat., 124°33.64' W.
long.;
- (64) 42°42.75' N. lat., 124°31.84' W.
long.;
- (65) 42°40.50' N. lat., 124°29.67' W.
long.;
- (66) 42°40.04' N. lat., 124°29.19' W.
long.;
- (67) 42°38.09' N. lat., 124°28.39' W.
long.;
- (68) 42°36.72' N. lat., 124°27.54' W.
long.;
- (69) 42°36.56' N. lat., 124°28.40' W.
long.;
- (70) 42°35.76' N. lat., 124°28.79' W.
long.;
- (71) 42°34.03' N. lat., 124°29.98' W.
long.;
- (72) 42°34.19' N. lat., 124°30.58' W.
long.;
- (73) 42°31.27' N. lat., 124°32.24' W.
long.;
- (74) 42°27.07' N. lat., 124°32.53' W.
long.;
- (75) 42°24.21' N. lat., 124°31.23' W.
long.;
- (76) 42°20.47' N. lat., 124°28.87' W.
long.;
- (77) 42°14.60' N. lat., 124°26.80' W.
long.;
- (78) 42°13.67' N. lat., 124°26.25' W.
long.;
- (79) 42°10.90' N. lat., 124°24.57' W.
long.;
- (80) 42°07.04' N. lat., 124°23.35' W.
long.;
- (81) 42°02.16' N. lat., 124°22.59' W.
long.;
- (82) 42°00.00' N. lat., 124°21.81' W.
long.;
- (83) 41°55.75' N. lat., 124°20.72' W.
long.;
- (84) 41°50.93' N. lat., 124°23.76' W.
long.;
- (85) 41°42.53' N. lat., 124°16.47' W.
long.;
- (86) 41°37.20' N. lat., 124°17.05' W.
long.;
- (87) 41°24.58' N. lat., 124°10.51' W.
long.;
- (88) 41°20.73' N. lat., 124°11.73' W.
long.;
- (89) 41°17.59' N. lat., 124°10.66' W.
long.;
- (90) 41°04.54' N. lat., 124°14.47' W.
long.;
- (91) 40°54.26' N. lat., 124°13.90' W.
long.;
- (92) 40°40.31' N. lat., 124°26.24' W.
long.;
- (93) 40°34.00' N. lat., 124°27.39' W.
long.;
- (94) 40°30.00' N. lat., 124°31.32' W.
long.;
- (95) 40°28.89' N. lat., 124°32.43' W.
long.;
- (96) 40°24.77' N. lat., 124°29.51' W.
long.;
- (97) 40°22.47' N. lat., 124°24.12' W.
long.;
- (98) 40°19.73' N. lat., 124°23.59' W.
long.;
- (99) 40°18.64' N. lat., 124°21.89' W.
long.;
- (100) 40°17.67' N. lat., 124°23.07' W.
long.;
- (101) 40°15.58' N. lat., 124°23.61' W.
long.;
- (102) 40°13.42' N. lat., 124°22.94' W.
long.;
- (103) 40°10.00' N. lat., 124°16.65' W.
long.;
- (g) The 100-fm (183-m) depth contour between the U.S./Canada border and 40°10' N. lat. is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°15.00' N. lat., 125°41.00' W.
long.;
- (2) 48°14.00' N. lat., 125°36.00' W.
long.;
- (3) 48°09.50' N. lat., 125°40.50' W.
long.;
- (4) 48°08.00' N. lat., 125°38.00' W.
long.;
- (5) 48°05.00' N. lat., 125°37.25' W.
long.;
- (6) 48°02.60' N. lat., 125°34.70' W.
long.;
- (7) 47°59.00' N. lat., 125°34.00' W.
long.;
- (8) 47°57.26' N. lat., 125°29.82' W.
long.;
- (9) 47°59.87' N. lat., 125°25.81' W.
long.;
- (10) 48°01.80' N. lat., 125°24.53' W.
long.;
- (11) 48°02.08' N. lat., 125°22.98' W.
long.;
- (12) 48°02.97' N. lat., 125°22.89' W.
long.;
- (13) 48°04.47' N. lat., 125°21.75' W.
long.;
- (14) 48°06.11' N. lat., 125°19.33' W.
long.;
- (15) 48°07.95' N. lat., 125°18.55' W.
long.;
- (16) 48°09.00' N. lat., 125°18.00' W.
long.;
- (17) 48°11.31' N. lat., 125°17.55' W.
long.;
- (18) 48°14.60' N. lat., 125°13.46' W.
long.;
- (19) 48°16.67' N. lat., 125°14.34' W.
long.;
- (20) 48°18.73' N. lat., 125°14.41' W.
long.;
- (21) 48°19.67' N. lat., 125°13.70' W.
long.;
- (22) 48°19.70' N. lat., 125°11.13' W.
long.;
- (23) 48°22.95' N. lat., 125°10.79' W.
long.;
- (24) 48°21.61' N. lat., 125°02.54' W.
long.;
- (25) 48°23.00' N. lat., 124°49.34' W.
long.;
- (26) 48°17.00' N. lat., 124°56.50' W.
long.;
- (27) 48°06.00' N. lat., 125°00.00' W.
long.;
- (28) 48°04.62' N. lat., 125°01.73' W.
long.;
- (29) 48°04.84' N. lat., 125°04.03' W.
long.;
- (30) 48°06.41' N. lat., 125°06.51' W.
long.;
- (31) 48°06.00' N. lat., 125°08.00' W.
long.;
- (32) 48°07.08' N. lat., 125°09.34' W.
long.;
- (33) 48°07.28' N. lat., 125°11.14' W.
long.;
- (34) 48°03.45' N. lat., 125°16.66' W.
long.;
- (35) 47°59.50' N. lat., 125°18.88' W.
long.;
- (36) 47°58.68' N. lat., 125°16.19' W.
long.;
- (37) 47°56.62' N. lat., 125°13.50' W.
long.;
- (38) 47°53.71' N. lat., 125°11.96' W.
long.;
- (39) 47°51.70' N. lat., 125°09.38' W.
long.;
- (40) 47°49.95' N. lat., 125°06.07' W.
long.;
- (41) 47°49.00' N. lat., 125°03.00' W.
long.;

- (42) 47°46.95' N. lat., 125°04.00' W. long.;
- (43) 47°46.58' N. lat., 125°03.15' W. long.;
- (44) 47°44.07' N. lat., 125°04.28' W. long.;
- (45) 47°43.32' N. lat., 125°04.41' W. long.;
- (46) 47°40.95' N. lat., 125°04.14' W. long.;
- (47) 47°39.58' N. lat., 125°04.97' W. long.;
- (48) 47°36.23' N. lat., 125°02.77' W. long.;
- (49) 47°34.28' N. lat., 124°58.66' W. long.;
- (50) 47°32.17' N. lat., 124°57.77' W. long.;
- (51) 47°30.27' N. lat., 124°56.16' W. long.;
- (52) 47°30.60' N. lat., 124°54.80' W. long.;
- (53) 47°29.26' N. lat., 124°52.21' W. long.;
- (54) 47°28.21' N. lat., 124°50.65' W. long.;
- (55) 47°27.38' N. lat., 124°49.34' W. long.;
- (56) 47°25.61' N. lat., 124°48.26' W. long.;
- (57) 47°23.54' N. lat., 124°46.42' W. long.;
- (58) 47°20.64' N. lat., 124°45.91' W. long.;
- (59) 47°17.99' N. lat., 124°45.59' W. long.;
- (60) 47°18.20' N. lat., 124°49.12' W. long.;
- (61) 47°15.01' N. lat., 124°51.09' W. long.;
- (62) 47°12.61' N. lat., 124°54.89' W. long.;
- (63) 47°08.22' N. lat., 124°56.53' W. long.;
- (64) 47°08.50' N. lat., 124°57.74' W. long.;
- (65) 47°01.92' N. lat., 124°54.95' W. long.;
- (66) 47°01.14' N. lat., 124°59.35' W. long.;
- (67) 46°58.48' N. lat., 124°57.81' W. long.;
- (68) 46°56.79' N. lat., 124°56.03' W. long.;
- (69) 46°58.01' N. lat., 124°55.09' W. long.;
- (70) 46°55.07' N. lat., 124°54.14' W. long.;
- (71) 46°59.60' N. lat., 124°49.79' W. long.;
- (72) 46°58.72' N. lat., 124°48.78' W. long.;
- (73) 46°54.45' N. lat., 124°48.36' W. long.;
- (74) 46°53.99' N. lat., 124°49.95' W. long.;
- (75) 46°54.38' N. lat., 124°52.73' W. long.;
- (76) 46°52.38' N. lat., 124°52.02' W. long.;
- (77) 46°48.93' N. lat., 124°49.17' W. long.;
- (78) 46°41.50' N. lat., 124°43.00' W. long.;
- (79) 46°34.50' N. lat., 124°28.50' W. long.;
- (80) 46°29.00' N. lat., 124°30.00' W. long.;
- (81) 46°20.00' N. lat., 124°36.50' W. long.;
- (82) 46°18.00' N. lat., 124°38.00' W. long.;
- (83) 46°17.52' N. lat., 124°35.35' W. long.;
- (84) 46°17.00' N. lat., 124°22.50' W. long.;
- (85) 46°16.00' N. lat., 124°20.62' W. long.;
- (86) 46°13.52' N. lat., 124°25.49' W. long.;
- (87) 46°12.17' N. lat., 124°30.75' W. long.;
- (88) 46°10.63' N. lat., 124°37.95' 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°38.49' W. long.;
- (93) 45°47.19' N. lat., 124°35.58' W. long.;
- (94) 45°46.41' 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°36.96' N. lat., 124°24.48' 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°04.38' N. lat., 124°18.36' 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°44.55' N. lat., 124°33.58' W. long.;
- (108) 44°39.88' N. lat., 124°35.01' W. long.;
- (109) 44°32.90' N. lat., 124°36.81' W. long.;
- (110) 44°30.33' 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°51.03' W. long.;
- (114) 44°13.68' N. lat., 124°56.38' W. long.;
- (115) 44°08.30' N. lat., 124°55.99' W. long.;
- (116) 43°56.67' N. lat., 124°55.45' W. long.;
- (117) 43°56.47' N. lat., 124°34.61' W. long.;
- (118) 43°42.73' N. lat., 124°32.41' W. long.;
- (119) 43°30.93' N. lat., 124°34.43' W. long.;
- (120) 43°20.83' N. lat., 124°39.39' W. long.;
- (121) 43°17.45' N. lat., 124°41.16' W. long.;
- (122) 43°07.04' N. lat., 124°41.25' W. long.;
- (123) 43°03.45' N. lat., 124°44.36' W. long.;
- (124) 43°03.90' N. lat., 124°50.81' W. long.;
- (125) 42°55.70' N. lat., 124°52.79' W. long.;
- (126) 42°54.12' N. lat., 124°47.36' W. long.;
- (127) 42°50.00' N. lat., 124°45.33' W. long.;
- (128) 42°44.00' N. lat., 124°42.38' W. long.;
- (129) 42°40.50' N. lat., 124°41.71' W. long.;
- (130) 42°38.23' N. lat., 124°41.25' W. long.;
- (131) 42°33.03' N. lat., 124°42.38' W. long.;
- (132) 42°31.89' N. lat., 124°42.04' W. long.;
- (133) 42°30.09' N. lat., 124°42.67' W. long.;
- (134) 42°28.28' N. lat., 124°47.08' W. long.;
- (135) 42°25.22' N. lat., 124°43.51' W. long.;
- (136) 42°19.23' N. lat., 124°37.92' W. long.;
- (137) 42°16.29' N. lat., 124°36.11' W. long.;
- (138) 42°13.67' N. lat., 124°35.81' W. long.;
- (139) 42°05.66' N. lat., 124°34.92' W. long.;
- (140) 42°00.00' N. lat., 124°35.27' W. long.;
- (141) 41°47.04' N. lat., 124°27.64' W. long.;
- (142) 41°32.92' N. lat., 124°28.79' W. long.;
- (143) 41°24.17' N. lat., 124°28.46' W. long.;
- (144) 41°10.12' N. lat., 124°20.50' W. long.;
- (145) 40°51.41' N. lat., 124°24.38' W. long.;
- (146) 40°43.71' N. lat., 124°29.89' W. long.;

- (147) 40°40.14' N. lat., 124°30.90' W. long.;
- (148) 40°37.35' N. lat., 124°29.05' W. long.;
- (149) 40°34.76' N. lat., 124°29.82' W. long.;
- (150) 40°36.78' N. lat., 124°37.06' W. long.;
- (151) 40°32.44' N. lat., 124°39.58' W. long.;
- (152) 40°30.00' N. lat., 124°38.13' W. long.;
- (153) 40°24.82' N. lat., 124°35.12' W. long.;
- (154) 40°23.30' N. lat., 124°31.60' W. long.;
- (155) 40°23.52' N. lat., 124°28.78' W. long.;
- (156) 40°22.43' N. lat., 124°25.00' W. long.;
- (157) 40°21.72' N. lat., 124°24.94' W. long.;
- (158) 40°21.87' N. lat., 124°27.96' W. long.;
- (159) 40°21.40' N. lat., 124°28.74' W. long.;
- (160) 40°19.68' N. lat., 124°28.49' W. long.;
- (161) 40°17.73' N. lat., 124°25.43' W. long.;
- (162) 40°18.37' N. lat., 124°23.35' W. long.;
- (163) 40°15.75' N. lat., 124°26.05' W. long.;
- (164) 40°16.75' N. lat., 124°33.71' W. long.;
- (165) 40°16.29' N. lat., 124°34.36' W. long.; and
- (166) 40°10.00' N. lat., 124°21.12' W. long.

[FR Doc. 06-2064 Filed 3-2-06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600 and 648

[Docket No. 051130316-6047-02; I.D. 110905C]

RIN 0648-AT21

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2006 Specifications

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

ACTION: Final rule; 2006 Atlantic herring specifications.

SUMMARY: NMFS announces final specifications for the 2006 fishing year for the Atlantic herring fishery. The

intent of this final rule is to promote the development and conservation of the herring resource.

DATES: Effective April 3, 2006, through December 31, 2006.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 2298.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, e-mail at eric.dolin@noaa.gov, fax at 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Proposed 2006 specifications were published on December 15, 2005 (70 FR 74285), with public comment accepted through January 17, 2006. These final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2006 Final Initial Specifications

The following specifications are established by this action: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPT), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and total allowable catch (TAC) for each management area and subarea.

SPECIFICATIONS AND AREA TACS FOR THE 2006 ATLANTIC HERRING FISHERY

Specification	Allocation (mt)
ABC	220,000.
OY	150,000.
DAH	150,000.
DAP	146,000.
JVPT	0.
JVP	0.
IWP	0.
USAP	20,000 (Areas 2 and 3 only).
BT	4,000.
TALFF Reserve	0.
TAC - Area 1A	60,000 (January 1-May 31, landings cannot exceed 6,000).
TAC - Area 1B	10,000.
TAC - Area 2	30,000 (No Reserve).
TAC - Area 3	50,000.

Comments and Responses

There were four comments received. Commenters included Garden State Seafood Association, Atlantic Pelagic Seafood, one fisherman, and one other individual.

Comment 1: One commenter supported setting OY at 180,000 mt, and TALFF at zero, as recommended last year by the New England Fishery Management Council (Council).

Response: Based on past performance of the fishery, NMFS finds that the recommendation to set DAH at 150,000 mt is appropriate. TALFF is that portion of the OY of a fishery that will not be harvested by vessels of the United States, thus, TALFF is set at zero.

Comment 2: One commenter stated that USAP should be set at zero, as the Council recommended last year.

Response: Setting USAP at zero would inappropriately favor one segment of the U.S. processing sector over another, without any justifiable reasons. Landings from Areas 2 and 3 (where USAP is being authorized, as in previous years) have been considerably lower than the allocated TACs for each of the past several years. USAP could provide an additional outlet for U.S. harvesters, particularly those who operate vessels that do not have refrigerated seawater systems (RSW) to maintain catch quality for delivery to onshore processors. Such vessels could offload product to USAP vessels near the fishing areas, increasing the benefits to the U.S. industry. Given the significant gap between the DAH and recent landings in this fishery, the allocation of 20,000 mt for USAP should not restrict either the operation or the expansion of the shoreside processing facilities.

Comment 3: One commenter urged NMFS to closely monitor the needs of the fleet and consider industry requests for inseason adjustments to USAP and Area 2/3 TACs.

Response: NMFS agrees that it will be important to closely monitor herring landings in 2006 so that an in-season adjustment, if necessary, can be implemented. NMFS will utilize all available data sources and landings projection techniques to identify the need for such an adjustment.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the IRFA and other analyses completed in support of this action. No comments were received on the IRFA. The FRFA uses the fishing year 2003 for comparison purposes because the analysis that this action is based on was completed in 2004. At that point, the Council voted to maintain the 2005 specifications for 2006, unless stock and fishery conditions changed substantially. As described in the proposed rule for this action, NMFS concurred with the Council's decision as to maintaining the specifications. Therefore, the analysis done in 2004, to establish the potential for two-year specifications, is what is used below. A copy of the IRFA is available from the Council (see ADDRESSES). A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

During the 2003 fishing year, 154 vessels landed herring, 38 of which averaged more than 2,000 lb (907 kg) of herring per trip. There are no large entities, as defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Impacts were assessed by the Council and NMFS by comparing the measures to the Atlantic herring landings made in 2003. The specifications are not expected to produce a negative economic impact to vessels prosecuting the fishery because they allow for landings levels that are significantly higher than the average landings achieved by the fishery in recent years. The 2006 specifications allow for incremental growth in the industry, while taking into consideration biological uncertainty.

The specification of OY and DAH is 150,000 mt for 2006. At this level, there could be an increase of up to 50,000 mt in herring landings, or \$7,150,000 in revenues, based on an average price of \$143/mt. This could allow individual vessels to increase their profitability under the 2006 specifications, depending on whether or not new vessels enter the fishery (the herring fishery will remain an open-access fishery for the 2006 fishing year). The magnitude of economic impacts related to the 146,000-mt specification of DAP will depend on the shoreside processing sector's ability to expand markets and increase capacity to handle larger amounts of herring during 2006.

The potential loss associated with eliminating the JVPt allocation (20,000 mt for 2003 and 2004) could approximate \$2.9 million (based on an average price of \$143/mt) if all of the 20,000-mt allocation would have been utilized (10,000 mt for JVP and 10,000 mt for IWP). However, very little of the 10,000-mt JVP allocation was utilized in 2002 and 2003, and no JVP activity occurred during the 2004 fishing year. The Council received no indication that demand exists for the JVP allocation in 2006. As a result, no substantial economic impacts are expected from reducing the JVP allocation to 0 mt in 2006, as vessels that sold fish in the past to JVP vessels could sell to U.S. processors.

The Area 1A and 1B TACs of 60,000 mt and 10,000 mt, respectively, have been unchanged since the 2000 fishery. In 2002 and 2003, the Area 1A TAC for the directed herring fishery was fully

utilized and is expected to be fully utilized for the 2006 fishery. Therefore, no change is expected in profitability of vessels as a result of the 2006 Area 1A specification. Since only 4,917 mt of herring were harvested in Area 1B in 2003, the 2006 specification of 10,000 mt should allow for increased economic benefits to individual vessels prosecuting the fishery in this management area. The potential economic gains associated with allocating 20,000 mt for USAP could approximate \$2.9 million (based on an average price of \$143/mt) if all of the 20,000-mt allocation is utilized in 2006.

The Council analyzed four alternatives for OY and the distribution of TACs. One alternative would have retained the specifications implemented during the 2003 and 2004 fishing years, which would have maintained the OY at 180,000 mt. This OY is still roughly 80 percent greater than the average historical landings for this fishery and therefore, that level of OY would not pose a constraint on the fishery. The three other alternatives considered by the Council would set the OY at 150,000 mt. This is still roughly 50-percent greater than the average historical landings for this fishery, and, therefore, that level of OY would not pose a constraint on the fishery. Each of the alternatives that would set the OY at 150,000 mt would establish varying levels for the area TACs.

One alternative would have established the following TACs: Area 1A, 60,000 mt; Area 1B, 10,000 mt; Area 2, 20,000 mt; and Area 3, 60,000 mt. The only area TAC that would be lower than 2004 under this option is the Area 2 TAC. The most recent year in which the landings from this area were greater than 20,000 mt (the proposed TAC) was 2000 (27,198 mt). The average landings from 2001-2003 were 14,300 mt, with 2003 landings at 16,079 mt. Under current market conditions, the new TAC may become constraining if the fishery in 2006 is similar to that in 2000. If this is the case, then the Area 2 TAC fishing season could end before the end of the year, creating a potential economic constraint on the fishery, especially if vessels are forced to travel farther (increased steaming time) to harvest in Area 3.

Another alternative considered would have established the following TACs: Area 1A, 45,000 mt; Area 1B, 10,000 mt; Area 2, 35,000 mt; and Area 3, 60,000 mt. With a 15,000-mt decrease in the combined Area 1 TACs, the economic impact of this option could be relatively large on vessels in the fishery that depend on herring in Area 1A, especially if those vessels are not able

to move to other areas to obtain fish. Even if vessels could fish in other areas, their operating costs would be increased because of increased steaming time. An Area 2 TAC of 35,000 mt under this alternative would not be constraining, given recent landings history.

The final alternative considered would have established the following TACs: Area 1A, 55,000 mt; Area 1B, 5,000 mt; Area 2, 30,000 mt; and Area 3, 60,000 mt. With a 10,000-mt decrease in the combined Area 1 TACs, the impact of this alternative would be very similar to the impact of the prior alternative, although not as severe. An Area 2 TAC of 30,000 mt under this alternative would not be constraining, given recent landings history.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the following web site: <http://www.nero.noaa.gov>.

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

Dated: February 27, 2006.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 06-1996 Filed 3-2-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 05120322-6051-02; I.D. 010506C]

RIN 0648-AU11

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Guam Longline Fishing Prohibited Area

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the geographic coordinates that define the longline fishing prohibited area in waters of the U.S. Exclusive Economic Zone (EEZ) around Guam. This action is necessary to correct an error in one of the published coordinates. The intended effect of this action is to accurately implement the Guam longline closed area.

DATES: Effective April 3, 2006.

ADDRESSES: This rule is available from William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, and from the PIR web site <http://swr.nmfs.noaa.gov/pir>.

FOR FURTHER INFORMATION CONTACT: Robert Harman, PIR, 808 944-2271.

SUPPLEMENTARY INFORMATION: This Federal Register document is also accessible via the Internet at <http://www.archives.gov/federal-register/publications>.

Portions of the EEZ around Guam are closed to pelagic longline fishing to prevent conflicts with users of other types of fishing gear. In 1992, NMFS published in the *Federal Register* a final rule that created a 50-nm longline closed area around Guam (57 FR 45989, October 6, 1992); the regulations that were implemented by that final rule contained an error in the geographic coordinates for one of the points that define the closed area. NMFS published a technical amendment (59 FR 46933, September 13, 1994) that corrected those coordinates. NMFS subsequently published a rule that consolidated several sections of the Code of Federal Regulations (CFR) under 50 CFR 660 (61 FR 34570, July 2, 1996). In that rule, the geographic coordinates for the same point (Point "C") were inadvertently

published with an error in 50 CFR 660.26(d). This final rule corrects the coordinates.

Comments and Responses

The proposed rule was published in the *Federal Register* on January 20, 2006 (71 FR 3254), and the comment period ended on February 21, 2006. NMFS received no comments on the proposed rule.

Changes to the Proposed Rule

NMFS made no changes to the proposed rule.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 27, 2006.

James W. Balsiger,

*Acting Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is correctly amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.26, revise the entry for Point C in the table in paragraph (d) to read as follows:

§ 660.26 Longline fishing prohibited area management.

* * * * *

(d) * * *

Point	N. lat.	E. long.
C	13° 41'	143° 33' 33"

[FR Doc. 06-1997 Filed 3-2-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044-6044-01; I.D. 112805A]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2006 and 2007 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2006 and 2007 harvest specifications, reserves and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2006 and 2007 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2006 and 2007 harvest specifications and associated management measures are effective at 1200 hrs, Alaska local time (A.l.t.), March 3, 2006, through 2400 hrs, A.l.t., December 31, 2007.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Records Officer or from the Alaska Region Web site at <http://www.fakr.noaa.gov>. Copies of the 2005 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated

November 2005, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510-2252 (907-271-2809) or from its Web site at <http://www.fakr.noaa.gov/npfinc>.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907-481-1780, or e-mail at tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The final harvest specifications in Tables 1 through 18 of this document satisfy these requirements. For 2006, the sum of the TAC amounts is 291,950 mt. For 2007, the sum of the TAC amounts is 257,772 mt.

The proposed 2006 and 2007 harvest specifications and Pacific halibut PSC allowances for the GOA were published in the **Federal Register** on December 16, 2005 (70 FR 74739). Comments were invited and accepted through January 17, 2006. NMFS received 1 letter with several comments on the proposed harvest specifications. These comments are summarized and responded to in the Response to Comments section. In December 2005, NMFS consulted with the Council regarding the 2006 and 2007 harvest specifications. After considering public comments received, as well as biological and economic data that were available at the Council's December 2005 meeting, NMFS is implementing the final 2006 and 2007 harvest specifications, as recommended by the

Council, with the exception of pollock as described below.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2005, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Plan Team and was presented in the 2005 SAFE report for the GOA groundfish fisheries, dated November 2005 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The final ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers with tier one representing the highest level of information and tier six the lowest level of information.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The Council adopted the AP's TAC recommendations. The Council recommended TACs for 2006 and 2007 that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, big skate, longnose skate, and other skates. The Council recommended TACs that

are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, other rockfish, and Atka mackerel. None of the Council's recommended TACs for 2006 and 2007 exceeds the final ABC for any species or species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of the groundfish stocks as described in the 2005 SAFE report and approved by the Council. The apportionment of TAC amounts among gear types, processing sectors, and seasons is discussed below.

NMFS finds that the Council's recommendations for OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments and approves these specifications under § 679.20(c)(3)(ii).

Tables 1 and 2 list the final 2006 and 2007 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sum of 2006 and of 2007 groundfish ABCs are 500,626 and 472,260 mt respectively, which are lower than the 2005 ABC total of 539,263 mt (70 FR 8958, February 24, 2005).

Specification and Apportionment of TAC Amounts

As in 2005, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2006 and 2007 include commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to ensure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern Regulatory Area and makes available 5 percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District (§ 679.20(a)(4)(i)).

Since the inception of a State managed pollock fishery in Prince William Sound (PWS) the GOA Plan Team has recommended that the guideline harvest level (GHL) for the pollock fishery in PWS be deducted

from the ABC for the western stock of pollock in the GOA in the Western/Central/West Yakutat (W/C/WYK) Area. The Plan Team based its pollock ABC recommendation for the W/C/WYK Area on a pollock GHL for the PWS of 910 mt. Following the Council's December 2005 meeting the Alaska Department of Fish and Game (ADF&G) completed a new assessment of the pollock biomass in PWS. In a news release dated December 28, 2005, ADF&G announced a GHL of 3.64 million pounds (1,650 mt) for the 2006 PWS pollock fishery, a difference of 740 mt for the GHL already considered. NMFS is reducing the 2006 and 2007 ABCs for the pollock fishery in the W/C/WYK Area by 740 mt from the Council's recommendation to be consistent with the conservation and management policies for pollock in the W/C/WYK. The Council recommended that the TAC for pollock in the W/C/WYK Area be set equal to the ABC, therefore, NMFS is reducing the 2006 and 2007 TACs for pollock in the W/C/WYK Area by 740 mt.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: The A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§§ 673.23(d)(2)(i) through (iv) and 679.20(a)(5)(iii)(B)).

The SSC, AP, and Council adopted the Plan Team's ABC recommendations for all groundfish species categories, except for Pacific cod in 2006. The SSC disagreed with the Plan Team's maximum permissible ABC recommendation of 79,618 mt based on conservation concerns. In particular, the SSC did not feel comfortable with the large implied increase in fishing mortality because of concerns over the new maturity schedule, a series of low recruitments between 2001 and 2004, and limited experience with the new model used for the Pacific cod assessment. For these reasons, the SSC recommended a stair-step approach to the maximum permissible ABC in 2006 resulting in an ABC recommendation of 68,859 mt. The final 2006 and 2007 ABCs, recommended by the Council and amended by NMFS, are listed in Tables 1 and 2.

The AP, SSC, and Council recommended that the ABC for Pacific

cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS' summer trawl surveys. As in previous years, the Plan Team, AP, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the 2006 and 2007 TACs be adjusted downward from the ABCs by amounts equal to the 2006 GHLs established for Pacific cod by the State of Alaska (State) for fisheries that occur in State waters in the GOA. The effect of the State's GHLs on the Pacific cod TAC is discussed in greater detail below. As in 2005, NMFS will establish for 2006 and 2007 an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. This action meets the intent of the Steller Sea Lion Protection Measures by achieving temporal dispersion of the Pacific cod removals and by reducing the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10).

The 2006 and 2007 Pacific cod TACs are affected by the State's developing fishery for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals not exceed the ABC. Accordingly, the Council recommended the 2006 and 2007 Pacific cod TACs be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Therefore, the 2006 TACs are reduced from ABCs as follows: (1) Eastern GOA, 413 mt; (2) Central GOA, 9,468 mt; and (3) Western GOA, 6,714 mt. Similarly, the 2007 TACs are reduced from ABCs as follows: (1) Eastern GOA, 297 mt; (2) Central GOA, 6,801 mt; and (3) Western GOA, 4,823 mt. These amounts reflect the sum of the State's 2006 GHLs in these areas, which are 10 percent, 25 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. The percentages of ABC used to calculate the GHLs for the State managed Pacific cod fisheries are unchanged from 2005.

NMFS also is establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the

annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the TAC amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The 2006 GOA-wide "other species" TAC is 13,856 mt, and the 2007 TAC is 12,229 mt, which is 5 percent of the sum of the combined TAC amounts (278,094 mt for 2006 and 245,543 mt for 2007) for the target species. The sum of the TACs for all GOA groundfish is 291,950 mt for 2006 and 257,772 mt for 2007, which is within the OY range specified by the FMP. The sums of the 2006 and 2007 TACs are higher in 2006 and lower in 2007 than the 2005 TAC sum of 291,298 mt (70 FR 8958, February 24, 2005).

In June 2005, the Council selected its preferred alternative for Amendment 69 to the GOA FMP to revise the manner in which the "other species" complex TAC is annually established. If approved, Amendment 69 would allow the Council, as part of its annual harvest specification process, to recommend a TAC amount for the "other species" less than or equal to 5 percent of the sum of the combined TAC amounts for target species. The intent of Amendment 69 is to better conserve and manage the species which comprise the "other species" complex. NMFS published a Notice of Availability (NOA) for Amendment 69 in the *Federal Register* on November 16, 2005 (70 FR 69505) and a proposed rule to implement Amendment 69 in the *Federal Register* on November 29, 2005 (70 FR 71450). Comments on the NOA were invited through January 17, 2006, and comments on the proposed rule were invited through January 13, 2006.

Copies of Amendment 69, the EA/RIR/IRFA prepared for the amendment, and the proposed rule may be obtained from NMFS, Alaska Region or from its Web site (see **ADDRESSES**). In December 2005, the Council recommended that if Amendment 69 receives Secretarial approval, then the TAC for the "other species" complex should be amended to 4,500 mt in 2006 and 2007. This amount would meet the incidental catch needs in the other directed groundfish and halibut fisheries while allowing for a limited directed fishery of approximately 500 mt.

At its June 2005 meeting, the Council selected a preferred pilot program alternative to rationalize the Central GOA rockfish fishery. The program was developed by the Council under the authority of the Consolidated Appropriations Act of 2004. If approved by the Secretary, the Central GOA Rockfish Pilot Program would allocate rockfish, associated groundfish, halibut PSC limits, and groundfish sideboard limits to a specific group of eligible harvesters in 2007. These amounts are expected to be identified in September 2006 and would modify the harvest specifications for 2007.

Changes From the Proposed 2006 and 2007 Harvest Specifications for the GOA

In October 2005, the Council's recommendations for the proposed 2006 and 2007 harvest specifications (70 FR 74739, December 16, 2005) were based largely on information contained in the 2004 SAFE report for the GOA groundfish fisheries, dated November 2004. The Council recommended that the 2006 and 2007 OFLs and ABCs for stocks in tiers 1 through 3 be based on biomass projections as set forth in the 2004 SAFE report and estimates of groundfish harvests through the 2006 and 2007 fishing years. For stocks in tiers 4 through 6, for which projections could not be made, the Council recommended that OFL and ABC levels be unchanged from 2005 until the 2005 SAFE report could be completed.

The 2005 SAFE report (dated November 2005), which was not available when the Council made its

recommendations in October 2005, contains the best and most recent scientific information on the condition of the groundfish stocks. This report was considered in December 2005 by the Council when it made its recommendations for the final 2006 and 2007 harvest specifications. Based on the 2005 SAFE report, the sum of the 2006 recommended final TACs for the GOA (291,950 mt) is 9,354 mt less than the proposed sum of TACs (301,304 mt). The largest 2006 increases occurred for Pacific cod, from 42,128 mt to 52,264 mt (24 percent increase); deep water flatfish, from 6,820 mt to 8,665 mt (27 percent increase), other rockfish, from 670 mt to 1,480 mt (121 percent increase), pelagic shelf rockfish, from 4,415 mt to 5,436 mt (23 percent increase) and for Atka mackerel, from 600 mt to 1,500 mt (150 percent increase). The largest decreases occurred for pollock, from 105,220 mt to 85,807 mt (18 percent decrease) and for rex sole, from 12,650 mt to 9,200 mt (27 percent decrease). Other increases or decreases in both 2006 and 2007 are within these ranges.

Compared to the proposed 2006 and 2007 harvest specifications, the Council's final 2006 and 2007 TAC recommendations increase fishing opportunities for species for which the Council had sufficient information to raise TAC levels. These include, Pacific cod, deep water flatfish, other rockfish, northern rockfish, Pacific ocean perch, shortraker rockfish, thornyhead rockfish, longnose and other skates, and Atka mackerel. Conversely, the Council reduced TAC levels to provide greater protection for several species; these include pollock, rex sole, flathead sole, shallow water flatfish, sablefish, roughey rockfish, and big skates. The changes recommended by the Council for the 2006 and 2007 fishing years were based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, and within a reasonable range of variation from the proposed TAC recommendations so that the affected public was fairly appraised and could have made meaningful comments based on the proposed harvest specifications.

TABLE 1.—FINAL 2006 ABCs, TACs, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Totals	Species	Area ¹	ABC	TAC	Overfishing level
	Pollock ²	Shumagin (610)	28,918	28,918	n/a
		Chirikof (620)	30,492	30,492	n/a

TABLE 1.—FINAL 2006 ABCs, TACs, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Totals	Species	Area ¹	ABC	TAC	Overfishing level
Subtotal		Kodiak (630)	18,448	18,448	n/a
		WYK (640)	1,792	1,792	n/a
		W/C/WYK	79,650	79,650	110,100
Total		SEO (650)	6,157	6,157	8,209
			86,807	86,807	118,309
Total	Pacific cod ³	W	26,855	20,141	n/a
		C	37,873	28,405	n/a
		E	4,131	3,718	n/a
			68,859	52,264	95,500
Total	Flatfish ⁴ (deep-water)	W	420	420	n/a
		C	4,139	4,139	n/a
		WYK	2,661	2,661	n/a
		SEO	1,445	1,445	n/a
		8,665	8,665	11,008	
Total	Rex sole	W	1,159	1,159	n/a
		C	5,506	5,506	n/a
		WYK	1,049	1,049	n/a
		SEO	1,486	1,486	n/a
		9,200	9,200	12,000	
Total	Flathead sole	W	10,548	2,000	n/a
		C	25,195	5,000	n/a
		WYK	2,022	2,022	n/a
		SEO	55	55	n/a
		37,820	9,077	47,003	
Total	Flatfish ⁵ (shallow-water)	W	24,720	4,500	n/a
		C	24,258	13,000	n/a
		WYK	628	628	n/a
		SEO	1,844	1,844	n/a
		51,450	19,972	62,418	
Total	Arrowtooth flounder	W	20,154	8,000	n/a
		C	134,906	25,000	n/a
		WYK	15,954	2,500	n/a
		SEO	6,830	2,500	n/a
		177,844	38,000	207,678	
Subtotal	Sablefish ⁶	W	2,670	2,670	n/a
		C	6,370	6,370	n/a
		WYK	2,280	2,280	n/a
		SEO	3,520	3,520	n/a
		E	5,800	5,800	n/a
		14,840	14,840	17,880	
Subtotal	Pacific ocean perch ⁷	W	4,155	4,155	4,931
		C	7,418	7,418	8,806
		WYK	1,101	1,101	n/a
		SEO	1,587	1,587	n/a
		E	2,688	2,688	3,190
		14,261	14,261	16,927	
Total	Shortraker rockfish ⁸	W	153	153	n/a
		C	353	353	n/a

TABLE 1.—FINAL 2006 ABCs, TACs, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued
[Values are rounded to the nearest metric ton]

Totals	Species	Area ¹	ABC	TAC	Overfishing level
		E	337	337	n/a
Total			843	843	1,124
	Rougheye rockfish ⁹	W	136	136	n/a
		C	608	608	n/a
		E	239	239	n/a
Total			983	983	1,180
	Other rockfish ^{10 11}	W	577	577	n/a
		C	386	386	n/a
		WYK	317	317	n/a
		SEO	2,872	200	n/a
Total			4,152	1,480	5,394
	Northern rockfish ^{11 12}	W	1,483	1,483	n/a
		C	3,608	3,608	n/a
		E	0	0	n/a
Total			5,091	5,091	7,673
	Pelagic shelf rockfish ¹³	W	1,438	1,438	n/a
		C	3,262	3,262	n/a
		WYK	301	301	n/a
		SEO	435	435	n/a
Total			5,436	5,436	6,662
	Thornyhead rockfish	W	513	513	n/a
		C	989	989	n/a
		E	707	707	n/a
Total			2,209	2,209	2,945
	Big skates ¹⁴	W	695	695	n/a
		C	2,250	2,250	n/a
		E	599	599	n/a
Total			3,544	3,544	4,726
	Longnose skates ¹⁵	W	65	65	n/a
		C	1,969	1,969	n/a
		E	861	861	n/a
Total			2,895	2,895	3,860
	Other skates ¹⁶	GW	1,617	1,617	2,156
	Demersal shelf rockfish ¹⁸	SEO	410	410	650
	Atka mackerel	GW	4,700	1,500	6,200
	Other GW species ^{17 19}	GW	n/a	13,856	n/a
TOTAL ²⁰			500,626	291,950	631,293

¹ Regulatory areas and districts are defined at § 679.2.

² Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 22 percent, 57 percent, and 21 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 22 percent, 69 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 53 percent, 15 percent, and 32 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments for 2006 and 2007 are shown in Tables 5 and 6. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³ The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC for 2006 and 2007 are shown in Tables 7 and 8.

⁴ "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

⁵ "Shallow water flatfish" means flatfish not including "deep water flatfish", flathead sole, rex sole, or arrowtooth flounder.

⁶ Sablefish is allocated to trawl and hook-and-line gears for 2006 and to trawl gear in 2007 these amounts are shown in Tables 3 and 4.

⁷ "Pacific ocean perch" means *Sebastes alutus*.

⁸ "Shortraker rockfish" means *Sebastes borealis*.

⁹ "Rougheye rockfish" means *Sebastes aleutianus*.

¹⁰ "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

¹¹ "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), and *S. reedi* (yellowmouth). In the Eastern Regulatory Area only, slope rockfish also includes northern rockfish, *S. polyspinis*.

¹² "Northern rockfish" means *Sebastes polyspinis*.

¹³ "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

¹⁴ Big skate means *Raja binoculata*.

¹⁵ Longnose skate means *Raja rhina*.

¹⁶ Other skates means *Bathyraja* spp.

¹⁷ N/A means not applicable.

¹⁸ "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹⁹ "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species", the TAC for "other species" equals 5 percent of the TACs for assessed target species.

²⁰ The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

TABLE 2.—FINAL 2007 ABCS, TACS, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/MYK), WESTERN (W), CENTRAL (C) EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Total	Species	Area ¹	ABC	TAC	Overfishing level
Subtotal	Pollock ²	Shumagin (610)	23,022	23,022	n/a
		Chirikof (620)	24,275	24,275	n/a
		Kodiak (630)	14,687	14,687	n/a
		WYK (640)	1,426	1,426	n/a
		W/C/MYK	63,410	63,410	89,500
		SEO (650)	6,157	6,157	8,209
Total			69,567	69,567	97,709
Total	Pacific cod ³	W	19,292	14,469	n/a
		C	27,206	20,405	n/a
		E	2,968	2,671	n/a
			49,466	37,545	59,100
Total	Flatfish ⁴ (deep-water)	W	421	421	n/a
		C	4,145	4,145	n/a
		WYK	2,665	2,665	n/a
		SEO	1,446	1,446	n/a
			8,677	8,677	11,022
Total	Rex sole	W	1,096	1,096	n/a
		C	5,207	5,207	n/a
		WYK	992	992	n/a
		SEO	1,405	1,405	n/a
	8,700	8,700	11,400		
Total	Flathead sole	W	10,932	2,000	n/a
		C	26,111	5,000	n/a
		WYK	2,096	2,096	n/a
		SEO	57	57	n/a
	39,196	9,153	48,763		
Total	Flatfish ⁵ (shallow-water)	W	24,720	4,500	n/a
		C	27,258	13,000	n/a
		WYK	628	628	n/a
		SEO	1,844	1,844	n/a
	51,450	19,972	62,418		
Total	Arrowtooth flounder	W	21,011	8,000	n/a
		C	140,640	25,000	n/a
		WYK	16,632	2,500	n/a
		SEO	7,120	2,500	n/a
	185,403	38,000	216,500		
Total	Sablefish ⁶	W	2,360	2,360	n/a

TABLE 2.—FINAL 2007 ABCs, TACs, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C) EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Total	Species	Area ¹	ABC	TAC	Overfishing level
		C	5,630	5,630	n/a
		WYK	2,014	2,014	n/a
		SEO	3,116	3,116	n/a
Subtotal		E	5,130	5,130	n/a
Total			13,120	13,120	15,800
	Pacific ocean perch ⁷	W	4,290	4,290	4,997
		C	7,660	7,660	8,923
		WYK	1,137	1,137	n/a
		SEO	1,639	1,639	n/a
Subtotal		E			3,232
Total			14,726	14,726	17,152
	Shortraker rockfish ⁸	W	153	153	n/a
		C	353	353	n/a
		E	337	337	n/a
Total			843	843	1,124
	Rougheye rockfish ⁹	W	133	133	n/a
		C	596	596	n/a
		E	235	235	n/a
Total			964	964	1,161
	Other rockfish ^{10 11}	W	577	577	n/a
		C	386	386	n/a
		WYK	317	317	n/a
		SEO	2,872	200	n/a
Total			4,152	1,480	5,394
	Northern rockfish ^{11 12}	W	1,483	1,483	n/a
		C	3,608	3,608	n/a
		E	0	0	n/a
Total			5,091	5,091	7,618
	Pelagic shelf rockfish ¹³	W	1,463	1,463	n/a
		C	3,318	3,318	n/a
		WYK	306	306	n/a
		SEO	443	443	n/a
Total			5,530	5,530	6,779
	Thornyhead rockfish	W	513	513	n/a
		C	989	989	n/a
		E	707	707	n/a
Total			2,209	2,209	2,945
	Big skates ¹⁴	W	695	695	n/a
		C	2,250	2,250	n/a
		E	599	599	n/a
Total			3,544	3,544	4,726
	Longnose skates ¹⁵	W	65	65	n/a
		C	1,969	1,969	n/a
		E	861	861	n/a
Total			2,895	2,895	3,860
	Other skates ¹⁶	GW	1,617	1,617	2,156
	Demersal shelf rockfish ¹⁸	SEO	410	410	650
	Atka mackerel	GW	4,700	1,500	6,200
	Other species ^{17 19}	GW	n/a	12,229	n/a

TABLE 2.—FINAL 2007 ABCS, TACS, AND OVERFISHING LEVELS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/MYK), WESTERN (W), CENTRAL (C) EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued
[Values are rounded to the nearest metric ton]

Total	Species	Area ¹	ABC	TAC	Overfishing level
Total ²⁰			472,260	257,772	582,477

¹ Regulatory areas and districts are defined at § 679.2.

² Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 22 percent, 57 percent, and 21 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 22 percent, 69 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 53 percent, 15 percent, and 32 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments for 2006 and 2007 are shown in Tables 5 and 6. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³ The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC for 2006 and 2007 are shown in Tables 7 and 8.

⁴ "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

⁵ "Shallow water flatfish" means flatfish not including "deep water flatfish", flathead sole, rex sole, or arrowtooth flounder.

⁶ Sablefish is allocated to trawl and hook-and-line gears for 2006 and to trawl gear in 2007 these amounts are shown in Tables 3 and 4.

⁷ "Pacific ocean perch" means *Sebastes alutus*.

⁸ "Shortraker rockfish" means *Sebastes borealis*.

⁹ "Rougheye rockfish" means *Sebastes aleutianus*.

¹⁰ "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

¹¹ "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), and *S. reedi* (yellowmouth). In the Eastern Regulatory Area only, slope rockfish also includes northern rockfish, *S. polyspinis*.

¹² "Northern rockfish" means *Sebastes polyspinis*.

¹³ "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

¹⁴ Big skate means *Raja binoculata*.

¹⁵ Longnose skate means *Raja rhina*.

¹⁶ Other skates means *Bathyraja* spp.

¹⁷ N/A means not applicable.

¹⁸ "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹⁹ "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species", the TAC for "other species" equals 5 percent of the TACs for assessed target species.

²⁰ The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

Apportionment of Reserves

Section 679.20(b)(2) requires 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date. In 2005, NMFS reapportioned all the reserves in the final harvest specifications. For 2006 and 2007, NMFS proposed apportionment of all the reserves in the proposed 2006 and 2007 harvest specifications published in the **Federal Register** on December 16, 2005 (70 FR 74739). NMFS received no public comments on the proposed reapportionments. For the final 2006 and 2007 harvest specifications, NMFS apportioned all the reserves for pollock, Pacific cod, flatfish, and "other species." Specifications of TAC shown in Tables 1 and 2 reflect apportionment of reserve amounts for these species and species groups.

Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Sections 679.20(a)(4)(i) and (ii) require allocation of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (see § 679.20(a)(1)). In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS concurs the allocation of 5 percent of

the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. The Council recommended that only the trawl sablefish TAC be established biennially. This recommendation results in an allocation of 290 mt to trawl gear and 1,990 mt to hook-and-line gear in the WYK District and 3,520 mt to hook-and-line gear in the SEO District in 2006, and 257 mt to trawl gear in the WYK District in 2007. Table 3 shows the allocations of the final 2006 sablefish TACs between hook-and-line and trawl gear. Table 4 shows the allocations of the final 2007 allocation of sablefish TACs to trawl gear.

TABLE 3.—FINAL 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR
[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,670	2,136	534
Central	6,370	5,096	1,274
West Yakutat	2,280	1,990	290
Southeast Outside	3,520	3,520	0
Total	14,840	12,742	2,098

TABLE 4.—FINAL 2007 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATION THEREOF TO TRAWL GEAR
[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line apportionment ¹	Trawl apportionment
Western	2,360	n/a	472
Central	5,630	n/a	1,126
West Yakutat	2,014	n/a	257
Southeast Outside	3,116	n/a	0
Total	13,120	n/a	1,855

¹ The Council recommended that harvest specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, from March 10 through May 31, from August 25 through October 1, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass based on a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass based on the four most recent NMFS summer

surveys. As in 2005, the Council recommended averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season to better reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2006 and 2007 fishing years. Within any fishing year, the underage or overage of a seasonal allowance may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator. The rollover amount of unharvested pollock is limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iii)(B)). The WYK and SEO District pollock TACs of 1,792 mt and 6,157 mt in 2006 and 1,426 mt and 6,157 mt in 2007, respectively, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock

TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The 2006 and 2007 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Tables 5 and 6, except that amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 5.—FINAL 2006 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]
 [Area apportionments resulting from seasonal distribution of biomass]

Season	Shumagin (area 610)	Chirikof (area 620)	Kodiak (area 630)	Total
A	4,210 (21.63%)	11,192 (57.50%)	4,062 (20.87%)	19,464 (100%)
B	4,210 (21.63%)	13,394 (68.81%)	1,861 (9.56%)	19,465 (100%)
C	10,249 (52.65%)	2,953 (15.17%)	6,263 (32.17%)	19,465 (100%)
D	10,249 (52.65%)	2,953 (15.17%)	6,262 (32.17%)	19,464 (100%)
Annual Total	28,918	30,492	18,448	77,858

TABLE 6.—FINAL 2007 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]
 [Area apportionments resulting from seasonal distribution of biomass]

Season	Shumagin (area 610)	Chirikof (area 620)	Kodiak (area 630)	Total
A	3,352 (21.63%)	8,910 (57.50%)	3,234 (20.87%)	15,496 (100%)
B	3,352 (21.63%)	10,663 (68.81%)	1,481 (9.56%)	15,496 (100%)
C	8,159 (52.65%)	2,351 (15.17%)	4,986 (32.17%)	15,496 (100%)
D	8,159 (52.65%)	2,351 (15.17%)	4,986 (32.17%)	15,496 (100%)
Annual Total	23,022	24,275	14,687	62,984

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1 (§ 679.23(d)(3)). After subtraction of incidental catch needs by the inshore and offshore components in other directed fisheries

through the A season ending June 10, 60 percent of the annual TAC will be available as a directed fishing allowance during the A season for the inshore and offshore components. The remaining 40 percent of the annual TAC will be available for harvest during the B season and will be apportioned between the inshore and offshore components (§ 679.20(a)(6)(ii)). Any amount of the A season apportionment of Pacific cod TAC under or over harvested will be added to or subtracted from the B season apportionment of Pacific cod TAC (§ 679.20(a)(11)(ii)). For purposes of clarification, NMFS points out that the dates for the A season and the B season for the Pacific cod fishery differ

from those of the A, B, C, and D seasons for the pollock fisheries.

Section 679.20(a)(6)(ii) requires the allocation of the Pacific cod TAC apportionment in all regulatory areas between vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the 2006 and 2007 Pacific cod TACs are shown in Tables 7 and 8, respectively.

TABLE 7.—FINAL 2006 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
A season (60%)	Western	20,141	18,127	2,014
	.....	12,085	10,876	1,208
B season (40%) .....	.....	8,056	7,251	806
	Central	28,405	25,565	2,840
A season (60%) .....	.....	17,043	15,339	1,704
	B season (40%)	11,362	10,226	1,136
.....	Eastern	3,718	3,346	372
	Total	52,264	47,038	5,226

TABLE 8.—FINAL 2007 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
A season (60%) B season (40%)	Western	14,469	13,022	1,447
		8,681	7,813	868
		5,788	5,209	579
A season (60%) B season (40%)	Central	20,405	18,365	2,040
		12,243	11,019	1,224
		8,162	7,346	816
Total	Eastern	2,671	2,404	267
		37,545	33,791	3,754

Demersal Shelf Rockfish

In a commercial fisheries news release dated December 9, 2005, the ADF&G announced the closure to directed fishing for demersal shelf rockfish (DSR) in the SEO District for 2006. The ADF&G estimates that the incidental catch mortality in the commercial halibut fishery combined with the estimated DSR catch in the charter and sport fisheries will exceed the TAC; therefore, a directed fishery in the SEO District cannot be prosecuted (5 AAC 28.160 (c)(3)). NMFS reminds all fishermen that full retention of all DSR by federally permitted catcher vessels using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA is required (§ 679.20(j)).

Halibut PSC Limits

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear and may establish apportionments for pot gear. In December 2005, the Council recommended that NMFS maintain the 2005 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. Ten mt of the hook-and-line limit is further allocated to the DSR fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS assumes the halibut bycatch in the DSR fishery is low because of the short soak times for the gear and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut.

Section 679.21(d)(4)(iii)(A) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 2006 and 2007. The Council recommended these exemptions because: (1) The pot gear fisheries experience low annual halibut bycatch mortality (averaging 18 mt annually from 2001 through 2005); (2) the Individual Fishing Quota (IFQ) program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. NMFS assumes halibut mortality is very low, given the small amount of groundfish harvested annually by jig gear (averaging 298 mt annually from 2001 through 2005), and the survival rates of any halibut incidentally caught by jig gear and released are high.

Section 679.21(d)(5) requires NMFS to seasonally apportion the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2005 and 2006 harvest specifications (70 FR 8958, February 24, 2005) summarized the Council's and NMFS' findings with respect to each of these FMP considerations. The Council's and NMFS' findings for 2006 and 2007 are unchanged from 2005. The opening date for the third seasonal allowance of the trawl halibut PSC limit and the start date for directed fishing for rockfish by trawl gear is July 1 in 2006 and 2007. This date will facilitate inseason management of the rockfish fisheries and reduce the effect of the rockfish fisheries on the annual NMFS sablefish survey that occurs later in July.

NMFS concurs with the Council's recommendations described here and listed in Table 9. Section 679.21(d)(5)(iii) and (iv) specify that any underages or overages in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2006 and 2007 fishing years. The information to establish the halibut PSC limits was obtained from the 2005 SAFE report, NMFS, ADF&G, the International Pacific Halibut Commission (IPHC), and public testimony.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2005. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 31, 2005, is 2,012 mt, 194 mt, and 45 mt, respectively, for a total halibut mortality of 2,251 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2005 fishing year. Trawling during the first season closed for the deep-water complex on March 23 (70 FR 15600, March 28, 2005) and during the second season on April 8 (70 FR 19339, April 13, 2005). The April 8

closure was modified to open trawling for the deep-water fishery complex from April 24 through May 3 (70 FR 21678, April 27, 2005 and 70 FR 23940, May 6, 2005). Trawling during the third season closed for the deep-water complex on July 24 (70 FR 43327, July 27, 2005) and during the fourth season on September 4 (70 FR 52326, September 2, 2005). Trawling during the third season closed for the shallow-water complex on August 19 (70 FR 49507, August 24, 2005) and during the fourth season on September 4 (70 FR 52325, September 2, 2005). Trawling for all groundfish targets (with the exception of pollock by vessels using pelagic trawl gear) closed for the fifth season on October 1 (70 FR 57803, October 4, 2005). The use of hook-and-line gear targeting groundfish remained open throughout the fishing year in 2005 because the first seasonal allowance of halibut PSC was not reached.

The amount of groundfish that trawl gear might have harvested if halibut catch limitations had not restricted the 2005 season is unknown.

Expected Changes in Groundfish Stocks

In December 2005, the Council adopted higher ABCs for Pacific cod (in 2006), deep-water flatfish (2006 and 2007), other rockfish (2006 and 2007), Pacific ocean perch (2006 and 2007), shortraker rockfish (2006 and 2007), pelagic shelf rockfish (2006 and 2007), thornyhead rockfish (2006 and 2007), Atka mackerel (2006 and 2007), and longnose and other skates (2006 and 2007), than those established for 2005. The Council adopted lower ABCs for pollock (2006 and 2007), Pacific cod (in 2007), sablefish (2006 and 2007), rex sole (2006 and 2007), shallow water flatfish (2006 and 2007), flathead sole (2006 and 2007), sablefish (2006 and 2007), arrowtooth flounder (2006 and 2007), rougheye rockfish (2006 and 2007), and big skate (2006 and 2007), than those established for 2005. For northern rockfish, the Council recommended that ABC levels remain unchanged from 2005. More information on these changes is included in the 2005 SAFE report (November 2005) and in the Council and SSC December 2005 meeting minutes.

Expected Changes in Groundfish Catch

The total TAC amounts for the GOA are 291,950 mt for 2006, and 257,772 mt for 2007, an increase of less than 1 percent in 2006 and a decrease of about 12 percent in 2007 from the 2005 TAC total of 291,298 mt. Those fisheries for which the 2006 and 2007 TACs are lower than in 2005 are pollock

(decreased to 85,807 mt in 2006 and 69,567 mt in 2007, from 91,710 mt in 2005), Pacific cod (decreased to 37,545 mt in 2007, from 44,433 mt in 2005), rex sole (decreased to 9,200 mt in 2006 and 8,700 mt in 2007, from 12,650 mt in 2005), shallow water flatfish (decreased to 19,972 mt in 2006 and 2007, from 20,740 mt in 2005), flathead sole (decreased to 9,077 mt in 2006 and 9,153 mt in 2007, from 10,390 mt in 2005), sablefish (decreased to 14,840 in 2006 and 13,120 mt in 2007, from 15,940 mt in 2005), rougheye rockfish (decreased to 983 mt in 2006 and 964 mt in 2007, from 1,007 mt in 2005), big skate (decreased to 3,544 mt in 2006 and 2007, from 3,999 mt in 2005), and "other species" (decreased to 13,856 in 2006 and to 12,314 mt in 2007, from 13,871 mt in 2005).

Those fisheries for which the 2006 or 2007 TACs are higher than in 2005 are Pacific cod (increased to 52,264 mt in 2006, from 44,433 mt in 2005), deep-water flatfish (increased to 8,665 mt in 2006 and 8,677 mt in 2007, from 6,820 mt in 2005), other rockfish (increased to 1,480 mt in 2006 and 2007, from 670 mt in 2005), Pacific ocean perch (increased to 14,261 mt in 2006 and 14,726 mt in 2007, from 13,575 mt in 2005), shortraker rockfish (increased to 843 mt in 2006 and 2007, from 753 mt in 2005), pelagic shelf rockfish (increased to 5,436 mt in 2006 and 5,530 mt in 2007, from 4,553 mt in 2005), thornyhead rockfish (increased to 2,209 mt in 2006 and 2007, from 1,940 mt in 2005), Atka mackerel (increased to 1,500 mt in 2006 and 2007, from 600 mt in 2005), longnose skate (increased to 2,895 mt in 2006 and 2007, from 2,818 mt in 2005), and other skates (increased to 1,617 mt in 2006 and 2007, from 1,327 mt in 2005). species (increased to 13,942 mt in 2006, from 13,871 mt in 2005).

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2005 for the 2006 commercial fishery. The 2005 assessment methods are unchanged from the previous year. The current exploitable halibut biomass in Alaska for 2006 was estimated to be 189,543 mt, down from 192,023 mt in 2005. The female spawning biomass remains far above the minimum spawning biomass that occurred in the 1970s.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average

reproductive biomass for the Pacific halibut resource is estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt. The species is fully utilized. Recent average catches (1994–2004) in the commercial halibut fisheries in Alaska have averaged 34,241 mt. Catch in Alaska is 27 percent higher than long-term potential yield for the entire halibut stock reflecting the good condition of the Pacific halibut resource. In December 2005, IPHC staff recommended Alaska commercial catch limits totaling 33,421 mt in 2006, down from 34,459 mt in 2005. Through December 31, 2005, commercial hook-and-line harvests of halibut in Alaska totaled 33,381 mt.

In 2004, IPHC staff identified a 25 percent harvest rate as a candidate target rate for use with the new population assessment, pending its evaluation using the sex-specific population model. This updated evaluation indicated that a harvest rate less than 25 percent would result in a 50 percent lower probability that the stock biomass would reach a level requiring reductions in harvest rate. For 2006, the IPHC staff recommended a harvest rate of 22.5 percent for Areas 2C and 3A, 20 percent in Areas 3B and 4A, and 15 percent in Areas 4B and 4CDE. These are the same rates as used in 2005 except in Areas 4B and 4CDE, where the rate has been reduced from 20 percent to 15 percent. For Area 4B, the continued decline in biomass relative to the estimated historical minimum, the lack of recruitment, and a new analysis of productivity, prompted the IPHC staff to recommend the lower harvest rate of 15 percent. Similarly for Area 4CDE, the sharp decline in survey and commercial catch rates resulted in the IPHC staff's recommendation of a 15 percent harvest rate.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2005 Pacific halibut stock assessment (December 2005), available from the IPHC and on its Web site at <http://www.iphc.washington.edu>. At its annual meeting in January 2006 the IPHC adopted staff recommendations for the commercial catch limits described above for 2006 and set a season opening date of March 5.

Other Factors

The proposed 2006 and 2007 harvest specifications (70 FR 74739, December 16, 2005) discuss potential impacts of expected fishing for groundfish on halibut stocks and methods and costs of reducing halibut bycatch in the groundfish fisheries.

TABLE 9.—FINAL 2006 AND 2007 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS
[Values are in metric tons]

Trawl gear		Hook-and-line gear ¹			
Dates	Amount	Other than DRS		DSR	
		Dates	Amount	Dates	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January 1–December 31	10 (100%)
April 1–July 1	400 (20%)	June 10–September 1	5 (2%)	.....	.....
July 1–September 1	600 (30%)	September 1–December 31	35 (12%)	.....	.....
September 1–October 1	150 (7.5%)	.....	.....	.....	.....
October 1–December 31	300 (15%)	.....	.....	.....	.....
Total	2,000 (100%)	.....	290 (100%)	.....	10 (100%)

¹ The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes the further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality and optimization of the total amount of

groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) A deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and (2) a shallow-water species complex, comprised of pollock, Pacific cod,

shallow-water flatfish, flathead sole, Atka mackerel, skates, and "other species" (§ 679.21(d)(3)(iii)). The final seasonal 2006 and 2007 apportionments for the two fishery complexes are presented in Table 10.

TABLE 10.—FINAL 2006 AND 2007 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX
[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31 ¹	n/a	n/a	300
Total	n/a	n/a	n/a

¹ There is no apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1–December 31).

Halibut Discard Mortality Rates

The Council recommends and NMFS concurs that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2005 GOA groundfish fisheries be used to monitor the 2006 and 2007 GOA halibut bycatch mortality limits. The IPHC recommended use of long-term average DMRs for the 2004–2006 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised

should analysis indicate that a fishery's annual DMR deviates substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1993 and 2002. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the "other species" and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for each gear type was recommended as

a default rate. The GOA DMRs for 2006 and 2007 are unchanged from those used in 2005. The DMRs for hook-and-line targeted fisheries range from 8 to 13 percent. The DMRs for trawl targeted fisheries range from 57 to 75 percent. The DMRs for all pot targeted fisheries are 17 percent. The final DMRs for 2006 and 2007 are listed in Table 11. The justification for these DMRs is discussed in Appendix A of the 2004 SAFE report dated November 2004. In December 2006, the IPHC will recommend DMRs for the 2007–2009 groundfish fisheries.

TABLE 11.—FINAL 2006 AND 2007 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA
[Listed values are percentages of halibut bycatch assumed to be dead]

Gear	Target	Mortality rate (percent)
Hook-and-line	Other species	13
	Skates	13
	Pacific cod	13

TABLE 11.—FINAL 2006 AND 2007 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA—Continued

[Listed values are percentages of halibut bycatch assumed to be dead]

Gear	Target	Mortality rate (percent)
Trawl	Rockfish	8
	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	57
	Flathead sole	62
	Non-pelagic pollock	59
	Other species	61
	Skates	61
	Pacific cod	61
	Pelagic pollock	75
	Rex sole	62
	Rockfish	67
	Sablefish	62
	Shallow-water flatfish	68
	Other species	17
Pot	Skates	17
	Pacific cod	17

Non-Exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Sideboard Limitations

Section 679.64 established groundfish harvesting and processing sideboard limitations on AFA catcher/processors and catcher vessels in the GOA. These sideboard limitations are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from fishermen and processors who received exclusive harvesting and processing privileges under the AFA. In the GOA, listed AFA catcher/processors are prohibited from

harvesting any species of fish (§ 679.7(k)(1)(ii)). These listed AFA catcher/processors also are prohibited from processing any pollock in the GOA and any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). Section 679.64(b)(2)(ii) exempts from sideboard limitations AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, sideboards limitations are

based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. These amounts are listed in Table 12 for 2006 and in Table 13 for 2007. All targeted or incidental catch of sideboard species made by non-exempt AFA catcher vessels will be deducted from the sideboard limits in Tables 12 and 13.

TABLE 12.—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only) January 20–February 25			
	Shumagin (610)	0.6112	4,210	2,573
	Chirikof (620)	0.1427	11,192	1,597
	Kodiak (630)	0.2438	4,062	990
	B Season (W/C areas only) March 10–May 31			
	Shumagin (610)	0.6112	4,210	2,573
	Chirikof (620)	0.1427	13,394	1,911
	Kodiak (630)	0.2438	1,861	454
	C Season (W/C areas only) August 25–September 15			
	Shumagin (610)	0.6112	10,249	6,264
	Chirikof (620)	0.1427	2,953	421
	Kodiak (630)	0.2438	6,263	1,527
	D Season (W/C areas only) October 1–November 1			
Shumagin (610)	0.6112	10,249	6,264	

TABLE 12.—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
	Chirikof (620)	0.1427	2,953	421
	Kodiak (630)	0.2438	6,262	1,527
	Annual			
	WYK (640)	0.3499	1,792	627
	SEO (650)	0.3499	6,157	2,154
Pacific cod	A Season ¹ January 1–June 10			
	W inshore	0.1423	10,876	1,548
	W offshore	0.1026	1,208	124
	C inshore	0.0722	15,339	1,107
	C offshore	0.0721	1,704	123
	B Season ² September 1–December 31			
	W inshore	0.1423	7,251	1,032
	W offshore	0.1026	806	83
	C inshore	0.0722	10,226	738
	C offshore	0.0721	1,136	82
	Annual			
	E inshore	0.0079	3,346	26
	E offshore	0.0078	372	3
Flatfish deep-water	W	0.0000	420	0
	C	0.0670	4,139	277
	E	0.0171	4,106	70
Rex sole	W	0.0010	1,159	1
	C	0.0402	5,506	221
	E	0.0153	2,535	39
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	2,077	10
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	2,472	31
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	534	0
	C trawl gear	0.0720	1,294	93
	E trawl gear	0.0488	290	14
Pacific ocean perch	W	0.0623	4,155	259
	C	0.0866	7,418	642
	E	0.0466	2,688	125
Shortraker rockfish	W	0.0000	153	0
	C	0.0237	353	8
	E	0.0124	337	4
Rougheye rockfish	W	0.0000	136	0
	C	0.0237	608	14
	E	0.0124	239	3
Other rockfish	W	0.0034	557	2
	C	0.2065	386	80
	E	0.0000	517	0
Northern rockfish	W	0.0003	1,483	0
	C	0.0336	3,608	121
	W	0.0001	1,438	0
	C	0.0000	3,262	0
	E	0.0067	736	5
Thornyhead rockfish	W	0.0308	513	16
	C	0.0308	989	30
	E	0.0308	707	22
Big skates	W	0.0090	695	6
	C	0.0090	2,250	20
	E	0.0090	599	5
Longnose skates	W	0.0090	65	1
	C	0.0090	1,969	18
	E	0.0090	861	8
Other skates	GW	0.0090	1,617	15
Demersal shelf rockfish	SEO	0.0020	410	1

TABLE 12.—FINAL 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Atka mackerel	Gulfwide	0.0309	1,500	46
Other species	Gulfwide	0.0090	13,856	125

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.

TABLE 13.—FINAL 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CA catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only) January 20–February 25			
	Shumagin (610)	0.6112	3,352	2,049
	Chirikof (620)	0.1427	8,910	1,271
	Kodiak (630)	0.2438	3,234	788
	B Season (W/C areas only) March 10–May 31			
	Shumagin (610)	0.6112	3,352	2,049
	Chirikof (620)	0.1427	10,663	1,522
	Kodiak (630)	0.2438	1,481	361
	C Season (W/C areas only) August 25–September 15			
	Shumagin (610)	0.6112	8,159	4,987
	Chirikof (620)	0.1427	2,351	335
	Kodiak (630)	0.2438	4,986	1,216
	D Season (W/C areas only) October 1–November 1			
	Shumagin (610)	0.6112	8,159	4,987
Chirikof (620)	0.1427	2,351	335	
Kodiak (630)	0.2438	4,986	1,216	
Pacific cod	Annual			
	WYK (640)	0.3499	1,426	499
	SEO (650)	0.3499	6,157	2,154
	A Season ¹ January 1–June 10			
	W inshore	0.1423	7,813	1,112
	W offshore	0.1026	868	89
	C inshore	0.0722	11,019	796
	C offshore	0.0721	1,224	88
	B Season ² September 1–December 31			
	W inshore	0.1423	5,209	741
	W offshore	0.1026	579	59
	C inshore	0.0722	7,346	530
	C offshore	0.0721	816	59
	Annual			
E inshore	0.0079	2,404	19	
E offshore	0.0078	267	2	
Flatfish deep-water	W	0.0000	421	0
	C	0.0670	4,145	278
	E	0.0171	4,111	70
	Annual			
Rex sole	W	0.0010	1,096	1
	C	0.0402	5,207	209
	E	0.0153	2,397	37
	Annual			
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	2,644	13
	Annual			
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777

TABLE 13.—FINAL 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CA catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Arrowtooth flounder	E	0.0126	2,472	31
	W	0.0021	8,000	17
	C	0.0309	25,000	773
Sablefish trawl gear	E	0.0020	5,000	10
	W trawl gear	0.0000	472	0
	C trawl gear	0.0720	1,126	81
Pacific ocean perch	E trawl gear	0.0488	257	13
	W	0.0623	4,290	267
	C	0.0866	7,660	663
Shortraker rockfish	E	0.0466	2,776	129
	W	0.0000	153	0
	C	0.0237	353	8
Shortraker rockfish	E	0.0124	337	4
	W	0.0000	133	0
	C	0.0237	596	14
Other rockfish	E	0.0124	235	3
	W	0.0034	577	2
	C	0.2065	386	80
Northern rockfish	E	0.0000	517	0
	W	0.0003	1,483	0
	C	0.0336	3,608	121
Pelagic shelf rockfish	E	0.0001	1,463	0
	W	0.0000	3,318	0
	C	0.0067	749	5
Thornyhead rockfish	E	0.0308	513	16
	W	0.0308	989	30
	C	0.0308	707	22
Big skates	E	0.0090	695	6
	W	0.0090	2,250	20
	C	0.0090	599	5
Big and Longnose skates	E	0.0090	65	1
	W	0.0090	1,969	18
	C	0.0090	861	8
Other skates	GW	0.0090	1,617	15
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	1,500	46
Other species	Gulfwide	0.0090	12,229	110

¹The Pacific cod A season for trawl gear does not open until January 20.²The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limitations for non-exempt AFA catcher vessels in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA

catcher vessels in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995

through 1997 (§ 679.64(b)(4)). These amounts are shown in Table 14.

TABLE 14.—FINAL 2006 AND 2007 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA

[Values are in metric tons]

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2006 and 2007 PSC limit	2006 and 2007 non-exempt AFA catcher vessel PSC limit
Halibut mortality	Trawl 1st seasonal allowance	shallow-water	0.340	450	153
	January 20–April 1	deep-water	0.070	100	7
	Trawl 2nd seasonal allowance	shallow-water	0.340	100	34
	April 1–July 1	deep-water	0.070	300	21
	Trawl 3rd seasonal allowance	shallow-water	0.340	200	68

TABLE 14.—FINAL 2006 AND 2007 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA—Continued

[Values are in metric tons]

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2006 and 2007 PSC limit	2006 and 2007 non-exempt AFA catcher vessel PSC limit
	July 1–September 1	deep-water	0.070	400	28
	Trawl 4th seasonal allowance	shallow-water	0.340	150	51
	September 1–October 1	deep-water	0.070	0	0
	Trawl 5th seasonal allowance	all targets	0.205	300	61
	October 1–December 31.				

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limitations for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Restrictions on participation in other fisheries, also called sideboards, restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Restrictions

also apply to landings made using a License Limitation Program (LLP) license derived from the history of a restricted vessel, even if that LLP is used on another vessel.

For non-AFA crab vessels in the GOA, sideboard limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Sections 680.22(d) and (e) base the groundfish sideboard limitations in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period. These amounts are listed in

Table 15 for 2006 and in Table 16 for 2007. All targeted or incidental catch of sideboard species made by non-AFA crab vessels will be deducted from the sideboard limits in Tables 15 and 16. Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kg of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996 and December 31, 2000, and any vessel named on an LLP that was generated in whole or in part by the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

TABLE 15.—FINAL 2006 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2006 TAC	2006 non-AFA crab vessel sideboard
Pollock	A Season (W/C areas only) January 20–March 10			
	Shumagin (610)	0.0098	4,210	41
	Chirikof (620)	0.0031	11,192	35
	Kodiak (630)	0.0002	4,062	1
	B Season (W/C areas only) March 10–May 31			
	Shumagin (610)	0.0098	4,210	41
	Chirikof (620)	0.0031	13,394	42
	Kodiak (630)	0.0002	1,861	0
	C Season (W/C areas only) August 25–October 1			
	Shumagin (610)	0.0098	10,249	100
	Chirikof (620)	0.0031	2,953	9
	Kodiak (630)	0.0002	6,263	1
	D Season (W/C areas only) October 1–November 1			
	Shumagin (610)	0.0098	10,249	100
Chirikof (620)	0.0031	2,953	9	
Kodiak (630)	0.0002	6,262	1	
Pacific cod	Annual			
	WYK (640)	0.0000	1,792	0
	SEO (650)	0.0000	6,157	0
	A Season ¹ January 1–June 10			
	W inshore	0.0902	10,876	981
	W offshore	0.2046	1,208	247
	C inshore	0.0383	15,339	587
	C offshore	0.2074	1,704	353
	B Season ² September 1–December 31			
	W inshore	0.0902	7,251	654

TABLE 15.—FINAL 2006 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/ processor/gear	Ratio of 1996– 2000 non-AFA CV catch to 1996–2000 total harvest	2006 TAC	2006 non-AFA crab vessel sideboard
	W offshore	0.2046	806	165
	C inshore	0.0383	10,226	392
	C offshore	0.2074	1,136	236
	Annual			
	E inshore	0.0110	3,346	37
	E offshore	0.0000	372	0
Flatfish deep-water	W	0.0035	420	1
	C	0.0000	4,139	0
	E	0.0000	4,106	0
Rex sole	W	0.0000	1,159	0
	C	0.0000	5,506	0
	E	0.0000	2,535	0
Flathead sole	W	0.0002	2,000	0
	C	0.0004	5,000	2
	E	0.0000	2,077	0
Flatfish shallow-water	W	0.0059	4,500	27
	C	0.0001	13,000	1
	E	0.0000	2,472	0
Arrowtooth flounder	W	0.0004	8,000	3
	C	0.0001	25,000	3
	E	0.0000	5,000	0
Sablefish	W trawl gear	0.0000	534	0
	C trawl gear	0.0000	1,274	0
	E trawl gear	0.0000	290	0
Pacific ocean perch	W	0.0000	4,155	0
	C	0.0000	7,418	0
	E	0.0000	2,688	0
Shortraker rockfish	W	0.0013	153	0
	C	0.0012	353	0
	E	0.0009	337	0
Rougheye rockfish	W	0.0067	136	1
	C	0.0047	608	3
	E	0.0008	239	0
Other rockfish	W	0.0035	577	2
	C	0.0033	386	1
	E	0.0000	517	0
Northern rockfish	W	0.0005	1,483	1
	C	0.0000	3,608	0
Pelagic shelf rockfish	W	0.0017	1,438	2
	C	0.0000	3,262	0
	E	0.0000	736	0
Thomyhead rockfish	W	0.0047	513	2
	C	0.0066	989	7
	E	0.0045	707	3
Big skate	W	0.0392	695	27
	C	0.0159	2,250	36
	E	0.0000	599	0
Longnose skate	W	0.0392	65	3
	C	0.0159	1,969	31
	E	0.0000	861	0
Other skates	GW	0.0176	1,617	28
Demersal shelf rockfish	SEO	0.0000	410	0
Atka mackerel	Gulfwide	0.0000	1,500	0
Other species	Gulfwide	0.0176	13,856	244

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.

TABLE 16.—FINAL 2007 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Pollock	A Season (W/C areas only) January 20–March 10			
	Shumagin (610)	0.0098	3,352	33
	Chirikof (620)	0.0031	8,910	28
	Kodiak (630)	0.0002	3,234	1
	B Season (W/C areas only) March 10–May 31			
	Shumagin (610)	0.0098	3,352	33
	Chirikof (620)	0.0031	10,633	33
	Kodiak (630)	0.0002	1,481	0
	C Season (W/C areas only) August 25–October 1			
	Shumagin (610)	0.0098	8,159	80
	Chirikof (620)	0.0031	2,351	7
	Kodiak (630)	0.0002	4,986	1
	D Season (W/C areas only) October 1–November 1			
	Shumagin (610)	0.0098	8,159	80
Chirikof (620)	0.0031	2,351	7	
Kodiak (630)	0.0002	4,986	1	
Pacific cod	Annual			
	WYK (640)	0.0000	1,426	0
	SEO (650)	0.0000	6,157	0
	A Season ¹ January 1–June 10			
	W inshore	0.0902	7,813	705
	W offshore	0.2046	868	178
	C inshore	0.0383	11,019	422
	C offshore	0.2074	1,224	254
	B Season ² September 1–December 31			
	W inshore	0.0902	5,209	470
	W offshore	0.2046	579	118
	C inshore	0.0383	7,346	281
	C offshore	0.2074	816	169
	Annual			
E inshore	0.0110	2,404	26	
E offshore	0.0000	267	0	
Flatfish deep-water	W	0.0035	421	1
	C	0.0000	4,145	0
	E	0.0000	4,111	0
Rex sole	W	0.0000	1,096	0
	C	0.0000	5,207	0
	E	0.0000	2,397	0
Flathead sole	W	0.0002	2,000	0
	C	0.0004	5,000	2
	E	0.0000	2,664	0
Flatfish shallow-water	W	0.0059	4,500	27
	C	0.0001	13,000	1
	E	0.0000	2,472	0
Arrowtooth flounder	W	0.0004	8,000	3
	C	0.0001	25,000	3
	E	0.0000	5,000	0
Sablefish	W trawl gear	0.0000	472	0
	C trawl gear	0.0000	1,126	0
	E trawl gear	0.0000	257	0
Pacific ocean perch	W	0.0000	4,290	0
	C	0.0000	7,660	0
	E	0.0000	2,776	0
Shortraker rockfish	W	0.0013	153	0
	C	0.0012	353	0
	E	0.0009	337	0
Rougeye rockfish	W	0.0067	133	1
	C	0.0047	596	3
	E	0.0008	235	0
Other rockfish	W	0.0035	577	2
	C	0.0033	386	1
	E	0.0000	517	0
Northern rockfish	W	0.0005	1,483	1
	C	0.0000	3,608	0
	E	0.0017	1,463	2
Pelagic shelf rockfish	W	0.0017	1,463	2

TABLE 16.—FINAL 2007 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Thornyhead rockfish	C	0.0000	3,318	0
	E	0.0000	749	0
	W	0.0047	513	2
Big skate	C	0.0066	989	7
	E	0.0045	707	3
	W	0.0392	695	27
Longnose skate	C	0.0159	2,250	36
	E	0.0000	599	0
	W	0.0392	65	3
Other skates	C	0.0159	2,250	36
	E	0.0000	599	0
	GW	0.0176	1,617	28
Demersal shelf rockfish	SEO	0.0000	410	0
Atka mackerel	Gulfwide	0.0000	1,500	0
Other species	Gulfwide	0.0176	12,229	215

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.**Directed Fishing Closures**

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines: (1) That any allocation or apportionment of a target species or “other species” category apportioned to a fishery will be reached or, (2) with respect to pollock and Pacific cod, an allocation or apportionment to an inshore or offshore

component allocation will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance and that allowance has or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species

or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts in Table 17 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2006 and 2007 fishing years.

TABLE 17.—DIRECTED FISHING CLOSURES IN THE GOA 2006 AND 2007

[Amounts needed for incidental catch in other directed fisheries are in mt.]

Target	Regulatory Area	Gear/Component	Incidental catch
Atka mackerel	entire GOA	all	1,500
Thornyhead rockfish	entire GOA	all	2,209
Shortraker rockfish	entire GOA	all	843
Rougheye rockfish	entire GOA	all	983 (2006) 964 (2007)
Other rockfish	entire GOA	all	1,480
Sablefish	entire GOA	trawl	2,098 (2006) 1,885 (2007)
Big skates	entire GOA	all	3,544
Longnose skates	entire GOA	all	2,895
Other skates	entire GOA	all	1,617
Pollock	entire GOA	all/offshore	¹ unknown

¹ Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the species or species groups listed in Table 17 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, regulatory areas, gear types, and components listed in Table 17. These closures will remain in effect through 2400 hrs, A.L.T., December 31, 2007. In

a commercial fisheries news release dated December 7, 2005, ADF&G, in accordance with 5 AAC 28.160(c)(©), has closed directed fishing for demersal shelf rockfish in the SEO District during the 2006 fishing year.

Section 679.64(b)(5) provides for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures in accordance with §§ 679.20(d)(1)(iv), 679.21(d)(8),

and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard limits listed in Tables 12 and 13 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2006 and 2007 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the directed fishing allowances for the species and

species groups in Table 18 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting

directed fishing by non-AFA catcher vessels in the GOA for the species and specified areas set out in

Table 18. These closures will remain in effect through 2400 hrs, A.L.t., December 31, 2007.

TABLE 18.—2006 AND 2007 NON-EXEMPT AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

[Amounts needed for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Gear	Incidental catch
Pacific cod	Eastern GOA	all	26 (inshore 2006) 19 (inshore 2007) 3 (offshore 2006) 2 (offshore 2007)
Deep-water flatfish	Western GOA	all	0
Rex sole	Western GOA	all	1
Flathead sole	Eastern and Western GOA.	all	10 and 7 (2006) 13 and 7 (2007)
Shallow-water flatfish	Eastern GOA	all	31
Arrowtooth flounder	Eastern and Western GOA.	all	10 and 17
Northern rockfish	Western GOA	all	0
Pelagic shelf rockfish	entire GOA	all	0 (W), 0 (©), 5(E)
Demersal shelf rockfish	SEO District	all	1

Section 680.22 provides for management of non-AFA crab vessel groundfish harvest limits using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that, in addition to the closures listed above in Table 17, many of the non-AFA crab vessel sideboard limits listed in Tables 15 and 16 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2006 and 2007 fishing years. Pursuant to § 680.22(e)(2), the Regional Administrator establishes the directed fishing allowances for all species and species groups in Tables 15 and 16 as zero, with the exception of Pacific cod in the Western and Central GOA. Therefore, in accordance with § 680.22(e)(3), NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and specified areas set out in Tables 15 and 16, with the exception of Pacific cod in the Western and Central GOA. These closures will remain in effect through 2400 hrs, A.L.t., December 31, 2007.

Under authority of the final 2005 and 2006 harvest specifications (70 FR 8958, February 24, 2005), pollock fishing opened on January 20, 2006, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.L.t., January 22, 2006 (71 FR 4311, January 26, 2006) and 1200 hrs, A.L.t., January 26, 2006, through January 27, 2006 (71 FR 5014, January 31, 2006). Also, NMFS has closed Statistical Area 630 to directed fishing for pollock effective 1200 hours, A.L.t., February 15, 2006, through 1200 hrs, A.L.t., March 10,

2006 (71 FR 8993, February 22, 2006). NMFS has prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA, effective 1200 hrs, A.L.t., February 19, 2006, through 1200 hrs, A.L.t., September 1, 2006, (71 FR 9476, February 24, 2006). NMFS prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOS, effective 1200 hrs, A.L.t., February 19, 2006, through 1200 hrs, A.L.t., September 1, 2006 (71 FR 9477, February 24, 2006). NMFS prohibited directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, effective 1200 hrs, A.L.t., February 23, 2006, through 1200 hrs, A.L.t., April 1, 2006 (published in the **Federal Register** of February 28, 2006). NMFS opened directed fishing for shallow water species by vessels using trawl gear in the GOA, effective 1200 hrs, A.L.t., February 27, 2006 (published in the **Federal Register** of March 2, 2006).

These closures supersede the closures announced under the authority of the final 2005 and 2006 harvest specifications (70 FR 8958, February 24, 2005). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. NMFS may implement other closures during the 2006 and 2007 fishing years as

necessary for effective conservation and management.

Response to Comments

NMFS received one letter of comment in response to the proposed 2006 and 2007 harvest specifications. This letter contained 7 separate comments that are summarized and responded to below.

Comment 1: The action is a major federal action that has significant effects on the quality of the human environment and requires an Environmental Impact Statement.

Response: NMFS prepared an EA for the 2006 and 2007 harvest specifications. The analysis in the EA supports a finding of no significant impact on the human environment as a result of the harvest specifications. Therefore, an environmental impact statement is not required under section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Comment 2: The "Ecosystem Considerations" report is not explicitly integrated into the process of setting ABC and TAC. NMFS should also integrate directly ecosystem needs into harvest specifications through development and implementation of Ecologically Sustainable Yield (ESY).

Response: ESY is defined as "the yield an ecosystem can sustain without shifting to an undesirable state" (Zabel *et al.* 2003). This is a qualitative concept because judging an "undesirable state" may vary widely. ESY requires simultaneously considering the impacts of all harvested species on an ecosystem and quantifying important qualities such as community stability or

resilience. This poses challenges due to uncertainty and indeterminacy inherent in ecological systems and the fact that ecosystems respond to natural processes in ways that are not well understood.

The NMFS and the Council, in essence, fulfill determinations of the ESYs through the development and evaluation of the SAFE report (see ADDRESSES) and during implementation of inseason multispecies fisheries management practices. The SAFE report evaluates the status and trends of the entire ecosystem. Also, the SAFE report responds to the stated ecosystem-based management goals of the Council. These goals are: (1) Maintain biodiversity consistent with natural evolutionary and ecological processes, including dynamic change and variability; (2) Maintain and restore habitats essential for fish and their prey; (3) Maintain system sustainability and sustainable yields for human consumption and nonextractive uses; and (4) Maintain the concept that humans are components of the ecosystem.

All groundfish species are currently managed for their impacts from a conservation and ecosystem perspective. As an example, the recent development of the GOA skate fishery led to prompt management action to provide appropriate protection of this species assemblage. Currently, there are ABC levels specified for the two main species of skates over three different areas. This effectively has prohibited the further development of a directed fishery for skates until more information is available to ensure appropriate conservation measures are taken. Zabel, R. W., C. J. Harvey, S. L. Katz, T. P. Good, and P. S. Levin. 2003. Ecologically sustainable yield. *American Scientist* 91: 150-157.

Comment 3: Catch levels for North Pacific rockfish are being set without sufficient precaution. They are based on inadequate and highly variable biomass estimates, without regard to stock structure and without proper consideration of life history characteristics such as rockfish longevity, late age at sexual maturity, and the increased reproductive success of older, more fecund female fish.

Response: Multiple layers of precaution are built into catch levels for North Pacific rockfish with age-structured models (Tier 3). For example, GOA Pacific ocean perch are assigned an F_{ABC} at $F_{40\%}$. Bayesian spawner-recruit analysis showed that maximum sustainable yield (MSY) was attained at approximately $F_{29\%}$. While the target fishing mortality is already well below MSY, the Eastern GOA is closed to trawling, further reducing fishing

mortality by 10 percent. Another precautionary layer is to employ a catchability coefficient near two. This means that the fishing mortality is applied to a biomass estimate that is about half of the biomass estimate that is derived from the trawl survey. The age-structured modeling approach integrates a variety of information to compensate for variable survey results.

Catch levels for North Pacific rockfish with survey-biomass based models (Tier 5) are based on highly variable biomass estimates. This variability is stabilized by using a 3-survey moving average. The catch levels for these species are set by applying a fishing mortality of 75 percent of the natural mortality to the average exploitable biomass. These fishing mortalities are precautionary in that they are theoretically at least 25 percent below MSY fishing mortality and are based on very low natural mortalities (e.g., 0.02-0.07).

At this time, stock structure information has not been synthesized directly into the stock assessments because of the lack of definitive structure and sufficient data to model spatially explicit populations. However, life history characteristics are explicitly accounted for in both the fishing mortality estimates in age-structured models (Tier 3) and in survey-biomass based estimates (Tier 5). In age-structured models, age at maturity is defined specific to each species and longevity is incorporated in the natural mortality estimates and the age data. For survey biomass based models, this information is not as well known, but the low natural mortality estimates for rockfish species is based on their maximum age. Recent research of black rockfish off the West Coast shows evidence of older, mature fish being more fecund, or producing higher quality larvae, than younger mature fish. Research is in progress to attempt to answer this question for Alaskan rockfish.

Comment 4: Signs of stress in North Pacific rockfish populations include age truncation, localized depletion, and potential overfishing.

Response: Some age truncation will occur if a stock is fished. Only GOA Pacific ocean perch showed more age truncation than was expected at equilibrium. However, this population is not at equilibrium and has increased substantially in the last decade. Therefore, the observed age truncation may be from fishing, but it also may be from the recent strength of recruitment substantially increasing the proportion of younger fish.

Three species of rockfish have shown localized depletion in some years and

areas. Most of the significant depletions did not occur in the same place or in consecutive years. The densities were as high as they were in the previous year when fishing resumed, implying migration and replenishment when depletions did occur in the same place or in consecutive years.

Recently, North Pacific rockfish species have not been subject to consistent overfishing.

Comment 5: NMFS should support the proposal by Goodman et al. in the review of the North Pacific harvest strategy to shift to $F_{50\%}$ to $F_{60\%}$ -based harvest rates as one step in sustainable rockfish management.

Response: There has been no evidence that Alaskan rockfish need to have a more conservative spawning output per recruit (SPR) rate than other species. Goodman et al. presented evidence based on less productive West Coast rockfish. The fishing mortality derived from an $F_{40\%}$ strategy is much lower for rockfish with their sensitive life history characteristics than the fishing mortalities derived from the same harvest strategy for other species. This is due to the late maturity, slow growth, and low natural mortality of rockfish. For example, the fishing mortality rate for rougheye rockfish is about one tenth the fishing mortality rate for Pacific cod. Several analyses for Pacific ocean perch show $F_{40\%}$ to be relatively conservative for rockfish.

Comment 6: We are particularly concerned with recommendations to increase TAC for rockfish in the GOA. The slope rockfish TAC is recommended to increase 45 percent in 2006. This level of increase is not sufficiently precautionary given that we have no point of reference for the populations of many species within the management complexes.

Response: The 2005 GOA survey showed large increases in rockfish abundance in the Western and Central GOA, particularly for harlequin rockfish, sharpchin rockfish, and redstripe rockfish. In the three-year moving average, a year of relatively low slope rockfish abundance (1999) was removed and replaced by a relatively high year of slope rockfish abundance. The overall slope rockfish ABC increased by only 10 percent. The associated TAC increased more than 10 percent because of increases in the Western and Central GOA to a higher ABC, while the Eastern GOA TAC remained at 200 mt. However, the recommended TAC is still far below the GOA wide ABC recommended in the stock assessment. None of the species in the slope rockfish complex are directly targeted and it is unlikely that they will

be harvested disproportionately to their abundance. Yet, the regionally apportioned TACs have been exceeded in the past, which may be a conservation concern or it may be driven by poor survey biomass estimates. The stock assessment authors for slope rockfish are researching alternative survey weighting schemes to attempt to prevent large changes in ABCs and resultant TACs, because of highly variable survey estimates.

Comment 7: The TAC for other rockfish in the Gulf including shortraker rockfish, pelagic shelf rockfish, and thornyhead rockfish are also recommended to increase. NMFS should proceed with caution if it authorizes any increase in rockfish harvest, given large uncertainties in biomass and population structure, and past over-harvest of regionally apportioned TACs.

Response: The 2005 GOA survey also showed substantial increases for species with age-structured models. Northern rockfish and dusky rockfish biomass estimates more than doubled from the previous survey, however, because the biennial variations in survey abundance are smoothed into modest changes in ABC.

The stock assessment authors concur that there is a lack of knowledge about many of the slope rockfish species in terms of distribution and stock structure. Therefore, catches will be monitored closely to ensure that these regional TACs are not exceeded.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce 2006 and 2007 final harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2006 and 2007 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fishery. The specific amounts of OFL, ABC, TAC, and PSC amounts are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the *Federal Register* and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared to evaluate the impacts of the 2006 and 2007 harvest level specifications on directly regulated small entities. This FRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA).

The proposed rule for the harvest specifications was published in the *Federal Register* on December 16, 2005 (70 FR 74739). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule and was described in the classifications section of the preamble to that rule. Copies of the IRFA prepared for this action are available from NMFS, Alaska Region (see ADDRESSES). The public comment period ended on January 17, 2006. No comments were received on the IRFA or regarding the economic impacts of this rule.

The 2006 and 2007 harvest specifications establish harvest limits for the groundfish species and species groups in the GOA. This action is necessary to allow fishing in 2006 and 2007. About 946 small catcher vessels and 29 small catcher/processors fishing off of Alaska may be directly regulated by the harvest specifications. This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The FRFA examined the impacts of the preferred alternative on small entities within fisheries that might be affected by the harvest specifications. The FRFA identified the potential for adverse impacts of the preferred alternative on small fishing operations harvesting pollock, Pacific cod, and sablefish in the GOA.

There were an estimated 62 directly regulated small entities in the GOA pollock sector. These small operations were expected to see their revenues from all sources (including fishing on other groundfish and non-groundfish species off of Alaska) decline by about 1 percent in 2006 and 5 percent in 2007, as compared to 2005. There were an estimated 488 directly regulated small entities in the GOA Pacific cod sector. These small operations were expected to see their revenues from all sources increase from 2005 to 2006, but to decline by about 3 percent from 2005 to 2007. There were an estimated 392 directly regulated small entities in the GOA sablefish sector. These small operations were expected to see their revenues from all sources decline by

about 3 percent between 2005 and 2006, and by about 9 percent between 2005 and 2007.

Although the preferred alternative had adverse impacts on some classes of small entities, as compared to the fishery in the preceding year, alternatives that had smaller adverse impacts were precluded by biological management concerns. Four alternatives were evaluated in addition to the preferred alternative. Alternative 1 set TACs equal to the maxFABC fishing rate. Alternative 1 was associated with high TACs, high revenues, and TACs that exceeded the GOA OY. Alternative 2, the preferred alternative, set TACs to produce the fishing rates recommended by the Council on the basis of Plan Team, SSC, and AP recommendations and public comment. Alternative 3 set TACs to produce fishing rates equal to half the maxFABC, and Alternative 4 set TACs to produce fishing rates equal to the last five years' average fishing rate. Alternative 5 set TACs equal to zero.

GOA Pacific cod and pollock fishermen would have had larger gross revenues under Alternative 1 than under the preferred alternative. GOA sablefish fishermen would not have had larger gross revenues under any alternative. However, for each species, the Council recommended the highest TAC levels it could, consistent with the ABC recommendations of the GOA Plan Team and the SSC. The ABCs are recommended by the Council on the basis of the biological recommendations made to it by its Plan Teams and its SSC. Higher TACs would not be consistent with prudent biological management of the fishery. The Pacific cod TAC is actually less than the ABC, but only to accommodate State of Alaska (State) fisheries conducted for Pacific cod under its own guideline harvest levels. To protect the resource, the sum of the State's GHL and the Federal TAC are not allowed to exceed the ABC. Thus, this TAC also has been set as high as possible while still protecting the biological health of the stock. The Pacific cod federal TACs and State GHLs under Alternative 1 would have exceeded the ABCs. TACs for all three species were higher under Alternative 2 than under Alternatives 3, 4, or 5.

Under the provisions of 5 U.S.C. 553(d)(3), an agency can waive a delay in the effective date of a substantive rule for good cause. The current allocation for GOA Pacific cod under the authority of the final 2005 and 2006 harvest specifications (70 FR 8958, February 24, 2005) is lower (44,433 mt) than the allocation under the 2006 and 2007 final harvest specifications (52,264 mt),

which is based on the best scientific information available. Because the allocation is divided into seasonal amounts, the first season (A season) will close earlier than necessary unless the delay in the effective date is waived and the 2006 and 2007 final harvest specifications become effective upon publication. The GOA Pacific cod fishery is the second largest fishery in the GOA after pollock and all gear types fish in the Pacific cod fisheries. Early closures results in a disruption within the fishing industry and the potential for regulatory discards. The 2006 and 2007 final harvest specifications establish increased Pacific cod TACs to provide continued directed fishing for species that would otherwise be prohibited under the 2005 and 2006 harvest specifications. These final harvest specifications were developed as quickly as possible, given Council consideration and recommendations in December 2005.

Also, the current allocation for GOA pollock under the authority of the final 2005 and 2006 harvest specifications (70 FR 8958, February 24, 2005) is higher (91,910 mt) than the allocation under the 2006 and 2007 final harvest specifications (86,547 mt). Unless this delay is waived, the A season pollock fisheries will overharvest allocations based on the best scientific information available that was based incorporated into the 2006 and 2007 final harvest specifications.

Additionally, if the final harvest specifications are not effective by March 5, 2006, which is the start of the Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut season. This would cause sablefish that is caught with Pacific halibut to be discarded, as both longline sablefish and Pacific halibut are managed under the same IFQ program.

Finally, the 2006 and 2007 final harvest specifications implements the groundfish sideboards and sideboard closures that restrict the owners of vessels with a history of participation in the Bering Sea snow crab fishery from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in GOA groundfish fisheries. Until the 2006 and 2007 final harvest specifications are effective no sideboard restrictions or closures apply to these vessels.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*, 1851 note; and 3631 *et seq.*

Dated: February 28, 2006.

James W. Balsiger,
*Acting Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044-6044-01; I.D.
112805B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2006 and 2007 Final Harvest Specifications for Groundfish

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

ACTION: Final rule; apportionment of reserves; closures.

SUMMARY: NMFS announces 2006 and 2007 final harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2006 and 2007 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The 2006 and 2007 final harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), March 3, 2006 through 2400 hrs, A.l.t., December 31, 2007.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Records Officer or from the Alaska Region Web site at <http://www.fakr.noaa.gov>. Copies of the 2005 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2005, are available from the North Pacific Fishery Management

Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510-2252 (907-271-2809) or from its Web site at <http://www.fakr.noaa.gov/npfmc>.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228 or e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Also specified are apportionments of TACs, and Community Development Quota (CDQ) reserve amounts, PSC allowances, and prohibited species quota (PSQ) reserve amounts. Section 679.20(c)(3) further requires NMFS to consider public comment on the proposed annual TACs and apportionments thereof and the proposed PSC allowances, and to publish final harvest specifications in the **Federal Register**. The final harvest specifications listed in Tables 1 through 17 of this action satisfy these requirements. For 2006 and 2007, the sum of TACs for each year is 2 million mt.

The 2006 and 2007 proposed harvest specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 16, 2005 (70 FR 74723). Comments were invited and accepted through January 17, 2006. NMFS received 1 letter with several comments on the proposed harvest specifications. These comments are summarized and responded to in the Response to Comments section. NMFS consulted with the Council during the December 2005 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the 2006 and 2007 final harvest specifications as recommended by the Council.

Acceptable Biological Catch (ABC) and TAC Harvest Specifications

The final ABC levels are based on the best available biological and

socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. Tier 1 represents the highest level of data quality and tier 6 the lowest level of data quality available.

In December 2005, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of the BSAI groundfish stocks. The Council's Plan Team complied and presented this information in the 2005 SAFE report for the BSAI groundfish fisheries, dated November 2005. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. The SAFE report is available for public review (see ADDRESSES). From these data and analyses, the Plan Team estimates an OFL and ABC for each species or species category.

In December 2005, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for Bogoslof pollock and the "other species" category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. For 2006 and 2007, the SSC recommended lower Bogoslof pollock OFLs and ABCs than the maximum permissible OFLs and ABCs recommended by the Plan Team. For Bogoslof pollock, the SSC recommended using a procedure that reduces the ABC proportionately to the ratio of current stock biomass to target stock biomass. For "other species," the SSC recommended using tier 6 management for the sharks and octopus species resulting in lower ABCs than the Plan Team's recommended tier 5 management. The Plan Team also recommended separate OFLs and ABCs for the species in the "other species" category; however, the current FMP specifies management at the group level. Since 1999, the SSC has recommended a procedure that moves gradually to a higher ABC for "other species" over a 10-year period instead of a large increase in one year. The 2006 and 2007 ABC amounts reflect the 8th and 9th years of incremental increase in the

ABC for "other species." For all species, the AP endorsed the ABCs recommended by the SSC, and the Council adopted them.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of the TACs within the required optimum yield (OY) range of 1.4 million to 2 million mt. The Council adopted the AP's 2006 and 2007 TAC recommendations. None of the Council's recommended TACs for 2006 or 2007 exceeds the final 2006 or 2007 ABC for any species category. NMFS finds that the recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2005 SAFE report that was approved by the Council.

Other Rules Affecting the 2006 and 2007 Harvest Specifications

The 2007 harvest specifications will be updated in early 2007, when new harvest specifications for 2007 and 2008 are implemented.

The Council is reviewing Amendment 85, which may revise the BSAI Pacific cod sector allocation and apportion the Pacific cod ABC or TAC by Bering Sea subarea and Aleutian Islands (AI) subarea separately instead of by the entire BSAI management area. The Council is also reviewing Amendment 84, which may modify current regulations for managing incidental catch of chinook and chum salmon. Another action the Council may consider is separating some species from the "other species" species category and establishing separate OFLs, ABCs, and TACs for those species.

Changes From the 2006 and 2007 Proposed Harvest Specifications in the BSAI

In October 2005, the Council's recommendations for the 2006 and 2007 proposed harvest specifications (70 FR 74723, December 16, 2005) were based largely on information contained in the 2004 SAFE report for the BSAI groundfish fisheries, dated November 2004. The Council recommended that OFLs and ABCs for stocks in tiers 1 through 3 be based on biomass projections as set forth in the 2004 SAFE report and estimates of groundfish harvests through the 2005 fishing year. For stocks in tiers 4 through 6, for which projections could not be made, the Council recommended that OFL and ABC levels be unchanged from 2005 until the 2005 SAFE report could be completed. The 2005 SAFE report (dated November 2005), which was not

available when the Council made its recommendations in October 2005, contains the best and most recent scientific information on the condition of the groundfish stocks. In December 2005, the Council considered the 2005 SAFE report in making its recommendations for the 2006 and 2007 final harvest specifications. Based on the 2005 SAFE report, the sum of the 2006 and 2007 recommended final TACs for the BSAI (2,000,000 mt) is the same as the sum of the 2006 and 2007 proposed TACs. Those species for which the final 2006 TAC is lower than the proposed 2006 TAC are Bering Sea subarea pollock (decreased to 1,485,000 mt, from 1,487,756 mt), Pacific cod (decreased to 194,000 mt, from 195,000 mt), Greenland turbot (decreased to 2,740 mt, from 3,500 mt), rock sole (decreased to 41,500 mt, from 42,000 mt), flathead sole (decreased to 19,500 mt, from 20,000 mt), Alaska plaice (decreased to 8,000 mt, from 10,000 mt), northern rockfish (decreased to 4,500 mt, from 5,000 mt), shortraker rockfish (decreased to 580 mt, from 596 mt), and "other species" (decreased to 29,000 mt, from 29,200 mt). Those species for which the final 2006 TAC is higher than the proposed 2006 TAC are Bering Sea sablefish (increased to 2,820 mt, from 2,310 mt), AI sablefish (increased to 3,000 mt, from 2,480 mt), "other flatfish" (increased to 3,500 mt, from 3,000 mt), yellowfin sole (increased to 95,701 mt, from 90,000 mt), arrowtooth flounder (increased to 13,000 mt, from 12,000 mt), and rougheye rockfish (increased to 224 mt, from 223 mt). Those species for which the final 2007 TAC is lower than the proposed 2007 TAC are Pacific cod (decreased to 148,000 mt, from 172,200 mt), Bering Sea Greenland turbot (decreased to 2,630 mt, from 10,500 mt), Atka mackerel (decreased to 63,000 mt, from 90,800 mt), yellowfin sole (decreased to 107,641 mt, from 109,600 mt), rock sole (decreased to 44,000 mt, from 116,100 mt), arrowtooth flounder (decreased to 18,000 mt, from 39,100 mt), flathead sole (decrease to 22,000 mt, from 50,600 mt), "other flatfish" (decreased to 5,000 mt, from 21,400 mt), Alaska plaice (decreased to 15,000 mt, from 65,000 mt), Pacific ocean perch (decreased to 14,800 mt, from 15,100 mt), northern rockfish (decreased to 5,000 mt, from 8,200 mt), shortraker rockfish (decreased to 580 mt, from 596 mt), squid (decreased to 1,275 mt, from 1,970 mt), and "other species" (decreased to 27,000 mt, from 29,200). Those species for which the final 2007 TAC is higher than the proposed 2007 TAC are Bering Sea pollock (increased to 1,500,000 mt,

from 1,223,200 mt), Bering Sea sablefish (increased to 2,700 mt, from 2,400 mt), AI sablefish (increased to 2,740 mt, from 2,600 mt), and rougheye rockfish (increased to 224 from 223 mt). As mentioned in the 2006 and 2007 proposed harvest specifications, NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC of several target species.

The 2006 and 2007 final TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed ABCs for any single species/complexes. Compared to the 2006 and 2007 proposed harvest

specifications, the Council's 2005 final TAC recommendations increase fishing opportunities for fishermen and economic benefits to the nation for species for which the Council had sufficient information to raise TAC levels. These include BSAI sablefish, yellowfin sole, arrowtooth flounder, "other flatfish", and rougheye rockfish. Conversely, the Council reduced TAC levels to provide greater protection for several species, these include Bering Sea subarea pollock, Pacific cod, rock sole, Greenland turbot, flathead sole, Alaska plaice, northern rockfish, shortraker rougheye, and "other

species." The changes recommended by the Council were based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, and within a reasonable range of variation from the proposed TAC recommendations so that the affected public was fairly apprised and could have made meaningful comments.

Table 1 lists the 2006 and 2007 final OFL, ABC, TAC, ITAC and CDQ reserve amounts of the BSAI groundfish. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2006 AND 2007 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI¹

[Amounts are in metric tons]

Species	Area	2006					2007				
		OFL	ABC	TAC	ITAC ²	CDQ ³	OFL	ABC	TAC	ITAC ²	CDQ ³
Pollock ⁴	BS ²	2,090,000	1,930,000	1,485,000	1,336,500	148,500	1,930,000	1,790,000	1,500,000	1,350,000	150,000
	AI ²	39,100	29,400	19,000	17,100	1,900	39,100	29,400	19,000	17,100	1,900
	Bogoslof	50,600	5,500	10	10	n/a	50,600	5,500	10	10	n/a
Pacific cod	BSAI	230,000	194,000	194,000	164,900	14,550	176,000	148,000	148,000	125,800	11,100
Sablefish ⁵	BS	3,680	3,060	2,820	2,327	388	3,260	2,700	2,700	1,148	101
	AI	3,740	3,100	3,000	2,438	499	3,300	2,740	2,740	582	51
Atka mackerel	BSAI	130,000	110,000	63,000	53,550	4,725	107,000	91,000	63,000	53,550	4,725
	EAI/BS	n/a	21,780	7,500	6,375	563	n/a	18,020	7,500	6,375	563
	CAI	n/a	46,860	40,000	34,000	3,000	n/a	38,760	38,000	32,300	2,850
Yellowfin sole	WAI	n/a	41,360	15,500	13,175	1,163	n/a	34,220	17,500	14,875	1,313
	BSAI	144,000	121,000	95,701	81,346	7,178	137,000	116,000	107,641	91,495	8,073
	Rock sole	150,000	126,000	41,500	35,275	3,113	145,000	122,000	44,000	37,400	3,300
Greenland turbot	BSAI	14,200	2,740	2,740	2,329	206	13,400	2,630	2,630	2,236	197
	BS	n/a	1,890	1,890	1,607	142	n/a	1,815	1,815	1,543	136
	AI	n/a	850	850	723	64	n/a	815	815	693	61
Arrowtooth flounder	BSAI	166,000	136,000	13,000	11,050	975	174,000	142,000	18,000	15,300	1,350
Flathead sole	BSAI	71,800	59,800	19,500	16,575	1,463	67,900	56,600	22,000	18,700	1,650
Other flatfish ⁶	BSAI	24,200	18,100	3,500	2,975	263	24,200	18,100	5,000	4,250	375
Alaska plaice	BSAI	237,000	188,000	8,000	6,800	600	231,000	183,000	15,000	12,750	1,125
Pacific ocean perch	BSAI	17,600	14,800	12,600	10,710	945	17,600	14,800	14,800	12,580	1,110
	BS	n/a	2,960	1,400	1,190	105	n/a	2,960	2,960	2,516	222
	EAI	n/a	3,256	3,080	2,618	231	n/a	3,256	3,256	2,768	244
Northern rockfish	CAI	n/a	3,212	3,035	2,580	228	n/a	3,212	3,212	2,730	241
	WAI	n/a	5,372	5,085	4,322	381	n/a	5,375	5,372	4,566	403
	BSAI	10,100	8,530	4,500	3,825	338	9,890	8,320	5,000	4,250	375
Shortraker rockfish	BSAI	774	580	580	493	44	774	580	580	493	44
Rougheye rockfish	BSAI	299	224	224	190	17	299	224	224	190	17
Other rockfish ⁷	BSAI	1,870	1,400	1,050	893	79	1,870	1,400	1,400	1,190	105
	BS	n/a	810	460	391	35	n/a	810	810	689	61
	AI	n/a	590	590	502	44	n/a	590	590	502	44
Squid	BSAI	2,620	1,970	1,275	1,084	n/a	2,620	1,970	1,275	1,084	n/a
Other species ⁸	BSAI	89,404	58,882	29,000	24,650	2,175	89,404	62,950	27,000	22,950	2,025
Total		3,476,987	3,013,086	2,000,000	1,775,020	187,958	3,224,217	2,799,914	2,000,000	1,773,058	187,623

¹ These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

² Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

³ Except for pollock, squid and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

⁴ Pursuant to § 679.20(a)(5)(i)(A)(7), the annual Bering Sea pollock TAC after subtraction for the CDQ directed fishing allowance—10 percent and the ICA—3.35 percent, is further allocated by sector for a directed pollock fishery as follows: Inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance—10 percent and second for the ICA—1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery.

⁵ Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

⁶ "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

⁷ "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

⁸ "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, in a non-specified reserve. Section 679.20(b)(1)(iii) further requires the allocation of one-half of each TAC amount that is placed in the non-specified reserve (7.5 percent), with the exception of squid, to the groundfish CDQ reserve, and the allocation of 20 percent of the hook-and-line and pot gear allocation of sablefish to the fixed gear sablefish CDQ reserve. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance. The entire Bogoslov District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of

the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Section 679.21(e)(1)(i) requires withholding of 7.5 percent of each PSC limit, with the exception of herring, as a PSQ reserve for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(1), NMFS allocates a pollock ICA of 3.35 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1998 through 2005. During this 6-year period, the pollock incidental catch ranged from a low of 2 percent in 2003, to a high of 5 percent in 1999, with a 6-year average of 3.5 percent. Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii),

NMFS recommends setting a 1,800 mt ICA for AI subarea pollock after subtraction of the 10 percent CDQ directed fishing allowance.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species or to the "other species" category during the year, providing that such apportionments do not result in overfishing (see § 679.20(b)(1)(ii)). The Regional Administrator has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 2.—2006 AND 2007 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species—area or subarea	2006 reserve amount	2006 final ITAC	2007 reserve amount	2007 final ITAC
Atka mackerel—Eastern Aleutian District and Bering Sea subarea	563	6,938	563	6,938
Atka mackerel—Central Aleutian District	3,000	37,000	2,850	35,150
Atka mackerel—Western Aleutian District	1,163	14,338	1,313	16,188
Pacific ocean perch—Eastern Aleutian District	231	2,849	244	3,012
Pacific ocean perch—Central Aleutian District	228	2,808	241	2,971
Pacific ocean perch—Western Aleutian District	381	4,703	403	4,969
Pacific cod—BSAI	14,550	179,450	11,100	136,900
Shortraker rockfish—BSAI	44	537	44	537
Rougheye rockfish—BSAI	17	207	17	207
Northern rockfish—BSAI	338	4,163	375	4,625
Other rockfish—Bering Sea subarea	35	426	61	750
Total	20,550	253,419	17,211	212,247

Allocation of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of the 10 percent for the CDQ program and the 3.35 percent for the ICA, will be allocated as a directed fishing allowance (DFA) as follows: 50 percent to the inshore component, 40 percent to the catcher/processor component, and 10 percent to the mothership component. In the Bering Sea subarea, the A season (January 20–June 10) is allocated 40 percent of the DFA and the B season (June 10–November 1) is allocated 60 percent of the DFA. The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA

(10 percent) and 1,800 mt for the ICA. In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 3 lists these 2006 and 2007 amounts.

Section 679.20(a)(5)(i)(A)(4) also includes several specific requirements regarding pollock and pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA

are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 3 lists the 2006 and 2007 allocations of pollock TAC. Tables 10 through 17 list other provisions of the AFA, including inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits.

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the 40 percent of the annual DFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual

DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The

A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated

percentage of the DFA. Table 3 lists by sector these 2006 and 2007 amounts.

TABLE 3.—2006 AND 2007 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)¹

[Amounts are in metric tons].

Area and sector	2006 allocations	2006 A season ¹		2006 B season ¹	2007 allocations	2007 A season ¹		2007 B season ¹
		A season DFA	SCA harvest limit ²	B season DFA		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea	1,485,000	n/a	n/a	n/a	1,500,000	n/a	n/a	n/a
CDQ DFA	148,500	59,400	41,580	89,100	150,000	60,000	42,000	90,000
ICA ¹	44,773	n/a	n/a	n/a	45,225	n/a	n/a	n/a
AFA Inshore	645,864	258,345	180,842	387,518	652,388	260,955	182,669	391,433
AFA Catcher/Processors ³	516,691	206,676	144,673	310,015	521,910	208,764	146,135	313,146
Catch by C/Ps	472,772	189,109	n/a	283,663	477,548	191,019	n/a	286,529
Catch by CVs ³	43,919	17,567	n/a	26,351	44,362	17,745	n/a	26,617
Unlisted C/P								
Limit ⁴	2,583	1,033	n/a	1,550	2,610	1,044	n/a	1,566
AFA Motherships	129,173	51,669	36,168	77,504	130,478	52,191	36,534	78,287
Excessive Harvesting								
Limit ⁵	226,052	n/a	n/a	n/a	228,336	n/a	n/a	n/a
Excessive Processing								
Limit ⁶	387,518	n/a	n/a	n/a	391,433	n/a	n/a	n/a
Total Bering Sea DFA	1,440,228	576,090	403,263	864,137	1,454,776	581,910	407,338	872,866
Aleutian Islands subarea ¹	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,800	1,200	n/a	600	1,800	1,200	n/a	600
Aleut Corporation	15,300	9,800	n/a	5,500	15,300	9,800	n/a	5,500
Bogoslof District ICA ⁷	10	n/a	n/a	n/a	10	n/a	n/a	n/a

¹ Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA—10 percent and the ICA—3.35 percent, is allocated as a DFA as follows: Inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. In the Bering Sea subarea, the A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1, is allocated 60 percent of the DFA. Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance—10 percent and second the ICA—1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

² In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

⁷ The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel ITAC

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approved, a 1 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and the

Bering Sea subarea to the jig gear in 2006 and 2007. Based on the 2006 and 2007 ITACs and reserve apportionments that together total 6,938 mt, the jig gear allocation is 69 mt.

Section § 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available

from September 1 to November 1 (B season) (see Table 4).

Pursuant to § 679.20(a)(8)(ii)(C)(1), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two districts (see § 679.20(a)(8)(iii)).

TABLE 4.—2006 AND 2007 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC¹

[Amounts are in metric tons]

Subarea and component	2006 TAC	2006 CDQ reserve	2006 CDQ reserve HLA limit ⁴	2006 ITAC	2006 seasonal allowances ²			
					A season ³		B season ³	
					Total	HLA limit ⁴	Total	HLA limit ⁴
Western AI District	15,500	1,163	698	14,338	7,169	4,301	7,169	4,301
Central AI District	40,000	3,000	1,800	37,000	18,500	11,100	18,500	11,100
EAI/BS subarea ⁵	7,500	563	n/a	6,938	n/a	n/a	n/a	n/a
Jig (1%) ⁶	n/a	n/a	n/a	69	n/a	n/a	n/a	n/a
Other gear (99%)	n/a	n/a	n/a	6,868	3,434	n/a	3,434	n/a
Total	63,000	n/a	n/a	n/a	29,103	n/a	29,103	n/a
Subarea and component	2007 TAC	2007 CDQ reserve	2007 CDQ reserve HLA limit ⁴	2007 ITAC	2007 Seasonal allowances ²			
					A season ³	B season ³		
					Total	HLA limit ⁴	Total	Total
Western AI District	17,500	1,313	788	16,188	8,094	4,856	8,094	4,856
Central AI District	38,000	2,850	1,710	35,150	17,575	10,545	17,575	10,545
EAI/BS subarea ⁵	7,500	563	n/a	6,938	n/a	n/a	n/a	n/a
Jig (1%) ⁶	n/a	n/a	n/a	69	n/a	n/a	n/a	n/a
Other gear (99%)	n/a	n/a	n/a	6,868	3,434	n/a	3,434	n/a
Total	63,000	n/a	n/a	n/a	29,103	n/a	29,103	n/a

¹ Regulations at §§ 679.20(a)(8)(iii) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.² The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.³ The A season is January 1 (January 20 for trawl gear) to April 15 and the B season is September 1 to November 1.⁴ Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2006 and 2007, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.⁵ Eastern Aleutian District and the Bering Sea subarea.⁶ Regulations at § 679.20 (a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to jig gear. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.**Allocation of the Pacific Cod ITAC**

Pursuant to § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Section 679.20(a)(7)(i)(B) further allocates the portion of the Pacific cod ITAC allocated to trawl gear as 50 percent to catcher vessels and 50 percent to catcher/processors. Section 679.20(a)(7)(i)(C)(1) sets aside a portion of the Pacific cod ITAC allocated to hook-and-line or pot gear as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator specifies an ICA of 500 mt. The remainder of Pacific cod ITAC is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line

catcher vessels, 3.3 percent to pot catcher/processors, 15 percent to pot catcher vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the apportionment of the ITAC disperses the Pacific cod fisheries into two seasonal allowances (see §§ 679.20(a)(7)(iii)(A) and 679.23(e)(5)). For pot and most hook-and-line gear, the first seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. Table 5 lists the 2006 and 2007 allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with § 679.20(a)(7)(ii)(D) and (iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 5.—2006 AND 2007 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD ITAC
[Amounts are in metric tons]

Gear sector	Percent	2006 share of gear sector total	2006 subtotal percentages for gear sectors	2006 share of gear sector total	2006 seasonal appointment ¹		2007 share of gear sector total	2007 subtotal percentage for gear sectors	2007 share of gear sector total	2007 seasonal appointment ¹	
					Date	Amount				Date	Amount
Total hook-and-line/pot gear.	51	91,520	n/a	n/a	n/a	n/a	69,819	n/a	n/a	n/a	n/a
Hook-and-line/pot ICA	n/a	n/a	n/a	500	n/a	n/a	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	91,020	n/a	n/a	n/a	n/a	69,319	n/a	n/a	n/a	n/a
Hook-and-line C/P	n/a	n/a	80	72,816	Jan 1–Jun 10	43,690	n/a	80	55,455	Jan 1–Jun 10	33,273
					Jun 10–Dec 31	29,126				Jun 10–Dec 31	22,182
Hook-and-line CV	n/a	n/a	0.3	273	Jan 1–Jun 10	164	n/a	0.3	208	Jan 1–Jun 10	125
					Jun 10–Dec 31	109				Jun 10–Dec 31	83
Pot C/P	n/a	n/a	3.3	3,004	Jan 1–Jun 10	1,803	n/a	3.3	2,288	Jan 1–Jun 10	1,373
					Sept 1–Dec 31	1,201				Sept 1–Dec 31	915
Pot CV	n/a	n/a	15	13,653	Jan 1–Jun 10	8,192	n/a	15	10,398	Jan 1–Jun 10	6,239
					Sept 1–Dec 31	5,461				Sept 1–Dec 31	4,159
CV < 60 feet LOA using Hook-and-line or Pot gear.	n/a	n/a	1.4	1,274	n/a	n/a	n/a	1.4	970	n/a	n/a
Total Trawl Gear	47	84,342	n/a	n/a	n/a	n/a	64,343	n/a	n/a	n/a	n/a
Trawl CV			50	42,171	Jan 20–Apr 1	29,520		50	32,171	Jan 20–Apr 1	22,520
					Apr 1–Jun 10	4,217				Apr 1–Jun 10	3,217
					Jun 10–Nov 1	8,434				Jun 10–Nov 1	6,434
Trawl CP			50	42,171	Jan 20–Apr 1	21,086		50	32,171	Jan 20–Apr 1	16,086
					Apr 1–Jun 10	12,651				Apr 1–Jun 10	9,651
					Jun 10–Nov 1	8,434				Jun 10–Nov 1	6,434
Jig	2	3,589	n/a	n/a	Jan 1–Apr 30	1,436	2,738	n/a	n/a	Jan 1–Apr 30	1,095
			n/a	n/a	Apr 30–Aug 31	718		n/a	n/a	Apr 30–Aug 31	548
			n/a	n/a	Aug 31–Dec 31	1,435		n/a	n/a	Aug 31–Dec 31	1,095
Total	100	179,450	n/a	n/a	n/a	n/a	136,900	n/a	n/a	n/a	n/a

¹ For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Sablefish Gear Allocation

Section 679.20(a)(4)(iii) and (iv) requires the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(iii)(B) requires apportionment of 20 percent of the

hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(iii)(A) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) to the CDQ reserve. Pursuant to § 679.20(c)(1)(iv), the harvest specifications for the hook-and-line gear and pot gear sablefish IFQ fisheries will be limited to the 2006 fishing year to ensure those fisheries are conducted concurrent with the halibut IFQ fishery. Having the sablefish IFQ fisheries concurrent with the halibut

IFQ fishery will reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries will remain closed at the beginning of each fishing year until the final specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery will be managed using specifications for up to a 2-year period concurrent with the remaining BSAI species. Table 6 lists the 2006 and 2007 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 6.—2006 AND 2007 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS
[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2006 share of TAC	2006 ITAC ¹	2006 CDQ reserve	2007 share of TAC	2007 ITAC	2007 CDQ reserve
Bering Sea:							
Trawl ²	50	1,410	1,199	106	1,350	1,148	101
Hook-and-line/pot gear ³	50	1,410	1,128	282	n/a	n/a	n/a
Total	100	2,820	2,327	388	1,350	1,148	101
Aleutian Islands:							
Trawl ²	25	750	638	56	685	582	51
Hook-and-line/pot gear ³	75	2,250	1,800	450	n/a	n/a	n/a

TABLE 6.—2006 AND 2007 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS—Continued

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2006 share of TAC	2006 ITAC ¹	2006 CDQ reserve	2007 share of TAC	2007 ITAC	2007 CDQ reserve
Total	100	3,000	2,438	506	685	582	51

¹ Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

² For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

³ For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) provides the halibut PSC limits. The BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Section 679.21(e)(1)(vii) specifies 29,000 fish as the 2006 and 2007 chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Section 679.21(e)(1)(i) allocates 7.5 percent, or 2,175 chinook salmon, as the PSQ for the CDQ program and allocates the remaining 26,825 chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(ix) specifies 700 fish as the 2006 and 2007 PSC limit for the AI subarea pollock fishery. Section 679.21(e)(1)(i) allocates 7.5 percent, or 53 chinook salmon, as an AI PSQ for the CDQ program and allocates the remaining 647 chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(viii) specifies 42,000 fish as the 2006 and 2007 non-chinook salmon PSC limit. Section 679.21(e)(1)(i) allocates 7.5 percent, or 3,150 non-chinook salmon, as the PSQ for the CDQ program and allocates the remaining 38,850 non-chinook salmon to the non-CDQ fisheries. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated from the 2005 survey data as 42.6 million king crab and the effective spawning biomass is estimated as 68 million pounds (30,845 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the 2006 and 2007 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit results from the mature female abundance being above 8.4 million king crab and the effective spawning biomass estimate being greater than 55 million pounds (24,948 mt).

Section 679.21(e)(3)(ii)(B) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for

the rock sole/flathead sole/"other flatfish" fishery category based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category within the RKCSS.

Based on 2005 survey data, Tanner crab *Chionoecetes bairdi* abundance is estimated as 763 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2006 and 2007 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits result from the *C. bairdi* crab abundance estimate of over 400 million animals.

Pursuant to § 679.21(e)(1)(iv), the PSC limit for snow crab *C. opilio* is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2005 survey estimate of 5,217,718,000 animals, the calculated limit is 5,911,674 animals. Pursuant to § 679.21(e)(1)(iv)(B), the 2006 and 2007 *C. opilio* crab PSC limit is 5,911,674 animals minus 150,000 animals, which results in a limit of 5,761,674 animals.

Pursuant to § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2006 and 2007 herring biomass is 177,000 mt. This amount was derived using 2005 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the 2006 and 2007 herring PSC limit is 1,770 mt.

Pursuant to § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut and crab is allocated as a PSQ reserve for use by the groundfish CDQ program. Section § 679.21(e)(3) requires the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Section 679.21(e)(4)(ii) authorizes the

apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among five fishery categories. Table 7 lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Section 679.21(e)(4)(ii) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because: (1) The pot gear fisheries experience low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers, and (3) the sablefish and halibut Individual Fishing Quota (IFQ) program (subpart D of 50 CFR part 679) requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ. In 2005, total BSAI groundfish catch for the pot gear fishery was approximately 18,342 mt, with an associated halibut bycatch mortality of about 42 mt. The 2005 jig gear fishery harvested about 124 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to

prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of

seasonal PSC apportionments on industry sectors. The Council recommended and NMFS approves the seasonal PSC apportionments in Table 7

to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7.—2006 AND 2007 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) zone 1 ¹	<i>C. opilio</i> (animals) COBLZ ¹	<i>C. bairdi</i> (animals)	
					Zone 1 ¹	Zone 2 ¹
Yellowfin sole	886	152	33,843	4,103,752	340,844	1,788,459
January 20–April 1	262	n/a	n/a	n/a	n/a	n/a
April 1–May 21	195	n/a	n/a	n/a	n/a	n/a
May 21–July 1	49	n/a	n/a	n/a	n/a	n/a
July 1–December 31	380	n/a	n/a	n/a	n/a	n/a
Rock sole/other flat/flathead sole ²	779	27	121,413	810,091	365,320	596,154
January 20–April 1	448	n/a	n/a	n/a	n/a	n/a
April 1–July 1	164	n/a	n/a	n/a	n/a	n/a
July 1–December 31	167	n/a	n/a	n/a	n/a	n/a
Turbot/arrowtooth/sablefish ³	n/a	12	n/a	62,356	n/a	n/a
Rockfish	n/a	n/a	n/a	n/a	n/a	n/a
July 1–December 31	69	10	n/a	62,356	n/a	10,988
Pacific cod	1,434	27	26,563	184,402	183,112	324,176
Midwater trawl pollock	n/a	1,350	n/a	n/a	n/a	n/a
Pollock/Atka mackerel/other ⁴	232	192	406	106,591	17,224	27,473
Red King Crab Savings Subarea ⁶	n/a	n/a	n/a	n/a	n/a	n/a
(non-pelagic trawl)	n/a	n/a	42,495	n/a	n/a	n/a
Total trawl PSC	3,400	1,770	182,225	5,329,548	906,500	2,747,250
Non-trawl fisheries						
Pacific cod—Total	775					
January 1–June 10	320					
June 10–August 15	0					
August 15–December 31	455					
Other non-trawl—Total	58					
May 1–December 31	58					
Groundfish pot and jig	exempt					
Sablefish hook-and-line	exempt					
Total non-trawl PSC	833					
PSQ reserve ⁵	342	n/a	14,775	432,126	73,500	222,750
PSC grand total	4,575	2,012	197,000	5,761,674	980,000	2,970,000

¹ Refer to § 679.2 for definitions of areas.

² "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.

³ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁴ Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

⁵ With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

⁶ In December 2005, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information

contained in the annual SAFE report (see ADDRESSES).

The Council recommended and NMFS concurs that the recommended halibut DMRs developed by the staff of the International Pacific Halibut Commission (IPHC) for the 2006 and 2007 BSAI groundfish fisheries be used to monitor halibut bycatch allowances established for the 2006 and 2007 groundfish fisheries (see Table 8). The IPHC developed these DMRs using the 10-year mean DMRs for the BSAI non-

CDQ groundfish fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for most fisheries. DMRs were more variable for the smaller fisheries that typically take minor amounts of halibut bycatch. The IPHC will analyze observer data annually and recommend changes to the DMR where a fishery DMR shows large variation from the mean. The IPHC has been calculating the DMRs for the CDQ fisheries since 1998, and a 10-year mean is not available. The Council

recommended and NMFS concurs with the DMRs recommended by the IPHC for 2006 and 2007 CDQ fisheries. The justification for the DMRs is discussed in Appendix A of the SAFE report dated November 2004.

TABLE 8.—2006 AND 2007 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	15
Other species	11
Pacific cod	11
Rockfish	16
Trawl gear fisheries:	
Atka mackerel	78
Flathead sole	67
Greenland turbot	72
Non-pelagic pollock	76
Pelagic pollock	85
Other flatfish	71
Other species	67
Pacific cod	68
Rockfish	74
Rock sole	77
Sablefish	49
Yellowfin sole	78
Pot gear fisheries:	
Other species	8
Pacific cod	8
CDQ trawl fisheries:	
Atka mackerel	86
Flathead sole	67
Non-pelagic pollock	85
Pelagic pollock	89
Rockfish	74
Yellowfin sole	85
CDQ hook-and-line fisheries:	
Greenland turbot	15
Pacific cod	10
CDQ pot fisheries:	
Pacific cod	8
Sablefish	30

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a directed fishing allowance for a species or species group, if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category has been or will be reached. If the Regional Administrator establishes a

directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 697.20(d)(1)(iii)). Similarly, pursuant to § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has

been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining allocation amounts in Table 9 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2006 and 2007 fishing year.

TABLE 9.—2006 AND 2007 DIRECTED FISHING CLOSURES ¹

[Amounts are in metric tons]

Area	Species	2006 incidental catch allowance	2007 incidental catch allowance
Bogoslof District	Pollock	10	10
Aleutian Islands subarea	ICA Pollock	1,800	1,800
	"Other rockfish"	502	502
Bering Sea subarea	Pacific ocean perch	1,190	2,516
	"Other rockfish"	426	750
Bering Sea and Aleutian Islands	Northern rockfish	4,163	4,625
	Shortraker rockfish	537	537
	Rougheye rockfish	207	207

TABLE 9.—2006 AND 2007 DIRECTED FISHING CLOSURES¹—Continued

[Amounts are in metric tons]

Area	Species	2006 incidental catch allowance	2007 incidental catch allowance
	"Other species"	24,650	22,950
	CDQ Northern rockfish	338	375
	CDQ Shortraker rockfish	44	44
	CDQ Rougheye rockfish	17	17
	CDQ "Other species"	2,175	2,025

¹ Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas effective at 1200 hrs, A.l.t., March 3, 2006 through 2400 hrs, A.l.t., December 31, 2007.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (see § 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. Also, the BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (see § 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI effective at 1200 hrs, A.l.t., March 3, 2006 through 2400 hrs, A.l.t., December 31, 2007. NMFS also is prohibiting directed fishing for rockfish outside Zone 1 in the BSAI through 1200 hrs, A.l.t., July 1, 2006 for 2006 and July 1, 2007 for 2007.

Under authority of the 2005 and 2006 final harvest specifications (70 FR 8979, February 24, 2005), NMFS prohibited directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI effective 1200 hrs, A.l.t., January 20, 2006, through 1200 hrs, A.l.t., September 1, 2006 (71 FR 4528, January 27, 2006). NMFS opened the first directed fisheries in the HLA in area 542 and area 543 effective 1200 hrs, A.l.t., January 22, 2006. The first HLA fishery in area 542 and area

543 remained open through 1200 hrs, A.l.t., February 5, 2006. The second directed fisheries in the HLA in area 542 and area 543 opened effective 1200 hrs, A.l.t., February 7, 2006. The second HLA fishery in area 542 and 543 remained open through 1200 hrs, A.l.t., February 21, 2006. NMFS prohibited directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters) length overall and longer using pot gear in the BSAI, effective 12 noon, A.l.t., February 3, 2006 (71 FR 6230, February 7, 2006). NMFS prohibited directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas of the BSAI effective 1200 hrs, A.l.t., February 15, 2006, through 1200 hrs, A.l.t., April 15, 2006, and from 1200 hrs, A.l.t., September 1, 2006, through 2400 hrs, A.l.t., December 31, 2006 (71 FR 8808, February 21, 2006). NMFS prohibited directed fishing for Atka Mackerel in the central Aleutian District of the BSAI, effective 1200 hrs, A.l.t., February 18, 2006, through 1200 hrs, A.l.t., September 1, 2006 (71 FR 9479, February 24, 2006). NMFS prohibited directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI, effective 1200 hrs, A.l.t., February 18, 2006, through 1200 hrs, A.l.t., June 10, 2006 (71 FR 9478, February 24, 2006). NMFS closes directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., February 21, 2006, through 1200 hrs, A.l.t., April 1, 2006 (71 FR 9478, February 24, 2006). NMFS prohibited fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall using jig or

hook-and-line gear in the Bogoslof Pacific cod exemption area of the BSAI, effective 1200 hrs, A.l.t., February 22, 2006, through 2400 hrs, A.l.t., December 31, 2006 (71 FR 9739, February 27, 2006). NMFS prohibited directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall and longer using hook-and-line gear in the BSAI effective 1200 hrs, A.l.t., February 24, 2006, through 1200 hrs, A.l.t., June 10, 2006, to be published March 1, 2006, in the *Federal Register*.

These closures remain effective under authority of these 2006 and 2007 final harvest specifications. These closures supersede the closures announced under authority of the 2005 and 2006 final harvest specifications (69 FR 8979, February 24, 2005). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

Bering Sea Subarea Inshore Pollock Allocations

Section 679.4(l) sets forth the procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 10 lists the 2006 and 2007 Bering Sea subarea pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2006 cooperative allocations that have been approved and permitted by NMFS for the 2006 fishing year. The Bering Sea subarea allocations may be revised pending adjustments to cooperatives' membership in 2007. Allocations for cooperatives and open access vessels are not made for the AI subarea because the Consolidated Appropriations Act of 2004 requires the non-CDQ directed pollock fishery to be fully allocated to the Aleut Corporation.

TABLE 10.—2006 AND 2007 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories ¹ (mt)	Percentage of inshore sector allocation	2006 annual cooperative allocation (mt)	2007 annual cooperative allocation (mt)
Akutan Catcher Vessel Association	31.145	201,154	203,186
Arctic Enterprise Association	1.146	7,402	7,476
Northern Victor Fleet Cooperative	8.412	54,330	54,879
Peter Pan Fleet Cooperative	2.876	18,575	18,763
Unalaska Cooperative	12.191	78,737	79,533
UniSea Fleet Cooperative	25.324	163,559	165,211
Westward Fleet Cooperative	18.906	122,107	123,340
Open access AFA vessels	0	0	0
Total inshore allocation	875,572	100	645,864	652,388

¹ According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Section 679.20(a)(5)(i)(A)(3) further divides the inshore sector allocation into separate allocations for cooperative and open access fishing. In addition, according to § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99

ft (30.2 m) LOA have the opportunity to operate entirely within the SCA until April 1. Accordingly, Table 11 lists the Bering Sea subarea pollock allocation to the inshore cooperative and open access sectors and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2

m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 11.

TABLE 11.—2006 AND 2007 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in metric tons]

Sector	2006 A season TAC	2006 A season SCA harvest limit ¹	2006 B season TAC	2007 A season TAC	2007 A season SCA harvest limit ¹	2007 B season TAC
Inshore cooperative sector:						
Vessels > 99 ft	n/a	155,408	n/a	n/a	156,923	n/a
Vessels < 99 ft	n/a	25,488	n/a	n/a	25,746	n/a
Total	258,345	180,842	387,518	260,955	182,669	391,433
Open access sector	0	0²	0	0	0²	0
Total inshore sector	258,345	180,842	387,518	260,955	182,669	391,433

¹ The Steller sea lion conservation area (SCA) is established at § 679.22(a)(7)(vii).

² The SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(2) that specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1."

Listed AFA Catcher/Processor Sideboard Limits

According to § 679.64(a), the Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting

from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). Table 12 lists the 2006 and 2007 catcher/processor sideboard limits.

All groundfish other than pollock that are harvested by listed AFA catcher/

processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 12. However, groundfish other than pollock that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2006 and 2007 sideboard limits for the listed catcher/processors.

TABLE 12.—2006 AND 2007 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUND FISH SIDEBOARD LIMITS
[Amounts are in metric tons]

Target species	Area	1995–1997			2006 ITAC available to trawl C/Ps	2006 C/P sideboard limit	2007 ITAC available to trawl C/Ps	2007 C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Pacific cod trawl	BSAI	12,424	48,177	0.258	42,171	10,880	32,171	8,300
Sablefish trawl	BS	8	497	0.016	1,199	19	1,148	18
	AI	0	145	0.000	638	0	582	0
Atka mackerel	Central AI	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	A season ¹	n/a	n/a	0.115	18,500	2,128	17,575	2,021
	HLA limit ²	n/a	n/a	n/a	11,100	1,277	10,545	1,213
	B season ¹	n/a	n/a	0.115	18,500	2,128	17,575	2,021
	HLA limit ²	n/a	n/a	n/a	11,100	1,277	10,545	1,213
	Western AI	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	A season ¹	n/a	n/a	0.200	7,169	1,434	8,094	1,619
	HLA limit ²	n/a	n/a	n/a	4,301	860	4,856	971
	B season ¹	n/a	n/a	0.200	7,169	1,434	8,094	1,619
	HLA limit ²	n/a	n/a	n/a	4,301	860	4,856	971
Yellowfin sole	BSAI	100,192	435,788	0.230	81,346	18,710	91,495	21,044
Rock sole	BSAI	6,317	169,362	0.037	35,275	1,305	37,400	1,384
Greenland turbot	BS	121	17,305	0.007	1,607	11	1,543	11
	AI	23	4,987	0.005	723	4	693	3
Arrowtooth flounder	BSAI	76	33,987	0.002	11,050	22	15,300	31
Flathead sole	BSAI	1,925	52,755	0.036	16,575	597	18,700	673
Alaska plaice	BSAI	14	9,438	0.001	6,800	7	12,750	13
Other flatfish	BSAI	3,058	52,298	0.058	2,975	173	4,250	247
Pacific ocean perch	BS	12	4,879	0.002	1,190	2	2,516	5
	Eastern AI	125	6,179	0.020	2,849	57	3,012	60
	Central AI	3	5,698	0.001	2,808	3	2,971	3
	Western AI	54	13,598	0.004	4,703	19	4,969	20
Northern rockfish	BSAI	91	13,040	0.007	4,163	29	4,625	32
Shortraker rockfish	BSAI	50	2,811	0.018	537	10	537	10
Rougheye rockfish	BSAI	50	2,811	0.018	207	4	207	4
Other rockfish	BS	18	621	0.029	426	12	750	22
	AI	22	806	0.027	502	14	502	14
Squid	BSAI	73	3,328	0.022	1,084	24	1,084	24
Other species	BSAI	553	68,672	0.008	24,650	197	22,950	184

¹ The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

² Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2006 and 2007, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Section 679.64(a)(5) establishes a formula for PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002).

PSC species listed in Table 13 that are caught by listed AFA catcher/processors participating in any groundfish fishery

other than pollock will accrue against the 2006 and 2007 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2006 or 2007 PSC sideboard limit listed in Table 13 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/“other species” fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 13.—2006 AND 2007 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS¹

PSC species	1995–1997			2006 and 2007 PSC available to trawl vessels	2006 and 2007 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	182,225	1,276
<i>C. opilio</i> ²	2,323,731	15,139,178	0.153	5,329,548	815,421
<i>C. bairdi</i>	n/a	n/a	n/a	n/a	n/a
Zone 1 ²	385,978	2,750,000	0.140	906,500	126,910
Zone 2 ²	406,860	8,100,000	0.050	2,747,250	137,363

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Refer to § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator restricts the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting

from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30,

2002). Tables 14 and 15 list the 2006 and 2007 AFA catcher vessel sideboard limits.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in Table 14.

TABLE 14.—2006 AND 2007 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2006 initial TAC	2006 catcher vessel sideboard limits	2007 initial TAC	2007 catcher vessel sideboard limits
Pacific cod	BSAI	n/a	n/a	n/a	n/a	n/a
	Jig gear	0.0000	3,589	0	2,738	0
	Hook-and-line CV	n/a	n/a	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	164	0	125	0
	Jun 10–Dec 31	0.0006	109	0	83	0
	Pot gear CV	n/a	n/a	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	8,192	5	6,239	4
	Sept 1–Dec 31	0.0006	5,461	3	4,159	2
	CV < 60 feet LOA using hook-and-line or pot gear.	0.0006	1,274	1	970	1
	Trawl gear CV	n/a	n/a	n/a	n/a	n/a
	Jan 20–Apr 1	0.8609	29,520	25,414	22,520	19,387
	Apr 1–Jun 10	0.8609	4,217	3,630	3,217	2,770
	Jun 10–Nov 1	0.8609	8,434	7,261	6,434	5,539
	Sablefish	BS trawl gear	0.0906	1,199	109	1,148	104
AI trawl gear		0.0645	638	41	582	38
Atka mackerel	Eastern AI/BS	n/a	n/a	n/a	n/a	n/a
	Jig gear	0.0031	69	0	69	0
	Other gear	n/a	n/a	n/a	n/a	n/a
	Jan 1–Apr 15	0.0032	3,434	11	3,434	11
	Sept 1–Nov 1	0.0032	3,434	11	3,434	11
	Central AI	n/a	n/a	n/a	n/a	n/a
	Jan–Apr 15	0.0001	18,500	2	17,575	2
	HLA limit	0.0001	11,100	1	10,545	1
	Sept 1–Nov 1	0.0001	18,500	2	17,575	2
	HLA limit	0.0001	11,100	1	10,545	1
	Western AI	n/a	n/a	n/a	n/a	n/a
	Jan–Apr 15	0.0000	7,169	0	8,094	0
	HLA limit	n/a	4,301	0	4,856	0
	Sept 1–Nov 1	0.0000	7,169	0	8,094	0
HLA limit	n/a	4,301	0	4,856	0	
Yellowfin sole	BSAI	0.0647	81,346	5,263	91,495	5,920
Rock sole	BSAI	0.0341	35,275	1,203	37,400	1,275
Greenland Turbot	BS	0.0645	1,607	104	1,543	100
	AI	0.0205	723	15	693	14
Arrowtooth flounder	BSAI	0.0690	11,050	762	15,300	1,056
Alaska plaice	BSAI	0.0441	6,800	300	12,750	562
Other flatfish	BSAI	0.0441	2,975	131	4,250	187
Pacific ocean perch	BS	0.1000	1,190	119	2,516	252
	Eastern AI	0.0077	2,849	22	3,012	23
	Central AI	0.0025	2,808	7	2,971	7
	Western AI	0.0000	4,703	0	4,969	0
Northern rockfish	BSAI	0.0084	4,163	35	4,625	39
Shortraker rockfish	BSAI	0.0037	537	2	537	2
Rougheye rockfish	BSAI	0.0037	207	1	207	1
Other rockfish	BS	0.0048	426	2	750	4
	AI	0.0095	502	5	502	5
Squid	BSAI	0.3827	1,084	415	1,084	415
Other species	BSAI	0.0541	24,650	1,334	22,950	1,242
Flathead Sole	BS trawl gear	0.0505	16,575	837	18,700	944

Halibut and crab PSC that are caught by AFA catcher vessels participating in

any groundfish fishery for groundfish other than pollock listed in Table 15

will accrue against the 2006 and 2007 PSC sideboard limits for the AFA

catcher vessels. Sections 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for groundfish other than pollock for AFA catcher vessels once a 2006 or 2007 PSC sideboard limit

listed in Table 15 for the BSAI is reached. The PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified

for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 15.—2006 AND 2007 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI¹

[Amounts are in metric tons]

PSC species	Target fishery category ²	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2006 and 2007 PSC limit	2006 and 2007 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole	n/a	n/a	n/a
	January 20–April 1	0.1144	262	30
	April 1–May 21	0.1144	195	22
	May 21–July 1	0.1144	49	6
	July 1–December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish ⁵	n/a	n/a	n/a
	January 20–April 1	0.2841	448	127
	April 1–July 1	0.2841	164	47
	July 1–December 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 1–December 31)	0.0245	69	2
Red King Crab Zone 1 ^{3,4}	Pollock/Atka mackerel/other species	0.0227	232	5
	Pacific cod	0.6183	26,563	16,424
	Yellowfin sole	0.1144	33,843	3,872
	Rock sole/flathead sole/other flatfish ⁵	0.2841	121,413	34,493
<i>C. opilio</i> COBLZ ³	Pollock/Atka mackerel/other species	0.0227	406	9
	Pacific cod	0.6183	184,402	114,016
	Yellowfin sole	0.1144	4,103,752	469,469
	Rock sole/flathead sole/other flatfish ⁵	0.2841	810,091	230,147
<i>C. bairdi</i> Zone 1 ³	Pollock/Atka mackerel/other species	0.0227	106,591	2,420
	Rockfish	0.0245	62,356	1,528
	Turbot/Arrowtooth/Sablefish	0.2327	62,356	14,510
	Pacific cod	0.6183	183,112	113,218
<i>C. bairdi</i> Zone 2 ³	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish ⁵	0.2841	365,320	103,787
	Pollock/Atka mackerel/other species	0.0227	17,224	391
	Pacific cod	0.6183	324,176	200,438
	Yellowfin sole	0.1144	1,788,459	204,600
Rock sole/flathead sole/other flatfish ⁵	Rock sole/flathead sole/other flatfish ⁵	0.2841	596,154	169,367
	Pollock/Atka mackerel/other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

³ Refer to § 679.2 for definitions of areas.

⁴ In December 2005, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).

⁵ "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Sideboard Directed Fishing Closures

AFA Catcher/Processor and Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 16 and 17 are necessary as incidental catch to

support other anticipated groundfish fisheries for the 2006 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 16 and 17 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 16 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 17.

TABLE 16.—2006 AND 2007 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES¹

[Amounts are in metric tons]

Species	Area	Gear types	2006 sideboard limit	2007 sideboard limit
Sablefish trawl	BS	Trawl	19	18
	AI	Trawl	0	0
Rock sole	BSAI	all	1,305	1,384
Greenland turbot	BS	all	11	11
	AI	all	4	3
Arrowtooth flounder	BSAI	all	22	31
Pacific ocean perch	BS	all	2	5
	Eastern AI	all	57	60
	Central AI	all	3	3
	Western AI	all	19	20
Northern rockfish	BSAI	all	29	32
Shortraker rockfish	BSAI	all	10	10
Rougheye rockfish	BSAI	all	4	4
Other rockfish	BS	all	12	22
	AI	all	14	14
Squid	BSAI	all	24	24
"Other species"	BSAI	all	197	184

¹Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.TABLE 17.—2006 AND 2007 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES¹

[Amounts are in metric tons]

Species	Area	Gear types	2006 sideboard limit	2007 sideboard limit
Pacific cod	BSAI	hook-and-line	0	0
	BSAI	pot	9	9
	BSAI	jig	0	0
Sablefish	BS	trawl	109	104
	AI	trawl	41	38
Atka mackerel	Eastern AI/BS	jig	0	0
	Eastern AI/BS	other	11	11
	Central AI	all	2	2
	Western AI	all	0	0
Greenland Turbot	BS	all	104	100
	AI	all	15	14
Arrowtooth flounder	BSAI	all	762	1,056
Pacific ocean perch	BS	all	119	252
	Eastern AI	all	22	23
	Central AI	all	7	7
	Western AI	all	0	0
Northern rockfish	BSAI	all	35	39
Shortraker rockfish	BSAI	all	2	2
Rougheye rockfish	BSAI	all	1	1
Other rockfish	BS	all	2	4
	AI	all	5	5
Squid	BSAI	all	415	415
"Other species"	BSAI	all	1,334	1,242

¹Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.**Response to Comments**

NMFS received one letter of comment in response to the proposed 2006 and 2007 harvest specifications. This letter contained 6 separate comments that are summarized and responded to below.

Comment 1: The action is a major federal action that has significant effects on the quality of the human environment and requires an Environmental Impact Statement.

Response: NMFS prepared an EA for the 2006 and 2007 harvest specifications. The analysis in the EA supports a finding of no significant impact on the human environment as a result of the harvest specifications. Therefore, an environmental impact statement is not required under section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Comment 2: The "Ecosystem Considerations" report is not explicitly integrated into the process of setting ABC and TAC. NMFS should also integrate directly ecosystem needs into harvest specifications through development and implementation of Ecologically Sustainable Yield (ESY).

Response: ESY is defined as "the yield an ecosystem can sustain without shifting to an undesirable state" (Zabel et al. 2003). This is a qualitative concept

because judging an "undesirable state" may vary widely. ESY requires simultaneously considering the impacts of all harvested species on an ecosystem and quantifying important qualities such as community stability or resilience. This poses challenges due to uncertainty and indeterminacy inherent in ecological systems and the fact that ecosystems respond to natural processes in ways that are not well understood.

The NMFS and the Council, in essence, fulfill determinations of the ESYs through the development and evaluation of the SAFE report (see ADDRESSES) and during implementation of inseason multispecies fisheries management practices. The SAFE report evaluates the status and trends of the entire ecosystem. Also, the SAFE report responds to the stated ecosystem-based management goals of the Council. These goals are: (1) Maintain biodiversity consistent with natural evolutionary and ecological processes, including dynamic change and variability; (2) Maintain and restore habitats essential for fish and their prey; (3) Maintain system sustainability and sustainable yields for human consumption and nonextractive uses; and (4) Maintain the concept that humans are components of the ecosystem.

All groundfish species are currently managed for their impacts from a conservation and ecosystem perspective. As an example, the recent development of the Gulf of Alaska (GOA) skate fishery led to prompt management action to provide appropriate protection of this species assemblage. Currently, there are ABC levels specified for the two main species of skates over three different areas. This effectively has prohibited the further development of a directed fishery for skates until more information is available to ensure appropriate conservation measures are taken. Zabel, R.W., C.J. Harvey, S.L. Katz, T.P. Good, and P.S. Levin. 2003. Ecologically sustainable yield. *American Scientist* 91: 150-157.

Comment 3: Catch levels for North Pacific rockfish are being set without sufficient precaution. They are based on inadequate and highly variable biomass estimates, without regard to stock structure and without proper consideration of life history characteristics such as rockfish longevity, late age at sexual maturity, and the increased reproductive success of older, more fecund female fish.

Response: Multiple layers of precaution are built into catch levels for North Pacific rockfish with age-structured models (Tier 3). For example,

GOA Pacific ocean perch are assigned an F_{ABC} at $F_{40\%}$. Bayesian spawner-recruit analysis showed that maximum sustainable yield (MSY) was attained at approximately $F_{29\%}$. While the target fishing mortality is already well below MSY, the Eastern GOA is closed to trawling, further reducing fishing mortality by 10 percent. Another precautionary layer is to employ a catchability coefficient near two. This means that the fishing mortality is applied to a biomass estimate that is about half of the biomass estimate that is derived from the trawl survey. The age-structured modeling approach integrates a variety of information to compensate for variable survey results.

Catch levels for North Pacific rockfish with survey-biomass based models (Tier 5) are based on highly variable biomass estimates. This variability is stabilized by using a 3-survey moving average. The catch levels for these species are set by applying a fishing mortality of 75 percent of the natural mortality to the average exploitable biomass. These fishing mortalities are precautionary in that they are theoretically at least 25 percent below MSY fishing mortality and are based on very low natural mortalities (e.g., 0.02-0.07).

At this time, stock structure information has not been synthesized directly into the stock assessments because of the lack of definitive structure and sufficient data to model spatially explicit populations. However, life history characteristics are explicitly accounted for in both the fishing mortality estimates in age-structured models (Tier 3) and in survey-biomass based estimates (Tier 5). In age-structured models, age at maturity is defined specific to each species and longevity is incorporated in the natural mortality estimates and the age data. For survey biomass based models, this information is not as well known, but the low natural mortality estimates for rockfish species is based on their maximum age. Recent research of black rockfish off the West Coast shows evidence of older, mature fish being more fecund, or producing higher quality larvae, than younger mature fish. Research is in progress to attempt to answer this question for Alaskan rockfish.

Comment 4: Signs of stress in North Pacific rockfish populations include age truncation, localized depletion, and potential overfishing.

Response: Some age truncation will occur if a stock is fished. Only GOA Pacific ocean perch showed more age truncation than was expected at equilibrium. However, this population is not at equilibrium and has increased

substantially in the last decade. Therefore, the observed age truncation may be from fishing, but it also may be from the recent strength of recruitment substantially increasing the proportion of younger fish.

Three species of rockfish have shown localized depletion in some years and areas. Most of the significant depletions did not occur in the same place or in consecutive years. The densities were as high as they were in the previous year when fishing resumed, implying migration and replenishment when depletions did occur in the same place or in consecutive years.

Recently, North Pacific rockfish species have not been subject to consistent overfishing.

Comment 5: NMFS should support the proposal by Goodman *et al.* in the review of the North Pacific harvest strategy to shift to $F_{50\%}$ to $F_{60\%}$ -based harvest rates as one step in sustainable rockfish management.

Response: There has been no evidence that Alaskan rockfish need to have a more conservative spawning output per recruit (SPR) rate than other species. Goodman *et al.* presented evidence based on less productive West Coast rockfish. The fishing mortality derived from an $F_{40\%}$ strategy is much lower for rockfish with their sensitive life history characteristics than the fishing mortalities derived from the same harvest strategy for other species. This is due to the late maturity, slow growth, and low natural mortality of rockfish. For example, the fishing mortality rate for rougheye rockfish is about one tenth the fishing mortality rate for Pacific cod. Several analyses for Pacific ocean perch show $F_{40\%}$ to be relatively conservative for rockfish.

Comment 6: NMFS should set separate TAC and OFL levels for rougheye rockfish in the Bering Sea and Aleutian Islands and consider the closure of bycatch hotspots.

Response: Separation of the rougheye rockfish TAC into the Bering Sea and AI subareas would be based on the proportion of the available biomass in each subarea. Recent surveys estimate the biomass of BSAI rougheye rockfish as 11 percent in the Bering Sea subarea and 89 percent in the AI subarea. Therefore, a separate rougheye rockfish TAC for the AI subarea would not be much lower than the TAC for the BSAI area, and would offer little additional protection for AI rougheye rockfish. Also, the biomass estimate used for BSAI rougheye rockfish is based on the AI survey data. The two years of the Bering Sea slope survey (2002 and 2004) have not been used in the stock assessment due to the short length of

this new time series. Basing the BSAI stock assessment on only the AI survey biomass produces more conservative (lower) estimates of rougheye rockfish biomass and TACs.

A separate TAC for Bering Sea subarea rougheye rockfish could potentially prevent disproportionate harvesting, but the available data are not sufficient to manage rougheye rockfish in the Bering Sea subarea as a separate stock. As mentioned above, the slope survey time series consists of two years, and very limited age and length composition sampling has occurred for rougheye rockfish on the Bering Sea slope. Because BSAI rougheye rockfish are obtained as incidental catch, setting separate ABCs for the Bering Sea and AI subareas may result in more regulatory discarding.

Several management measures are in place to minimize and distribute catch of BSAI rougheye rockfish. Rougheye rockfish are closed to directed fishing for the entire year and are taken only in association with other directed fisheries. As a result, catch is partitioned consistent with the population distribution described above. In 2004 and 2005, 89 percent and 87 percent, respectively, of the catch occurred in the AI subarea.

Rougheye rockfish are taken predominantly in the Atka mackerel and Pacific ocean perch fisheries in the AI subarea. The directed Atka mackerel and Pacific ocean perch fisheries are divided into three separate Aleutian Islands districts. Distribution of the target fisheries also distributes the incidental catch of rougheye rockfish.

Because rougheye rockfish are not open to directed fishing and the directed fisheries that catch rougheye rockfish are distributed by three districts in the Aleutian Island subarea, creation of a separate TAC within the AI subarea for rougheye rockfish would not serve to reduce the potential of localized depletion. Conversely, separate TACs could serve to increase discards.

Retention rates are set low to discourage intentional targeting within the directed fisheries. For rougheye rockfish the maximum retention rate is 2 percent in the Atka mackerel fishery and 7 percent in the Pacific ocean perch fishery.

In the North Pacific, localized depletion has been examined for several rockfish species including Pacific ocean perch, northern rockfish, and dusky rockfish. Localized depletion was found to occur in some years and areas, but has generally not diminished stock densities over successive years. Fishery catch per unit effort data is used as an index of stock abundance to examine

localized depletion on short time scales. Because rougheye rockfish are not subject to a direct fishery and are obtained as incidental catch, fishery catch per unit effort may not accurately reflect population size, thus limiting the data available for examining localized depletion for this species.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce 2006 and 2007 final harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2006 and 2007 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the BSAI fishery. The specific amounts of OFL, ABC, TAC and PSC amounts are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared to evaluate the impacts of the 2006 and 2007 harvest level specifications on directly regulated small entities. This FRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA).

The proposed rule for the BSAI harvest specifications was published in the **Federal Register** on December 16, 2005 (70 FR 74723). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule and was described in the classifications section of that preamble to the rule. Copies of the IRFA prepared for this action are available from NMFS, Alaska Region (see **ADDRESSES**). The public comment period ended on January 17, 2006. No comments were received on the IRFA or regarding the economic impacts of this rule.

The 2006 and 2007 harvest specifications establish harvest limits for the groundfish species and species groups in the BSAI. This action is necessary to allow fishing in 2006 and

2007. About 946 small catcher vessels, 29 small catcher/processors, and six small private non-profit CDQ groups may be directly regulated by the BSAI harvest specifications. This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The FRFA examined the impacts of the preferred alternative on small entities within fisheries defined by the harvest of species groups whose TACs might be affected by the harvest specifications. The FRFA identified the potential for adverse impacts of the preferred alternative on small fishing operations harvesting Pacific cod, Greenland turbot, northern rockfish, and "other species" in the BSAI and on CDQ groups operating in the BSAI.

There were an estimated 120 directly regulated small entities in the BSAI Pacific cod sector. These small operations were projected to see a 3 percent decline in their gross revenues from all sources in 2006 and 14 percent (from 2005 levels) in 2007. There were an estimated 24 directly regulated small entities in the BSAI Greenland turbot sector. These small operations were projected to see less than a 1 percent reduction in their gross revenues from 2005 levels in both 2006 and 2007.

There were an estimated 2 small entities in the BSAI northern rockfish sector. While detailed information cannot be provided for these two operations because of confidentiality restrictions, BSAI northern rockfish revenues for these two vessels were significantly less than 1 percent of their annual revenues; therefore, any decrease that may occur in the BSAI northern rockfish allocation in 2006 would have less than a 1 percent reduction in their gross revenues. There were an estimated 28 directly regulated small entities in the BSAI "other species" sector. These small operations were expected to see their revenues decline by a fraction of a percent from 2005 levels in 2006 and 2007. Six non-profit CDQ groups operating in the BSAI were expected to see their revenues drop by under 1 percent between 2005 and 2006 and by about 2 percent between 2005 and 2007.

Although the preferred alternative had adverse impacts on some classes of small entities compared to the fishery in the preceding year, alternatives that had smaller adverse impacts were precluded by biological management concerns. Four alternatives were evaluated in addition to the preferred alternative. Alternative 1 set TACs equal to the \max_{ABC} fishing rate. Alternative 1 was associated with high TACs, high revenues, and TACs that exceeded the statutory BSAI OY. Alternative 2, the

preferred alternative, set TACs to produce the fishing rates recommended by the Council on the basis of Plan Team and SSC recommendations.

Alternative 3 set TACs to produce fishing rates equal to half the $\max F_{ABC}$, and Alternative 4 set TACs to produce fishing rates equal to the last five years' average fishing rate. Alternative 5 set TACs equal to zero.

BSAI fishermen and CDQ groups would have had larger gross revenues under Alternative 1 than under the preferred alternative. However, Alternative 1 involves TAC levels that are precluded by law since they would exceed the statutory two million mt BSAI OY. In order to stay within the OY threshold, increases in some TACs would have had to be offset by decreases in other TACs. Moreover, in 2006 and 2007, the BSAI Pacific cod TACs are set equal to the ABCs recommended by the Council's BSAI Plan Team and SSC. Higher TACs would not be consistent with prudent biological management of the fishery; therefore, Alternative 2 was chosen instead of Alternative 1 because it sets TACs as high as possible while still protecting the biological health of the

stock. Alternative 2 was chosen instead of Alternatives 3, 4, or 5 because it provided higher levels of overall harvest and revenue.

Under the provisions of 5 U.S.C. 553(d)(3), an agency can waive a delay in the effective date of a substantive rule for good cause. If the final harvest specifications are not effective by March 5, 2006, which is the start of the Pacific halibut season as specified by the IPHC, the longline sablefish fishery will not begin concurrently with the Pacific halibut season. This would cause sablefish that is caught with Pacific halibut to be discarded, as both longline sablefish and Pacific halibut are managed under the same Individual Fishing Quota program. Immediate effectiveness of the 2006 and 2007 final harvest specifications will allow the sablefish fishery to begin concurrently with the Pacific halibut season.

Accordingly, I find that there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above. Also, by regulation, the AFA cooperative applications are due to NMFS on December 1, 2005,

providing the basis for the final AFA cooperative allocation. The 2006 cooperatives changed from 2005 as a result of 5 vessels changing cooperatives. The inshore cooperative allocations currently in effect are based on cooperative applications for the 2005 fishing year. Time is of the essence to have the 2006 and 2007 harvest specifications in effect because vessels begin fishing for inshore cooperative pollock allocations immediately after the start of the calendar year in order to harvest pollock when its value is high due to mature roe. Unless this delay is waived, several vessels will be fishing for the wrong AFA inshore cooperative once the 2006 and 2007 final harvest specifications are effective.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; and 3631 *et seq.*

Dated: February 28, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06-1995 Filed 3-2-06; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 71, No. 42

Friday, March 3, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206-AL01

Senior Executive Service Pay

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to provide agencies with the authority to increase the rates of basic pay of certain members of the Senior Executive Service (SES) whose pay was set before the agency's senior executive performance appraisal system was certified for the calendar year involved. The proposed regulations would allow an agency to review the rate of basic pay of these SES members and provide an additional pay increase, if warranted, up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system for the current calendar year.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by FAX at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini by telephone at (202) 606-2858; by FAX at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to provide agencies with the authority to increase the rates of basic pay of certain members of the Senior Executive Service (SES) whose pay was set before the agency's senior executive performance appraisal system was certified under 5 CFR part

430, subpart D, for the calendar year involved. The proposed regulations would allow an agency to review the rates of basic pay set for these SES members, which was capped at the rate for level III of the Executive Schedule, and provide an additional pay increase, if warranted, up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system for the current calendar year.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136, November 24, 2003) authorized a new performance-based pay system for SES members. Under the new SES pay system, an agency must set and adjust the rate of basic pay for an SES member on the basis of the employee's performance and/or contribution to the agency's performance, as determined by the agency through the administration of its performance management system(s) for senior executives. On December 6, 2004, OPM issued final regulations on the administration of the SES performance-based pay system and prescribed the criteria for establishing and adjusting SES rates of basic pay and paying performance awards (69 FR 70355).

Agencies have had experience administering pay under the new SES performance-based system for 2 years. During this period, we have identified a recurring problem that occurs at the beginning of each calendar year and that prevents an agency from setting pay above the rate for level III of the Executive Schedule because its senior executive performance appraisal system has not yet been certified for that calendar year.

Under 5 U.S.C. 5307(d), an agency's senior executive performance appraisal system is certified on a calendar year basis. (The regulations in 5 CFR part 430, subpart D, provide the requirements for obtaining certification of a performance appraisal system for senior executives.) Under 5 U.S.C. 5382(b), the maximum rate of the SES rate range may not exceed the rate for level III of the Executive Schedule unless the agency's senior executive performance appraisal system is certified under 5 U.S.C. 5307(d). Therefore, an agency may not set pay for an SES member at a rate above the rate for level III until its senior executive performance appraisal system is

certified for the calendar year involved. Since many agencies' senior executive performance appraisal systems are not certified at the beginning of a calendar year, there is a gap from the time an agency may set SES pay above level III (in the previous calendar year) to the time an agency may again set SES pay above level III upon certification of its senior executive performance appraisal system (in the next calendar year).

In one limited circumstance, OPM authorized the extension of provisional certification into the following calendar year—i.e., for the sole purpose of adjusting pay on the basis of official ratings determined during the calendar year for which their appraisal system was certified. (See 5 CFR 430.405(c)(2).) However, this limited exception does not help affected agencies in other situations—e.g., recruiting individuals with superior leadership skills into the SES, reassigning current SES members into positions with substantially greater responsibility, or retaining an SES member who is critical to the mission of the agency—because non-certified agencies may not set SES pay above the rate for level III in these situations. Moreover, the statutory prohibition against adjusting SES pay more than once during any 12-month period (except in unusual situations as described in OPM's regulations) results in these individuals receiving lower rates of basic pay than individuals in the same situations whose rates of basic pay were or are set during a period when the agency's senior executive appraisal system has been certified.

The requirement in 5 U.S.C. 5307(d) that senior executive performance appraisal systems be certified on a calendar year basis may be changed only by legislation. We are proposing regulations to allow agencies that obtain certification of their senior executive performance appraisal system(s) to review the rates of pay they set earlier in the calendar year for certain SES members and provide an additional pay increase, if warranted, up to the rate for level II of the Executive Schedule. Under this proposal, the determination to provide an additional pay increase could not be made effective before the date the agency's senior executive performance appraisal system is certified under 5 CFR part 430, subpart D, or after December 31st of the calendar year for which the agency's system is

certified. The additional pay increase would not be considered a pay adjustment for the purpose of applying 5 CFR 534.404(c) (the "12-month rule").

Waiver of 60-Day Comment Period for Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the 60-day comment period for general notice of proposed rulemaking. Limiting the comment period for the proposed regulations to 30 days will enable OPM to issue final regulations in 2006, which will give practical effect to these regulations at the earliest possible moment. The final regulations will permit agencies to review the rates of basic pay set previously in early 2006 for SES members and provide an additional pay increase, if warranted, later in 2006 upon certification of the agency's senior executive performance appraisal system.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply to only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in Part 534

Government employees, Hospitals, Students, and Wages.

Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, OPM proposes to amend part 534 of title 5 of the Code of Federal Regulations as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, and sec. 1125 of the National Defense Authorization Act for FY 2004, Public Law 108-136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207).

Subpart D—Pay and Performance Awards Under the Senior Executive Service

2. In § 534.404, redesignate paragraphs (c)(3)(v) and (vi) as (c)(3)(vi) and (vii), respectively, add new paragraph (c)(3)(v), and revise paragraph (e) to read as follows:

§ 534.404 Setting and adjusting pay for senior executives.

* * * * *
(c) 12-month rule. * * *
(3) * * *

(v) A determination to provide an additional pay increase under paragraph (e)(2) of this section when an agency's senior executive performance appraisal system is certified under 5 CFR part 430, subpart D, after the beginning of a calendar year;

* * * * *
(e) *Adjustments in pay after certification of applicable performance appraisal system.*

(1) In the case of an agency that obtains certification of a performance appraisal system for senior executives under 5 CFR part 430, subpart D, an authorized agency official may increase a covered senior executive's rate of basic pay up to the rate for level II of the Executive Schedule, consistent with the limitations in § 534.403(a)(3). The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and if the senior executive is otherwise eligible for such an increase (i.e., he or she did not receive a pay adjustment under § 534.404(c) during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying § 534.404(c).

(2) In the case of an agency that was prevented from establishing or adjusting a rate of basic pay above the rate for level III of the Executive Schedule for an individual upon initial appointment to the SES under § 534.404(a) or for a current SES member using one of the exceptions to the 12-month rule in § 534.404(c)(4)(i), (ii), or (iii) because the agency had not yet obtained certification of its performance appraisal system for senior executives under 5 CFR 430, subpart D, in the current calendar year, an authorized agency official may increase such a senior executive's rate of basic pay up to the rate for level II of the Executive Schedule upon certification of the agency's senior executive performance appraisal system, consistent with the limitations in § 534.403(a)(3). The authorized agency official may review the previous determination to set or adjust the pay of a senior executive to determine whether, and to what extent, an additional pay increase may be warranted based on the same criteria used for the previous determination. The determination to provide an additional pay increase may not be made effective before the date the

agency's senior executive performance appraisal system is certified under 5 CFR 430, subpart D, or after December 31st of the calendar year for which the agency's system is certified. An adjustment in pay made under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c) and does not begin a new 12-month period for that purpose.

* * * * *

[FR Doc. E6-3016 Filed 3-2-06; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, 226, 246, 247 and 251

RIN 0584-AD43

Data Collection Related to Institutions and Organizations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule is part of the Department's effort to fulfill its responsibilities under Executive Orders 13279 and 13280. Under this rule, State agencies would collect and report information related to faith-based and community organizations currently participating and applying to participate in Food and Nutrition Service (FNS) nutrition assistance programs. This information would be added to existing collections for the affected programs. It would enable FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of faith-based and community organizations in its programs, ensure that FNS' programs are open to all eligible organizations and evaluate the effectiveness of its technical assistance and outreach efforts. It will not adversely impact the application or participation of any organization or institution currently participating in, or seeking to participate in FNS nutrition assistance programs.

DATES: Comments must be received on or before June 1, 2006 to be assured of consideration.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

• E-Mail: Send comments to SNPPROPOSAL@FNS.USDA.GOV.

Please include Docket ID Number 403 in the subject line of the message.

- Fax: Submit comments by facsimile transmission to: (703) 305-2879.

- Disk or CD-ROM: Submit comments on disk or CD-ROM, Keith Churchill, Section Chief, Child and Adult Care and Summer Food Service Programs, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302-1594.

- Mail: Send comments to: Keith Churchill, Section Chief, Child and Adult Care and Summer Food Service Programs, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302-1594.

- Federal eRulemaking Portal: Visit <http://www.regulations.gov> and follow the online instructions for submitting comments.

All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.-5 p.m. eastern standard time.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Child and Adult Care and Summer Section, Policy and Program Development Branch, at the above address, or by telephone at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

Background

Faith-based and community organizations (FBOs and COs) are important parts of the social service system of the United States, offering assistance to those in need. These organizations include small nonprofit organizations that provide access to one program or multiple services, and neighborhood groups that respond to a particular crisis or lead community renewal. Acting alone or as partners with other service providers and government programs, FBOs and COs serve needy persons, strengthen families and rebuild communities.

Federal agencies, including this Department, have been directed to ensure that Federal policies and programs allow FBOs and COs to participate in a manner that is consistent with the Constitution and statutory requirements.

On December 16, 2002, Executive Orders 13279 and 13280 were published in the *Federal Register* (67 FR 77139 and 67 FR 77145). Executive Order 13280 created a Center for Faith-Based and Community Initiatives in the

Department of Agriculture. The Order charged the Center to coordinate efforts to identify and eliminate regulatory, contracting, and other programmatic obstacles that prevent the full participation of FBOs and COs in the delivery of the Department's social service programs.

Executive Order 13279 charged all Federal agencies, including the Department, to give equal treatment to FBOs and COs that apply for Federal assistance used to support social service programs. Additionally, the Order instructed Federal agencies to ensure that they collect data regarding the participation of FBOs and COs in social service programs that receive Federal financial assistance.

On July 9, 2004, the Department published a final rule, "Equal Opportunity for Religious Organizations," in the *Federal Register* (69 FR 41375). This rule established Departmental policy regarding equal opportunity for religious organizations to participate in the Department's assistance programs for which other private organizations are eligible.

Purpose of This Rule

This proposed rule is part of the Department's effort to fulfill its responsibilities under Executive Orders 13279 and 13280. It is essential to collect information that enables FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of FBOs and COs in its programs, ensure that FNS' programs are open to all qualified organizations and evaluate the effectiveness of its technical assistance and outreach efforts. The consequence of non-collection would be an inability to determine the success of efforts to comply with the Executive Orders.

Requirements

Section 3(b) of Executive Order 13279 provides the Secretary with authority to "collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance." This proposed rule would authorize the Secretary to require State agencies to report on a number of data elements for Federal fiscal years 2006 through 2009 regarding the organizations and institutions that currently participate in and that submit an application for the purpose of contracting, or entering into an agreement, with the State agency to participate in the National School Lunch Program; School Breakfast Program; Summer Food Service

Program; Child and Adult Care Food Program; Special Supplemental Nutrition Program for Women, Infants and Children; Commodity Supplemental Food Program; or the State agency or a recipient agency to participate in The Emergency Food Assistance Program (TEFAP). This rule would also require State agencies to collect a second tier of data for TEFAP, since institutions and organizations may participate in TEFAP through entities that are dissimilar in institutional character.

A variety of approaches to this data collection are still being considered; therefore, the data elements to be included in the report have not yet been finalized. Data elements under consideration include:

(a) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(b) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(c) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(d) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations;

(e) The name of each organization that actually participates in the program;

(f) The city in which the participating organization is headquartered within the state;

(g) The amount of funds provided to the participating organization, whether awarded, granted, contracted, or reimbursed;

(h) The type of participating organization, e.g. government agency, educational institution, for-profit organization, non-profit organization/ secular, non-profit organization/faith-based, and "other."

It is anticipated that only four or five of the above proposed data elements will be included in the final reporting requirement. The State agency would be required to report this data to FNS on or before March 1 for the prior Federal fiscal year. We solicit comment on which of these, or other data elements should be included in the final rule.

Implementation

It is anticipated that the requirements in this rule would be phased in on a program-specific basis, thereby enabling State agencies to include the collection

of new data concurrent with each program's time of application, so that a separate collection specifically to meet this requirement would not be needed. However, further guidance will be provided to State agencies prior to the time of implementation of the final rule. This guidance will address appropriate vehicles and language for the collection of data to ensure that the results are comparable across States and programs. Although it is unlikely this guidance will be included in the final regulation, FNS seeks comments on several areas of guidance under consideration at this time. These include but are not limited to:

(a) When and how during the application process it is best to request data on the type of organizations applying and/or participating;

(b) Whether to collect data on subgrantees (pass-through funding recipients) in addition to the primary grantees; and

(c) Which of the specific data elements proposed above will be included in the reporting requirement.

Executive Order 12866

This proposed rule has been determined to be significant but not economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Impact Analysis

Costs

The cost implications of this proposed rule are minor. Assuming that State agencies collect this data as part of the application process for participation in the program, this rule will result in a small additional time burden for each applicant. Each program varies in the number of applications it receives and in how often during a Federal fiscal year participants must report to their State agencies so the overall additional time burden will differ among programs.

Need for Action

Section 3(b) of Executive Order 13279 provides the Secretary with authority to "collect data regarding the participation of FBOs and COs in social service programs that receive Federal financial assistance." The consequence of non-collection would be an inability to determine the number of FBO and CO participants and a failure to comply with Executive Orders 13279 and 13280.

Benefits

This proposed rule would help the Department to implement Executive Orders 13279 and 13280. Collecting information on FBOs and COs would

enable FNS to determine the level of participation in FNS programs by those organizations and help ensure that its programs are open to all eligible organizations.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The data collection which would be implemented would enable FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of FBOs and COs in its programs, ensure that FNS' nutrition assistance programs are open to all eligible organizations as mandated by Executive Orders 13279 and 13280, and evaluate the effectiveness of the Department's outreach efforts. While the effect of this rule would require organizations seeking to participate or participating in affected FNS programs to provide the requested information at the time of application and at other times, these reporting changes will not have a significant economic impact on those small entities.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes a requirement 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, FNS generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have "Federal mandates" which may result in expenditures of \$100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates of \$100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not

subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

National School Lunch Program; School Breakfast Program; Summer Food Service Program; Child and Adult Care Food Program; Special Supplemental Nutrition Program for Women, Infants and Children; and the Commodity Supplemental Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553, 10.559, 10.558, 10.557, and 10.565, respectively. The Emergency Food Assistance Program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.568 and 10.569. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Date paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact

Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this proposed rule would not in any way limit or reduce participants' ability to participate in FNS' nutrition assistance programs on the basis of race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires the Office of Management and Budget (OMB) to

approve all information collections by a Federal agency from the public before the collections can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, 60-day notices soliciting public comment on changes in the information collection burden that would result from adoption of the proposal is contained in this rule.

Comments must be received by May 2, 2006.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to, Keith Churchill, Section Chief, Child and Adult Care and Summer Food Service Programs, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 634,

Alexandria, VA 22302-1594. For further information, or for copies of the information collection, please contact Keith Churchill at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

TITLES OF DATA COLLECTION AFFECTED BY THIS RULE

Programs	OMB No.	Expiration date
National School Lunch Program	0584-0006	7/31/07
School Breakfast Program	0584-0012	8/31/07
Summer Food Service Program	0584-0280	10/31/07
Child and Adult Care Food Program	0584-0055	6/30/07
Special Supplemental Nutrition Program for Women, Infants and Children	0584-0043	3/31/07
Food Distribution Forms (Commodity Supplemental Food Program and The Emergency Food Assistance Program)	0584-0293	2/29/08

Type of Request: Revision of currently approved collections.

Abstract: This proposed rule is part of the Department's effort to fulfill its responsibilities under Executive Orders 13279 and 13280. In order to implement these Executive Orders, it is essential to collect information that allows FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of FBOs and COs in its programs, ensure that FNS' programs

are open to all eligible organizations and evaluate the effectiveness of its technical assistance and outreach efforts. The consequence of non-collection would be an inability to determine the success of efforts to comply with the Executive Orders.

Respondents: State agencies collect data from organizations and institutions that submit an application for the purpose of contracting, or entering into an agreement, to participate in the National School Lunch Program; School

Breakfast Program; Summer Food Service Program; Child and Adult Care Food Program; Special Supplemental Nutrition Program for Women, Infants and Children; Commodity Supplemental Food Program; or with the State agency or another recipient agency to participate in The Emergency Food Assistance Program (TEFAP). State agencies document, compile, and report the data to FNS.

Estimated Annual Reporting Burden:

**NATIONAL SCHOOL LUNCH PROGRAM
[OMB #0584-0006]**

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Each State agency (SA) collects data related to currently participating school food authorities and applicant school food authorities for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.					
Total Existing State Agency	7 CFR 210.23(d)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 210.23(d)(1)	57	364	.25	5,187
Total Reporting Burden:					

NATIONAL SCHOOL LUNCH PROGRAM—Continued

[OMB #0584-0006]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	5,187 .....	.....	.....	.....	.....
Change	+5,187 .....	.....	.....	.....	.....

SAs document the process used to determine the data and report process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 210.23(d)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 210.23(d)(2)	57	1	1	57
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	57 .....	.....	.....	.....	.....
Change	+57 .....	.....	.....	.....	.....

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 210.23(d)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 210.23(d)(3)	57	1	.5	28.5
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	28.5 .....	.....	.....	.....	.....
Change	+28.5 .....	.....	.....	.....	.....

Current Total Existing Burden for 7 CFR part 210: 10,448,411.
 Total Purposed Burden Attributed to Rule: 5,272.5.
 Total Proposed Burden for 7 CFR part 210: 10,453,683.

SCHOOL BREAKFAST PROGRAM

[OMB #0584-0012]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
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Each SA collects data related to currently participating school food authorities and applicant school food authorities for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.

Total Existing State Agency	7 CFR 220.13(l)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 220.13(l)(1)	57	290	.25	4,132.5
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	4,132.5 .....	.....	.....	.....	.....
Change	+4,132.5 .....	.....	.....	.....	.....

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 220.13(l)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 220.13(l)(2)	57	1	1	57
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	57 .....	.....	.....	.....	.....
Change	+57 .....	.....	.....	.....	.....

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 220.13(l)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 220.13(l)(3)	57	1	.5	28.5
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	28.5 .....	.....	.....	.....	.....
Change	+28.5 .....	.....	.....	.....	.....

Current Total Existing Burden for 7 CFR part 220: 4,564,772.
 Total Proposed Burden Attributed to Rule: 4,218.
 Total Proposed Burden for 7 CFR part 220: 4,568,990.

SUMMER FOOD SERVICE PROGRAM
[OMB #0584-0280]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Each SA collects data related to currently participating sponsors and applicant sponsors for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.					
Total Existing State Agency	7 CFR 225.18(i)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 225.18(i)(1)	52	70	.25	910
Total Reporting Burden:					
Total Existing	0				
Total Proposed	910				
Change	+910				

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 225.18(i)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 225.18(i)(2)	52	1	1	52
Total Reporting Burden:					
Total Existing	0				
Total Proposed	52				
Change	+52				

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 225.18(i)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 225.18(i)(3)	52	1	.25	13
Total Reporting Burden:					
Total Existing	0				
Total Proposed	13				
Change	+13				

Current Total Existing Burden for 7 CFR part 225: 249,769.
Total Purposed Burden Attributed to Rule: 975.
Total Proposed Burden for 7 CFR part 225: 250,744.

CHILD AND ADULT CARE FOOD PROGRAM
[OMB #0584-0055]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Each SA collects data related to currently participating organizations and applicant organizations for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.					
Total Existing State Agency	7 CFR 226.25(g)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 226.25(g)(1)	53	388	.5	10,282
Total Reporting Burden:					
Total Existing	0				
Total Proposed	10,282				
Change	+10,282				

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 226.25(g)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 226.25(g)(2)	53	1	1	53
Total Reporting Burden:					
Total Existing	0				
Total Proposed	53				
Change	+53				

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 226.25(g)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 226.25(g)(3)	53	1	.25	13.25
Total Reporting Burden:					
Total Existing	0				
Total Proposed	13.25				

CHILD AND ADULT CARE FOOD PROGRAM—Continued

[OMB #0584-0055]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Change	+13.25 .....	.....	.....	.....	.....

Current Total Existing Burden for 7 CFR part 226: 5,782,030.
 Total Purposed Burden Attributed to Rule: 10,348.25.
 Total Proposed Burden for 7 CFR part 226: 5,792,378.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

[OMB #0584-0043]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
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Each SA collects data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.

Total Existing State Agency	7 CFR 246.26(h)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 246.26(h)(1)	53	35	.25	463.8
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	463.8 .....	.....	.....	.....	.....
Change	+463.8 .....	.....	.....	.....	.....

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 246.26(h)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 246.26(h)(2)	53	1	1	53
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	53 .....	.....	.....	.....	.....
Change	+53 .....	.....	.....	.....	.....

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 246.26(h)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 246.26(h)(3)	53	1	.25	13.25
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	13.25 .....	.....	.....	.....	.....
Change	+13.25 .....	.....	.....	.....	.....

Current Total Existing Burden for 7 CFR part 246: 2,953,524.
 Total Purposed Burden Attributed to Rule: 530.05.
 Total Proposed Burden for 7 CFR part 246: 2,954,054.

FOOD DISTRIBUTION FORMS—COMMODITY SUPPLEMENTAL FOOD PROGRAM

[OMB #0584-0293]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
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Each SA collect data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through 2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the "Requirements" section.

Total Existing State Agency	7 CFR 247.29(d)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 247.29(d)(1)	35	4	.25	35
Total Reporting Burden:					
Total Existing	0 .....	.....	.....	.....	.....
Total Proposed	35 .....	.....	.....	.....	.....
Change	+35 .....	.....	.....	.....	.....

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 247.29(d)(2)	0	0	0	0
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FOOD DISTRIBUTION FORMS—COMMODITY SUPPLEMENTAL FOOD PROGRAM—Continued
[OMB #0584-0293]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Total Proposed State Agency	7 CFR 247.29(d)(2)	35	1	1	35
Total Reporting Burden:					
Total Existing	0				
Total Proposed	35				
Change	+35				

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 247.29(d)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 247.29(d)(3)	35	1	.25	8.75
Total Reporting Burden:					
Total Existing	0				
Total Proposed	8.75				
Change	+8.75				

Current Total Existing Burden for 7 CFR part 247: 298,267.
Total Purposed Burden Attributed to Rule: 78.75.
Total Proposed Burden for 7 CFR part 247: 298,346.

FOOD DISTRIBUTION FORMS—THE EMERGENCY FOOD ASSISTANCE PROGRAM
[OMB #0584-0293]

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Total Existing State Agency	7 CFR 251.10(i)(1)	0	0	0	0
Total Proposed State Agency	7 CFR 251.10(i)(1)	56	29	.25	406
Total Reporting Burden:					
Total Existing	0				
Total Proposed	406				
Change	+406				

SAs document the process used to determine the data and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

Total Existing State Agency	7 CFR 251.10(i)(2)	0	0	0	0
Total Proposed State Agency	7 CFR 251.10(i)(2)	56	1	1	56
Total Reporting Burden:					
Total Existing	0				
Total Proposed	56				
Change	+56				

On or before March 1 of each year from 2007 through 2010, SAs report to FNS, as designated by FNS, data compiled for the prior Federal fiscal year.

Total Existing State Agency	7 CFR 251.10(i)(3)	0	0	0	0
Total Proposed State Agency	7 CFR 251.10(i)(3)	56	1	.25	14
Total Reporting Burden:					
Total Existing	0				
Total Proposed	14				
Change	+14				

Current Total Existing Burden for 7 CFR part 251: 674,693
Total Purposed Burden Attributed to Rule: 476
Total Proposed Burden for 7 CFR part 251: 675,169

Commenters should note that the average burden per response for the requirement that "each SA collects data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through

2009, and reports on those data elements that will be selected from the list of proposed data elements included above in the 'Requirements' section" is .25 hour. This average burden per response was based on the collection of

the four data elements (a)-(d) found in the "Requirements" section of this preamble. Should a different combination of data elements be selected, the average burden hours per response may change. For example,

should the four data elements (e)–(h) be selected, the average burden hour per response for this response could be expected to increase to 2 hours.

List of Subjects

7 CFR Part 210

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, National School Lunch Program.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, American Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs—social programs, American Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210, 220, 225, 226, 246, 247 and 251 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.23, a new paragraph (d) is added to read as follows:

§ 210.23 Other responsibilities.

* * * * *

(d) *Data collection related to school food authorities.*

(1) Each State agency must collect data related to currently participating school food authorities and applicant school food authorities for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (d)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (d)(1) of this section for the prior Federal fiscal year.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.13, a new paragraph (l) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(l) *Data collection related to school food authorities.*

(1) Each State agency must collect data related to currently participating school food authorities and applicant

school food authorities for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (l)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (l)(1) of this section for the prior Federal fiscal year.

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In § 225.18, a new paragraph (i) is added to read as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(i) *Data collection related to sponsors.*

(1) Each State agency must collect data related to currently participating sponsors and applicant sponsors for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (i)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (i)(1) of this section for the prior Federal fiscal year.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.25, a new paragraph (g) is added to read as follows:

§ 226.25 Other provisions.

* * * * *

(g) *Data collection related to organizations.*

(1) Each State agency must collect data related to currently participating organizations and applicant organizations for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations;

(2) State agencies must document the process used to determine the data specified in paragraph (g)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in

paragraph (g)(1) of this section for the prior Federal fiscal year.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.26, a new paragraph (h) is added to read as follows:

§ 246.26 Other provisions.

* * * * *

(h) *Data collection related to local agencies.*

(1) Each State agency must collect data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (h)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (h)(1) of this section for the prior Federal fiscal year.

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. The authority citation for part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2 (8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7

U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); Pub. L. 107–171.

2. In § 247.29, a new paragraph (d) is added to read as follows:

§ 247.29 Reports and recordkeeping.

* * * * *

(d) *Data collection related to local agencies.*

(1) Each State agency must collect data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (d)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (d)(1) of this section for the prior Federal fiscal year.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

2. In § 251.10, a new paragraph (i) is added to read as follows:

§ 251.10 Miscellaneous provisions.

* * * * *

(i) *Data collection related to eligible recipient agencies.*

(1) Each State agency must collect data related to currently participating local agencies and applicant local agencies for Federal fiscal years 2006 through 2009. Such data may include but are not limited to:

(i) The total number of organizations that submitted an application to the

State agency or to another eligible recipient agency to participate in the program with subtotals for the number of faith-based and community-based organizations;

(ii) The total number of applications that were approved by the State agency or by another eligible recipient agency with subtotals for the number of faith-based and community-based organizations;

(iii) The total number of organizations and institutions that sign a contract, or enter into an agreement with the State agency or with another eligible recipient agency with subtotals for the number of faith-based and community-based organizations;

(iv) The total number of organizations and institutions that actually participate in the program with subtotals for the number of faith-based and community-based organizations.

(2) State agencies must document the process used to determine the data specified in paragraph (i)(1) of this section and report that process to FNS, on or before March 1 of each year from 2007 through 2010.

(3) On or before March 1 of each year from 2007 through 2010, State agencies must report to FNS, as designated by FNS, data compiled as specified in paragraph (i)(1) of this section for the prior Federal fiscal year.

Dated: February 27, 2006.

Kate Coler,

Deputy Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 06-1985 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03-086-2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before March 10, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0107 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in [Regulations.gov](http://www.regulations.gov).
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03-086-1, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 03-086-1.

Reading Room: You may read any comments that we receive on Docket No. 03-086-1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8758.

SUPPLEMENTARY INFORMATION: On December 22, 2005, we published in the *Federal Register* (70 FR 75967-75981, Docket No. 03-086-1) a proposal to amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States.

Comments on the proposed rule were required to be received on or before February 21, 2006. We are reopening the comment period on Docket No. 03-086-1 until March 10, 2006. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments

received between February 22, 2006, and the date of this notice.

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

Done in Washington, DC, this 27th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-3037 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-23927; Airspace Docket No. 06-AAL-11]

Proposed Revision of Class E Airspace; Big Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Big Lake, AK. Two Standard Instrument Approach Procedures (SIAPs) are being produced, and one SIAP is being revised for the Big Lake Airport. Adoption of this proposal would result in revision of Class E airspace upward from 700 feet (ft.) above the surface at Big Lake, AK.

DATES: Comments must be received on or before April 17, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2006-23927/Airspace Docket No. 06-AAL-11, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: gary.ctr.rolf@faa.gov. Internet address: <http://www.alaska.faa.gov/at>.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2006-23927/Airspace Docket No. 06-AAL-11." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling

(202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at Big Lake, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Big Lake, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has drafted two SIAPs and amended one SIAP for the Big Lake Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 07, Original; and (2) RNAV (GPS) RWY 25, Original. The revised approach is the Very High Frequency Omni-directional Range (VOR) RWY 07, Amendment 6. This action would modify the Class E controlled airspace extending upward from 700 ft. above the surface near the Big Lake Airport. The runway designation is also changing from 08/24 to 07/25 due to magnetic variation changes. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Big Lake Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Big Lake Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Big Lake, AK [Revised]

Big Lake Airport, AK

(Lat. 61°32'10" N., long. 149°48'50" W.)

Big Lake VORTAC

(Lat. 61°34'10" N., long. 149°58'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Big Lake Airport, and within 4 miles north and 8 miles south of the 295° radial of the Big Lake VORTAC extending to 16 miles west of the VORTAC.

* * * * *

Issued in Anchorage, AK, on February 24, 2006.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. E6-3072 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

RIN 0960-AG11

Medicare Part B Income-Related Monthly Adjustment Amount

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to add to our regulations a new subpart, Medicare Part B Income-Related Monthly Adjustment Amount, to contain the rules we would follow for Medicare Part B income-related monthly adjustment amount determinations. The monthly adjustment amount represents the amount of decrease in the Medicare Part B premium subsidy, *i.e.* the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund. This new subpart would implement section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act or MMA) and would contain the rules for determining when, based on income, a monthly adjustment amount will be added to a Supplementary Medical Insurance (Medicare Part B) beneficiary's standard monthly premium. These proposed rules describe: what the new subpart is about; what information we would use to determine whether you would pay an income-related monthly adjustment amount and the amount of the adjustment when applicable; when we will consider a major life-changing

event that results in a significant reduction in your modified adjusted gross income; and how you can appeal our determination about your income-related monthly adjustment amount.

DATES: To be sure your comments are considered, we must receive them by May 2, 2006.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-9793 or TTY 1-800-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Statutory Provisions

Section 811 of the MMA (Public Law 108-173), which was enacted into law on December 8, 2003, added subsection (i) to section 1839 of the Social Security Act (the Act), and established a Medicare Part B premium subsidy reduction (referred to in these proposed rules as "the income-related monthly adjustment amount") effective January 1, 2007, which will be added to the standard monthly Medicare Part B premium amount for certain beneficiaries. Section 1839(i) of the Act was subsequently amended by section 5111 of the Deficit Reduction Act of

2005, Public Law 109-171. The Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS), has overall responsibility for determining the annual Medicare Part B standard monthly premium amounts and premium increases for late enrollment or reenrollment. CMS regulations at 42 CFR part 408 describe the rules that CMS uses to determine those amounts. As explained in these proposed rules, we are responsible only for making initial determinations and reconsiderations about income-related monthly adjustment amounts. Any subsequent levels of appeal will be provided by HHS under its regulations at 42 CFR part 405, subpart I.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Other provisions in section 811 of the MMA provide us with additional specific authorization to make rules and regulations to determine the income-related monthly adjustment amount. For example, sections 1839(i)(4)(B) and (i)(4)(C)(i)(II) of the Act authorize us to promulgate regulations, in consultation with the Secretary of the Treasury, necessary for our determinations about income-related monthly adjustment amounts. Section 1839 of the Act requires the Secretary of HHS to annually determine the Medicare Part B standard monthly premium amount. Section 1839 of the Act also authorizes the Secretary of HHS to establish a premium increase for late enrollment and for reenrollment under certain circumstances and provide for a limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries.

The new section 1839(i) requires us to determine the income-related monthly adjustment amount for Medicare beneficiaries with modified adjusted gross income above an established threshold. The income-related monthly adjustment amount is added to the Medicare Part B standard monthly premium and any applicable premium increase for late enrollment or reenrollment. The MMA provides that in 2007 the modified adjusted gross income threshold is \$80,000 for individuals who file their Federal income taxes with a filing status of single and \$160,000 for married individuals who file a joint tax return. Section 811(c)(1) of the MMA enacted a new section 6103(1)(20) of the Internal Revenue Code authorizing the Internal Revenue Service (IRS) to provide certain income information to us to use in determining the income-related monthly adjustment amount. The MMA requires

that the threshold amount be adjusted yearly based on the Consumer Price Index.

Section 811(b)(1)(C) of the MMA also amended section 1839(f) of the Act, so that the limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries will not apply to beneficiaries who are responsible for an income-related monthly adjustment amount.

Background

Medicare Part B is a voluntary program which provides medical insurance coverage for medical and health services such as physician services, diagnostic services, and medical supplies. Medicare Part B beneficiaries are responsible for deductibles, co-insurance and monthly premiums towards the cost of covered services. CMS promulgates rules and regulations concerning the Medicare program.

The Medicare Part B standard monthly premium is set by CMS so that it covers approximately 25 percent of the Medicare Part B program costs. Certain beneficiaries may also pay an increased premium for late enrollment in Medicare Part B or for reenrollment after a period without coverage. Approximately 75 percent of the full cost of Medicare Part B is subsidized by the Federal Government by contributions to the Federal Supplementary Medical Insurance Trust Fund. In addition, for certain beneficiaries whose premiums are deducted from other payable Social Security (or railroad retirement) benefit amounts that they receive, the yearly adjustment to the premium amount cannot be raised more than the amount of the cost-of-living adjustment for those other benefits.

Starting in January 2007, the Medicare Part B premium subsidy will be reduced for an estimated 4 to 5 percent of the approximately 40 million Medicare Part B beneficiaries. Beneficiaries who had modified adjusted gross income above the threshold level set in the MMA in the tax year 2 years prior to the year for which we make a determination about whether they must pay an income-related monthly adjustment amount (the effective year) will receive a reduced Federal subsidy of their Medicare Part B premium. The reduction of the Federal premium subsidy will result in beneficiaries with modified adjusted gross income above the threshold paying more of the cost of their Medicare Part B benefits through an income-related monthly adjustment amount that is added to the Medicare Part B standard monthly premium plus

any applicable premium increase for late enrollment or reenrollment.

How This Affects You

Your modified adjusted gross income is your adjusted gross income, as defined at 26 U.S.C. 62 and in related regulations, plus certain other forms of income that may be excluded from adjusted gross income for the purpose of determining the amount of Federal income tax that you must pay. The MMA as amended by the Deficit Reduction Act provides that the payment of the full amount of the income-related monthly adjustment amount will be phased in starting in 2007 and will be completed in 2009. If you must pay an income-related monthly adjustment amount, you will not be eligible for the limitation on Medicare Part B standard monthly premium increase beyond the amount of your Social Security (or tier 1 railroad retirement) cost-of-living adjustments, as described in 42 CFR 408.20.

If you are a Medicare beneficiary prior to January 1, 2007 and you will be required to pay an income-related monthly adjustment amount in 2007, you will be notified at the end of 2006 about the additional amount of your premium and any related changes in the amount of your Social Security monthly benefits or other payments from which your premiums will be withheld (railroad retirement or Civil Service annuity payments). If you enroll in Medicare Part B after January 1, 2007 and we determine that you must pay an income-related monthly adjustment amount for your Medicare Part B coverage, you will be notified shortly after you enroll in Medicare Part B. If you are a Medicare beneficiary during 2007 or after, we will notify you prior to the start of each year if you must pay an income-related monthly adjustment amount in that year.

How We Determine Your Income-Related Monthly Adjustment Amount

The amount of your modified adjusted gross income will determine if you are to pay an income-related monthly adjustment. Section 1839(i)(2) of the Act establishes the threshold for modified adjusted gross income used to determine if you are to pay an income-related monthly adjustment amount. In 2007, the modified adjusted gross income threshold amount is \$80,000 for individuals who file their Federal income tax return with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child, and \$160,000 for individuals who file a joint income tax return with their spouse.

Section 1839(i)(4) of the Act requires us to request information about your modified adjusted gross income from IRS in the Department of the Treasury and to use this information to determine if you must pay an income-related monthly adjustment amount. We will specify the tax year involved in our information request. We will request that IRS send us Federal income tax return information about your modified adjusted gross income for the tax year which is 2 years before the effective year. If modified adjusted gross income information is not available from IRS for the tax year 2 years before the effective year of our determination, IRS will send us your modified adjusted gross income information for the tax year 3 years before that year if it exceeds the threshold. We will use information for 3 years prior to determine whether you must pay an income-related monthly adjustment amount only until information for 2 years prior becomes available.

If we use information from IRS for the tax year 3 years before the effective year of our determination, you may request that we use information that you provide for the tax year 2 years before that year. We will use that information, when you provide it to us, if that information will result in a lower income-related monthly adjustment amount. In order for us to make an initial determination based on such a request, you must provide your retained copy of your Federal income tax return for that year, a copy that you request from IRS, or an IRS transcript of your return. If you provide your retained copy, we will also verify this information with IRS.

In some cases, IRS will not have data to provide us regarding an individual's modified adjusted gross income because the amount of the individual's income is below the level for which an income tax return must be filed. We will not be making income-related monthly adjustment amount determinations in such situations because this individual's income would also be below the modified adjusted gross income threshold. However, if we receive information which indicates that an individual who has not filed a tax return has income which exceeds the established threshold for an income-related monthly adjustment amount, we will make such a determination. The statute requires that we, in consultation with the Secretary of the Treasury issue regulations that "provide for the treatment of the premium adjustment with respect to such individual[s]." We are consulting with the IRS to determine if we can obtain information from IRS

(or otherwise) on such non-filing individuals. Since typically the IRS does not collect and maintain the same information for filers and non-filers, SSA is requesting public comment on this issue.

The Sliding Scale Formula and How It Applies to You

Section 1839(i)(3) prescribes a sliding scale formula that CMS will use to establish annually four income-related monthly adjustment amounts beginning in 2007. The calculation of the income-related monthly adjustment amount reduces a beneficiary's Medicare Part B premium subsidy using specified percentages. The amount of this premium subsidy reduction is the income-related monthly adjustment amount. To determine each income-related monthly adjustment amount, CMS will use the unsubsidized Medicare Part B premium (approximately four times the Medicare Part B standard monthly premium) and multiply it by a specified percentage. The percentage used in the calculation increases as the amount of modified adjusted gross income increases.

We use your modified adjusted gross income and your Federal income tax filing status (e.g., single, married filing jointly, married filing separately) to determine whether you must pay an income-related monthly adjustment amount and the amount of your income-related monthly adjustment amount. Section 1839(i)(3)(C) provides the modified adjusted gross income ranges. The range amounts for individuals who are married filing jointly are double the range amounts for single income tax filers. IRS recognizes three additional filing statuses: Head of household, qualifying widow(er) (26 U.S.C. 2) and married filing separately. If you file as a head of household or as a qualifying widow(er), we will apply the modified adjusted gross income range applicable to individuals who file their Federal income tax with a filing status of single. Section 1839(i)(3)(C)(iii) provides for the modified adjusted gross income ranges for individuals who file their Federal income tax return with a filing status of married filing separately and who also have lived with their spouse at any time during the year to be reduced by the threshold amount established for that calendar year which may result in a higher income-related monthly adjustment amount for these individuals. However, section 1839(i)(1) provides a threshold amount (which is \$80,000 in 2007 but will change in subsequent years due to indexing) that is applicable to all income-related monthly adjustment amount

determinations. Thus, the lowest range amount cannot be lower than the threshold. For 2007, this results in the following two ranges for married filing separately: (1) \$80,000 to less than or equal to \$120,000 and (2) More than \$120,000.

Starting in 2007 for calendar year 2008, and annually thereafter for each following calendar year, CMS will publish the annual modified adjusted gross income ranges and income-related monthly adjustment amounts that are associated with each range. We will use this published information to determine which amount applies to you based on your tax filing status in the tax year we are using to determine your income-related monthly adjustment amount.

If you filed an amended tax return for the tax year we used to make a determination of your income-related monthly adjustment amount, you may request that we use your amended tax return for that year. You must provide us with proof that you filed an amended tax return with IRS, including your retained copy of the amended tax return, and a letter from IRS verifying receipt of the return or an IRS transcript of your amended tax return. If you believe that IRS provided incorrect modified adjusted gross income information and we used that information to determine your income-related monthly adjustment amount, you may request that we make a new income-related monthly adjustment amount determination. You must provide proof of the error in the IRS data and evidence of your actual modified adjusted gross income, such as a copy of the return that you obtain from IRS. When we use information from your amended or corrected Federal income tax return to make a determination, we will make retroactive adjustments that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

Phase-In and Inflation Adjustment of the Income-Related Monthly Adjustment Amount

Section 1839(i)(3)(B) requires the amount of the full income-related monthly adjustment to be phased in over a 3-year period beginning in 2007. The effect is that from 2007 through 2009 the amount of the income-related monthly adjustment amount will increase, because the subsidy will decrease. The percentage will change each year so that the income-related monthly adjustment amount will gradually increase, until the full amount is phased in starting in 2009.

Beginning in 2008, section 1839(i)(5) of the Act requires an annual inflation adjustment for the threshold amount and the amounts used in the modified adjusted gross income ranges. The adjustment will be based on the percentage increase in the Consumer Price Index for all urban consumers rounded to the nearest \$1,000. CMS will publish these amounts annually.

Changes in Your Modified Adjusted Gross Income

Section 1839(i)(4)(C) of the Act requires us to establish procedures in consultation with the Secretary of the Treasury for determining your modified adjusted gross income for a tax year more recent than the information ordinarily provided by IRS. The statute states that we will grant your request to use a more recent tax year to determine your income-related monthly adjustment amount only when:

- You experience a major life-changing event;
- That major life-changing event results in a significant reduction in your modified adjusted gross income;
- You request that we use a more recent tax year's modified adjusted gross income; and
- You provide evidence of the event and the reduction in your modified adjusted gross income.

These proposed rules describe the standards that you must meet in order for us to use a more recent tax year's modified adjusted gross income to determine whether you must pay an income-related monthly adjustment amount and what the amount of your income-related monthly adjustment amount will be. In these proposed rules we define qualifying major life-changing events and what is a significant reduction in your modified adjusted gross income. We also specify the evidence we will require of major life-changing events and the resulting reduction in your modified adjusted gross income.

Section 1839(i)(4)(C)(ii)(II) specifies that major life-changing events include marriage, divorce, and death of a spouse. Under that section, we have discretion to include in regulations additional major life-changing events that would allow us to grant your request that we use information from a more recent tax year to determine your income-related monthly adjustment amount. In these rules we propose to establish the following categories of qualifying major life-changing events:

- Death of a spouse;
- Marriage;
- Divorce;
- Partial or full work stoppage;

- Loss of income from income-producing property when the loss is not at your direction, for example, loss of income from real property due to a natural disaster in a Presidentially or Governorially-declared disaster area, or due to arson, or destruction of livestock or crops; and

- Reduction or loss of certain forms of pension income due to termination or reorganization of the pension plan, or a scheduled cessation of your pension benefits.

We have included these additional categories of major life-changing events because we recognize that these events may cause a significant reduction in your modified adjusted gross income. We will include losses in pension income that occur due to events outside of your control, such as underfunding that results in a termination of the plan, but not due to your choices about funding an employee-directed pension plan. The statute does not authorize us to define as major life-changing events circumstances that affect your expenses, but not your income.

We propose to define a significant reduction in your modified adjusted gross income as any change that results in a reduction or elimination of your income-related monthly adjustment amount. Section 1839(i)(4)(C)(ii) provides that we may grant your request to use a more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount only if you provide us with a copy of a filed Federal income tax return or equivalent document. These proposed rules define the evidence that we will consider to be equivalent to a copy of a filed Federal income tax return.

When we make an income-related monthly adjustment amount determination based on your request due to a qualifying major life-changing event, the determination will generally be effective on January 1 of the calendar year for which we make the determination. If you enrolled in Medicare Part B after January 1 of the year for which we make an income-related monthly adjustment amount determination based on your request due to a major life-changing event, the determination will be effective the month of your Medicare Part B enrollment.

When we make an income-related monthly adjustment amount determination following a major life-changing event using your more recent tax year's modified adjusted gross income, we will continue trying to get IRS data for that tax year. When we receive modified adjusted gross income

information from IRS for that tax year, we will use the information from IRS to determine the correct income-related monthly adjustment amount for the year or years for which we used information that you provided, and we will make retroactive adjustments, if necessary. Retroactive adjustments will apply to all months for which you paid an incorrect income-related monthly adjustment amount.

If You Disagree With Our Determination of Your Income-Related Monthly Adjustment Amount

We will decide whether you must pay an income-related monthly adjustment, and the amount of any adjustment, based on information we receive from IRS or you. We will send you a notice of our initial determination of your income-related monthly adjustment amount and the basis for our determination. The notice will explain that, if you disagree with our determination, you may request that we reconsider it within 60 days after the date you receive notice of our initial determination. The notice will also explain that you may request a new initial determination, rather than a reconsideration, if you believe the information we used in our initial determination was correct, but you want us to use different information about your modified adjusted gross income.

For purposes of this subpart, in making initial determinations and reconsiderations, we will use the rules for the administrative review process that we use for determinations of your rights regarding nonmedical issues under title II of the Act. These are the same rules that we use when making initial determinations and reconsiderations regarding applications for and entitlement to Medicare benefits under 42 CFR 405.904(a)(1). If you are dissatisfied with our reconsideration, you may request further review, including a hearing before an administrative law judge from the Office of Medicare Hearings and Appeals (OMHA) at HHS, review by the Medicare Appeals Council (MAC), and judicial review, consistent with the CMS regulations at 42 CFR part 405, subpart I. As part of your request for an administrative law judge hearing or MAC review, you will be required to provide your consent to HHS for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

We propose to establish a new procedure, a request for a new initial determination, that you may use when you do not dispute the accuracy of the IRS modified adjusted gross income information we used, or the determination we made based on that information, but you want us to use different information. You may provide evidence of your modified adjusted gross income for a more recent tax year than the information provided by IRS when you have had a major life-changing event that significantly reduces your income or when IRS has provided modified adjusted gross income information from 3 years prior to the premium effective year and you supply your retained copy of your Federal income tax return for the tax year 2 years prior. You may also request that we make a new initial determination when you have amended your Federal income tax return or when you can furnish proof that IRS has provided incorrect information about your modified adjusted gross income for the year that we used to determine your income-related monthly adjustment amount.

We propose to establish this alternative procedure in view of the nature of the information that we are required by the MMA to use in making determinations regarding the income-related monthly adjustment amount. We anticipate that the use of this new procedure will allow us to make timely adjustments when you have updated information about your modified adjusted gross income, or when you can prove the IRS information we used is incorrect. This process does not affect your right to appeal any initial determination that we make about your income-related monthly adjustment amount, but allows you to choose an alternative of requesting that we use other information to make a new initial determination.

Explanation of Proposed Subpart B

We propose to add a new subpart B, Medicare Part B Income-Related Monthly Adjustment Amount, to part 418 of chapter III of title 20 of the Code of Federal Regulations. Proposed subpart B would contain the rules that we will use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment. Following is a description of each section for proposed subpart B.

Introduction, General Provisions, and Definitions

- Section 418.1001 describes what subpart B is about, lists the groups of sections in the subpart, and the subject of each group.
- Section 418.1005 explains that the purpose of the income-related monthly adjustment amount is to reduce the premium subsidy of the Medicare Part B program, i.e., the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund, for certain beneficiaries.
- Section 418.1010 contains definitions of terms used throughout this subpart.

Determination of the Income-Related Monthly Adjustment Amount

- Section 418.1101 explains what the income-related monthly adjustment amount is and when it is applied.
- Section 418.1105 defines the modified adjusted gross income threshold and what the modified adjusted gross income threshold amounts will be in the year 2007. It also describes how threshold amounts will change in later years.
- Section 418.1110 defines modified adjusted gross income ranges and explains how we will use them and your tax filing status to determine the amount of your income-related monthly adjustment amount when applicable, and what effect Federal income tax filing status has on the ranges.
- Section 418.1115 explains how we will determine your income-related monthly adjustment amount.
- Section 418.1120 describes the effective date of our initial determination about the income-related monthly adjustment amount.
- Section 418.1125 explains how the income-related monthly adjustment amount will affect your total Medicare Part B premium.
- Section 418.1130 explains how we will phase in the full applicable income-related monthly adjustment amounts.
- Section 418.1135 describes what modified adjusted gross income information we will use to determine your income-related monthly adjustment amount.
- Section 418.1140 describes what will happen if the modified adjusted gross income that we later receive from IRS is different from the information that we previously used to make a determination of your income-related monthly adjustment amount.
- Section 418.1145 describes how we will determine the income-related monthly adjustment amount if IRS does

not provide your modified adjusted gross income information.

- Section 418.1150 describes when we will use a copy of your amended Federal income tax return filed with IRS to determine the income-related monthly adjustment amount and what proof is necessary to show that you filed a tax return with IRS.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- Section 418.1201 explains when we will use modified adjusted gross income information for a more recent tax year to determine your income-related monthly adjustment amount.
- Section 418.1205 describes what is considered a major life-changing event that would justify using information from a more recent tax year.
- Section 418.1210 explains what is not considered a major life-changing event that would justify using information from a more recent tax year.
- Section 418.1215 explains which more recent tax years we may use to determine whether you must pay an income-related monthly adjustment amount and the amount of that adjustment.
- Section 418.1220 outlines what evidence we will consider when you request that we use information that you provide about your modified adjusted gross income for a more recent tax year to determine your income-related monthly adjustment amount.
- Section 418.1225 describes what evidence of a major life-changing event you will need to provide to support your request to use a more recent tax year.
- Section 418.1230 describes what evidence of a significant reduction in your modified adjusted gross income you will need to provide to support your request to use a more recent tax year.
- Section 418.1235 explains the effective date of our income-related monthly adjustment amount determination based on your request to use a more recent tax year.
- Section 418.1240 explains when we will stop using your modified adjusted gross income from a more recent tax year for income-related monthly adjustment amount determinations.
- Section 418.1245 explains what you should do if your modified adjusted gross income for the more recent tax year changes.
- Section 418.1250 explains what will happen if you notify us of a change in your modified adjusted gross income for the more recent tax year.

Determinations and the Administrative Review Process

- Section 418.1301 explains what is an initial determination regarding your income-related monthly adjustment, and provides examples of determinations that are initial determinations for purposes of these rules.
- Section 418.1303 explains that administrative actions that are not initial determinations are not subject to the administrative review process.
- Section 418.1305 explains how we will notify you when we make an initial determination, and what information the notice will contain.
- Section 418.1310 explains the effect of the initial determination.
- Section 418.1315 explains when you may request a reconsideration.
- Section 418.1320 explains when you may request that we make a new initial determination.
- Section 418.1325 tells you the rules for the administrative review process.
- Section 418.1330 tells you the rules we will use to decide if reopening a prior determination or decision is appropriate.
- Section 418.1335 explains what will happen if you request a reconsideration because you believe that IRS information we used to make an initial determination about your income-related monthly adjustment amount is incorrect.
- Section 418.1340 explains what to do if you believe our initial determination is based on incorrect modified adjusted gross income information.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on these proposed rules, we also invite your comments on how to make the rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for an "economically-significant" regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus they were reviewed by OMB.

These proposed rules provide the implementing rules for the income-related premium calculation enacted as part of MMA. The legislative provision is expected to result in an overall savings to the Medicare Supplementary Medical Insurance Trust Fund of roughly \$7.7 billion over the period of

fiscal years 2007–2011. The following chart shows the total savings in millions for each program year.

Fiscal year	Total savings
2007	490
2008	1,180
2009	1,860
2010	2,060
2011	2,150
Total: 2007–2011	7,740

In addition, the process of determining the additional premiums will result in an increase in administrative expenses incurred by SSA in the amount of \$200 million over that same 5-year period.

Accounting Statement

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in the following table (Table 1) we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed rules. This table provides our best estimate of the increase in premium payments as a result of the changes to the Part B program presented in these proposed rules. All expenditures are classified as transfers to the SMI Trust Fund.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS
[In millions]

Category	Transfers
Annualized Monetized Transfers	\$1,370.
From Whom to Whom?	Certain High-Income Medicare Part B Beneficiaries to the Medicare SMI Trust Fund.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory

Flexibility Act, as amended, is not required for these proposed rules.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table. Where the public

reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Section	Annual number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 418.1135(c)–(e), § 418.1140(b)–(d), § 418.1320(a)(1)–(2)	104,725	1	30	52,363
§ 418.1150, § 418.1320(a)(2)	300	1	30	150
§ 418.1005(c), § 418.1201, § 418.1215, § 418.1220, § 418.1225, § 418.1230, § 418.1320(a)(4)				1
§ 418.1240(c)–d, § 418.1245, § 418.1250	42,260	1	30	21,130
§ 418.1310, § 418.1315	6,698	1	30	3,349
§ 418.1340	200	1	30	100
Total	154,183			77,093

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to OMB and SSA at the following addresses/numbers:

Office of Management and Budget,
Attn: Desk Officer for SSA, Fax

Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. Fax Number: 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer at 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital

Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: February 27, 2006.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to add a new

subpart B to part 418 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 418—MEDICARE SUBSIDIES

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

Introduction, General Provisions, and Definitions

Sec.

- 418.1001 What is this subpart about?
418.1005 Purpose and administration.
418.1010 Definitions.

Determination of the Income-Related Monthly Adjustment Amount

- 418.1101 What is the income-related monthly adjustment amount?
418.1105 What is the threshold?
418.1110 What are the modified adjusted gross income ranges?
418.1115 How do we determine your income-related monthly adjustment amount?
418.1120 What is the effective date of our initial determination about your income-related monthly adjustment amount?
418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?
418.1130 How will we phase in the income-related monthly adjustment amount?
418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?
418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?
418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?
418.1150 When will we use your amended tax return filed with IRS?

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?
418.1205 What is a major life-changing event?
418.1210 What is not a major life-changing event?
418.1215 What more recent tax year will we use?
418.1220 What evidence will you need to support your request for us to use a more recent tax year?
418.1225 What kind of major life-changing event evidence will you need to support your request?
418.1230 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?
418.1235 What is the effective date of an income-related monthly adjustment

amount initial determination that is based on a more recent tax year?

- 418.1240 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?
418.1245 Should you notify us if your modified adjusted gross income for the more recent tax year changes?
418.1250 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

Determinations and the Administrative Review Process

- 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?
418.1303 What is not an initial determination regarding your income-related monthly adjustment amount?
418.1305 How will we notify you and what information will we provide about our initial determination?
418.1310 What is the effect of an initial determination?
418.1315 When may you request a reconsideration?
418.1320 When may you request that we make a new initial determination?
418.1325 What are the rules for the administrative review process?
418.1330 Is reopening of a determination or decision ever appropriate?
418.1335 Can you request a reconsideration when you believe the IRS information we used is incorrect?
418.1340 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

Authority: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

Introduction, General Provisions, and Definitions

§ 418.1001 What is this subpart about?

This subpart relates to section 1839(i) of the Social Security Act (the Act), as added by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173). Section 1839(i) establishes an income-related monthly adjustment to the Medicare Part B premium. Beneficiaries enrolled in Medicare Part B who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to the Medicare Part B standard monthly premium and any applicable premium increases as described in 42 CFR 408.20. The regulations in this subpart explain how we decide whether you are required to pay an income-related monthly

adjustment amount and the amount of your adjustment. The rules are divided into the following groups of sections:

(a) Sections 418.1001 through 418.1010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.1101 through 418.1150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare Part B premium. These sections also explain how the income-related monthly adjustment amount will be phased in from calendar year 2007 through calendar year 2009.

(c) Sections 418.1201 through 418.1250 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when income-related monthly adjustment amount determinations based on information you provide will be effective, and how long they will remain in effect. Additionally, these sections describe how retroactive adjustments of the income-related monthly adjustment amount will be made based on information you provide, updated information you provide and information we later receive from the Internal Revenue Service (IRS).

(d) Sections 418.1301 through 418.1340 contain the rules that we will apply when you disagree with our determination regarding your income-related monthly adjustment amount. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

§ 418.1005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is to reduce the Federal subsidy of the Medicare Part B program for beneficiaries with modified adjusted gross income above an established threshold. These beneficiaries will pay a greater share of

actual program costs. Medicare Part B premiums paid by beneficiaries cover approximately 25 percent of total Medicare Part B program costs and the remaining 75 percent of program costs are subsidized by the Federal Government's contributions to the Federal Supplementary Medical Insurance Trust Fund. The reduction in the Medicare Part B premium subsidy results in an increase in the total amount that affected beneficiaries pay for Medicare Part B coverage. A beneficiary with modified adjusted gross income above the threshold amount will pay:

(1) The Medicare Part B standard monthly premium; plus

(2) Any applicable increase in the standard monthly premium for late enrollment or reenrollment; plus

(3) An income-related monthly adjustment amount.

(b) The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) publishes the Medicare Part B standard monthly premium each year. CMS also establishes rules for entitlement to a nonstandard premium, as well as premium penalties for late enrollment or reenrollment (42 CFR 408.20 through 408.27).

(c) We use information that we get from IRS to determine if beneficiaries who are enrolled in Medicare Part B are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information provided by a beneficiary under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.1010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of the Centers for Medicare & Medicaid Services (CMS).

(2) *CMS* means the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

(3) *Commissioner* means the Commissioner of Social Security.

(4) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(5) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(6) *The Act* means the Social Security Act, as amended.

(7) *Title* means a title of the Act.

(8) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an amended tax return using the required IRS form(s) has been filed by an individual or couple and accepted by IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the full cost of providing Medicare Part B coverage that is paid by the Federal Government through transfers into the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare Part B coverage if you have income above the threshold. The amount of your income-related monthly adjustment amount is based on your modified adjusted gross income.

(5) *Medicare Part B standard monthly premium* means the monthly Medicare Part B premium amount which is set annually by CMS, according to regulations in 42 CFR 408.20 through 408.27.

(6) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(7) *Modified adjusted gross income ranges* are the four bands of modified adjusted gross income above the threshold. The dollar amounts of the modified adjusted gross income ranges are specified in § 418.1110.

(8) *Non-standard premium* means a Medicare Part B premium that some beneficiaries pay for Medicare Part B, rather than the standard premium. The rules for applying a non-standard premium are in 42 CFR 408.20(e). The non-standard premium does not apply to beneficiaries who must pay an income-related monthly adjustment amount.

(9) *Premium* is a payment that an enrolled beneficiary pays for Medicare Part B coverage. The rules that CMS

uses to annually establish the premium amount are found in 42 CFR 408.20 through 408.27.

(10) *Representative* means an individual as defined in § 404.1703 of this chapter.

(11) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(12) *Threshold* means a modified adjusted gross income amount above which the beneficiary will have to pay an income-related monthly adjustment amount described in paragraph (b)(3) of this section. The dollar amount of the threshold is specified in § 418.1105.

(13) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

Determination of the Income-Related Monthly Adjustment Amount

§ 418.1101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare Part B standard monthly premium plus any applicable increase in that premium as described in 42 CFR 408.22 for your Medicare Part B coverage when your modified adjusted gross income is above the threshold described in § 418.1105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in § 418.1110 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in § 418.1115 and § 418.1130.

§ 418.1105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which the beneficiary will have to pay the income-related monthly adjustment amount.

(b) In 2007, the modified adjusted gross income threshold is \$80,000 for individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is \$160,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2007 and each year thereafter, the threshold amounts for the following year will be set by CMS by increasing the preceding year's threshold amount by the percentage increase in the Consumer Price Index rounded to the

nearest \$1,000. CMS will publish the threshold amounts annually in September in the **Federal Register**. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

§ 418.1110 What are the modified adjusted gross income ranges?

(a) The 2007 modified adjusted gross income ranges for each Federal tax filing category are listed in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment.

(b) In 2007, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$80,000 and less than or equal to \$100,000;
- (2) Greater than \$100,000 and less than or equal to \$150,000;
- (3) Greater than \$150,000 and less than or equal to \$200,000; and
- (4) Greater than \$200,000.

(c) In 2007, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$160,000 and less than or equal to \$200,000;

(2) Greater than \$200,000 and less than or equal to \$300,000;

(3) Greater than \$300,000 and less than or equal to \$400,000; and

(4) Greater than \$400,000.

(d) In 2007, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$80,000 and less than or equal to \$120,000; and
- (2) Greater than \$120,000.

(e) CMS will annually revise the modified adjusted gross income ranges and publish them in the **Federal Register** starting in September of 2007 for 2008. Each year thereafter, all modified adjusted gross income range amounts will be set by CMS by increasing the preceding year's modified adjusted gross income range amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000, and CMS will publish the amounts for the following year in September of each year.

§ 418.1115 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for 2007 in the column on the left in each table. The middle column in each table shows the percentage of the

unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the unsubsidized Medicare Part B premium that will be subsidized by the Federal Supplementary Medical Insurance Trust Fund. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually as described in § 418.1110(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, then the Federal Supplementary Medical Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$100,000	35	65
More than \$100,000 but less than or equal to \$150,000	50	50
More than \$150,000 but less than or equal to \$200,000	65	35
More than \$200,000	80	20

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted gross income for that tax year is in the

range listed in the left column in the following table, then the Federal Supplementary Medical Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the

right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$160,000 but less than or equal to \$200,000	35	65
More than \$200,000 but less than or equal to \$300,000	50	50
More than \$300,000 but less than or equal to \$400,000	65	35

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$400,000	80	20

(3) *Table of applicable percentages for married individuals filing separate returns.* If your Federal tax filing status for the tax year we use is married filing separately and you lived with your

spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Supplementary Medical

Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$120,000	65	35
More than \$120,000	80	20

(c) CMS will annually publish in the **Federal Register** the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

§ 418.1120 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount will be effective for all months that you are enrolled in Medicare Part B during the year for which we determine you must pay an income-related monthly adjustment amount. We will follow the rules in 42 CFR part 408, subpart C, regarding premium collections to withhold your income-related monthly adjustment amount from a benefit payment or to determine if you will be billed directly.

(b) When we have used modified adjusted gross income information from IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount and modified adjusted gross income information for the tax year 2 years prior later becomes available from IRS, we will review the new information to determine if we should revise our initial determination. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month you were enrolled or re-enrolled in Medicare Part B if later than January.

(c) When we use your amended tax return, as described in § 418.1150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

Example: You are enrolled in Medicare Part B throughout 2011. We use your 2009 modified adjusted gross income as reported to us by IRS to determine your 2011 income-related monthly adjustment amount. In 2012 you submit to us a copy of your 2009 amended tax return that you filed with IRS. The modified adjusted gross income reported on your 2009 amended tax return is significantly less than originally reported to IRS. We use the modified adjusted gross income that was reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively adjust for any differences between the amount paid in 2011 and the amount that should have been paid based on the amended tax return.

(d) When we use evidence that you provide which proves that the IRS modified adjusted gross income information we used is incorrect, as described in § 418.1340, the effective date will be January of the year(s) that is affected or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in § 418.1201, the effective date is described in § 418.1235.

§ 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare Part B premium will be the sum of:

- (1) The Medicare Part B standard monthly premium, determined using the rules in 42 CFR 408.20; plus
- (2) Any applicable increase in the Medicare Part B standard monthly premium as described in 42 CFR 408.22; plus

(3) Your income-related monthly adjustment amount.

(b) In 2007 and 2008, your income-related monthly adjustment amount you must pay will be adjusted as described in § 418.1130.

(c) The nonstandard Medicare Part B premium amount described in 42 CFR 408.20 does not apply to individuals who must pay an income-related monthly adjustment amount. Such individuals must pay the full Medicare Part B standard monthly premium plus any applicable penalties for late enrollment or reenrollment plus the income-related adjustment.

§ 418.1130 How will we phase in the income-related monthly adjustment amount?

(a) In 2007 and 2008, we will phase in the full amount of the income-related monthly adjustment amount. For the year in the left column you will pay the percentage of the income-related monthly adjustment amount specified in the right column.

Year	Percentage of the income-related monthly adjustment amount that you will pay
2007	33
2008	67

(b) Phase-in of the subsidy reduction will be complete in 2009.

§ 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

(a) In general, we will use your modified adjusted gross income provided by IRS for the tax year beginning 2 years prior to the effective year of the income-related monthly adjustment amount determination.

Modified adjusted gross income is based on information you provide to IRS when you file your Federal income tax return.

(b) We will use your modified adjusted gross income for the tax year beginning 3 years prior to the effective year of the income-related monthly adjustment amount determination when IRS does not provide the information specified in paragraph (a) of this section. If IRS can provide modified adjusted gross income for the tax year 3 years prior to the income-related monthly adjustment amount effective year, we will temporarily use that information to determine your income-related monthly adjustment amount and make adjustments as described in § 418.1120(b) to all affected income-related monthly adjustment amounts when information for the year specified in paragraph (a) of this section is provided by IRS.

(c) When we have used the information in paragraph (b) of this section, you may provide us with evidence of your modified adjusted gross income for the year in paragraph (a) of this section. You must provide a retained copy of your signed Federal income tax return for that year, if available. If you filed a return for that year, but did not retain a copy, you must request a transcript or a copy of your return from IRS and provide it to us. When we use this evidence, we will later confirm this information with IRS records.

(d) When you meet the conditions specified in § 418.1150 because you have amended your Federal income tax return, or when you believe we have used information provided by IRS which is incorrect, as described in § 418.1340, we will use information that you provide directly to us regarding your modified adjusted gross income.

(e) We may use information that you give us about your modified adjusted gross income for a more recent tax year than those discussed in paragraphs (a) or (b) of this section as described in §§ 418.1201 through 418.1250.

§ 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

In general, we will use modified adjusted gross income information from IRS to determine your income-related monthly adjustment. We will make retroactive adjustments to your income-related monthly adjustment amount as described in paragraphs (a) through (d) of this section.

(a) When we have used modified adjusted gross income from the tax year 3 years prior to the effective year as described in § 418.1135(b), and IRS provides modified adjusted gross income information from the tax year 2 years prior to the effective year, we will use the new information to make an initial determination for the effective year. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(b) When we have used the modified adjusted gross income information that you provided for the tax year 2 years prior to the effective year and the modified adjusted gross income information we receive from IRS for that same year is different from the information you provided, we will use the modified adjusted gross income information provided to us by IRS to make a new initial determination. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we have used information from your amended Federal tax return that you provide, as explained in § 418.1150, or you provide proof that the information IRS provided to us is incorrect as described in § 418.1340, we will not make any adjustments to your income-related monthly adjustment amount for the effective year or years based on IRS information that we later receive.

(d) When we use modified adjusted gross income information that you provided due to a qualifying life-changing event and we receive different information from IRS, we will use the IRS information to make retroactive corrections to all months affected in the effective year(s) during which you were enrolled in Medicare Part B, except when paragraph (c) of this section applies.

§ 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?

In general, if we do not receive any information for you from IRS showing that you had modified adjusted gross income above the threshold in the tax year we request, we will not make an income-related monthly adjustment amount determination.

§ 418.1150 When will we use your amended tax return filed with IRS?

You may provide your amended tax return for a tax year we used within 3

calendar years following the close of the tax year for which you filed the amended tax return. You must provide us with your retained copy of your amended U.S. Individual Income Tax Return on the required IRS form and a copy of the IRS letter confirming the amended tax return was filed or a transcript from IRS if they did not send a letter. If you cannot provide your retained copy of the amended tax return, you must obtain a copy of the return from IRS. We will then make any necessary retroactive corrections as defined in § 418.1120 to your income-related monthly adjustment amount.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

§ 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will use a more recent tax year than the years described in § 418.1135(a) or (b) to reduce or eliminate your income-related monthly adjustment amount when all of the following occur:

(a) You experience a major life-changing event as defined in § 418.1205; and

(b) That major life-changing event results in a significant reduction in your modified adjusted gross income for the year which you request we use and the next year, if applicable. For purposes of this section, a significant reduction in your modified adjusted gross income is one that results in the decrease or elimination of your income-related monthly adjustment amount; and

(c) You request that we use a more recent tax year's modified adjusted gross income; and

(d) You provide evidence as described in §§ 418.1220 through 418.1230.

§ 418.1205 What is a major life-changing event?

For the purposes of this subpart, we will consider the following to be major life-changing events:

(a) Your spouse dies;

(b) You marry;

(c) You divorce;

(d) You or your spouse stop working or reduce the hours you work;

(e) You or your spouse experience a reduction in your income due to a loss of income-producing property, provided that the loss is not at your direction (e.g., due to the sale or transfer of the property). Examples of the type of property loss include, but are not limited to, loss of income from real property within a Presidentially or

Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, or loss of income from real property due to arson.

(f) You or your spouse experience a reduction in or loss of certain forms of pension income due to termination or reorganization of the pension plan or a scheduled cessation of pension benefits.

§ 418.1210 What is not a major life-changing event?

We will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered major life-changing events for the purposes of this subpart, such as:

(a) Events that affect your expenses, but not your income; or

(b) Events that result in the loss of dividend income.

§ 418.1215 What more recent tax year will we use?

We will consider evidence of your modified adjusted gross income that you provide for a tax year that is more recent than the year described in § 418.1135 (a) or (b) when you meet all of the requirements described in § 418.1201. We will always ask you for your retained copy of your filed Federal income tax return for the more recent year you request that we use and will use that information to make an initial determination. If you have not filed your Federal income tax return for the more recent year you request that we use, you must provide us with evidence that is equivalent to a copy of a filed Federal income tax return. Evidence that is equivalent to a copy of a filed Federal income tax return is defined in § 418.1230(c).

§ 418.1220 What evidence will you need to support your request for us to use a more recent tax year?

When you request that we use a more recent tax year to determine your income-related monthly adjustment amount, we will ask for evidence of the major life-changing event and how the event significantly reduced your modified adjusted gross income as described in §§ 418.1225 and 418.1230. Unless we have information in our records that raises a doubt about the evidence, additional evidence documenting these same facts will not be needed.

§ 418.1225 What kind of major life-changing event evidence will you need to support your request?

(a) If your spouse died and we do not have evidence of the death in our records, we will require proof of death

as described in § 404.720(b) or (c) or § 404.721 of this chapter.

(b) If you marry and we do not have evidence of the marriage in our records, we will require proof of marriage as described in §§ 404.725 through 404.727 of this chapter.

(c) If your marriage ends and we do not have evidence that the marriage has ended in our records, we will require proof that the marriage has ended as described in § 404.728(b) or (c) of this chapter.

(d) If you or your spouse stop working or reduce your work hours, we will require evidence documenting the change in work activity. Examples of acceptable documentation include, but are not limited to, a signed statement from your employer, proof of the transfer of your business, or your signed statement under penalty of perjury, describing your work separation or a reduction in hours.

(e) If you or your spouse experience a loss of income from income-producing property, we will require evidence documenting the loss. Examples of the type of evidence include, but are not limited to, insurance claims or an insurance adjuster's statement.

(f) If you or your spouse experience a reduction in or loss of pension income, we will require evidence documenting the reduction or loss. Examples include, but are not limited to, a statement from the Pension Benefit Guaranty Corporation or your pension fund administrator that explains the reduction or termination of your benefits.

§ 418.1230 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?

(a) You must provide evidence that one or more of the major life-changing events described in § 418.1205 resulted in a significant reduction in your modified adjusted gross income for the tax year you request we use.

(b) The preferred evidence is a retained copy of your filed Federal income tax return or amended tax return with an IRS letter of receipt of the amended tax return, or a copy of your return or amended tax return that you obtain from IRS for the more recent tax year you request we use.

(c) When a copy of your filed Federal income tax return is not available for the more recent tax year in which your modified adjusted gross income was significantly reduced, we will accept equivalent evidence. Equivalent evidence is the appropriate proof(s) in paragraphs (c)(1), (2) and (3) of this section, plus your signed statement

under penalty of perjury that the information you provide is true and correct. When the major life-changing event changes your tax filing status, or the income-related monthly adjustment amount determination could be affected by your tax filing status, you will also be required to sign a statement regarding your intended income tax filing status for the tax year you request we use.

(1) If you experience one or more of the events described in § 418.1205(a), (b), or (c), you must provide evidence as to how the event(s) significantly reduced your modified adjusted gross income. Examples of the type of evidence include, but are not limited to, evidence of your spouse's modified adjusted gross income and/or your modified adjusted gross income for the tax year we use.

(2) If you experienced one or more of the events described in § 418.1205(d), (e) or (f), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we use, and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in § 418.1205(d), (e), or (f), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence requirements are described in paragraph (c)(2) of this section.

(d) When we use information described in paragraph (c) of this section, we will request that you provide your retained copy of your Federal income tax return for the year we used when you file your taxes, so that we can make timely adjustments. We will later verify the information you provide when we receive information about that tax year from IRS, as described in § 418.1140(d).

§ 418.1235 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

(a) When you make your request prior to January 1, 2007, our initial determination is effective on January 1, 2007.

(b) Subject to paragraph (c) of this section, when you make your request during or after 2007 and your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or

reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(c) We will make a determination about your income-related monthly adjustment amount for the year preceding the year that you make your request in the limited circumstances explained in § 418.1320(a)(4). When we make a determination for the preceding year, our initial determination is generally effective on January 1 of that year. If your first month of enrollment or reenrollment in Medicare Part B is after January of that year, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(d) When you make your request during or after 2007 and your modified adjusted gross income is significantly reduced beginning in the year following the year in which you make your request as a result of one or more of the events described in § 418.1205(a) through (f), our initial determination is effective on January 1 of the next year.

§ 418.1240 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will use your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount effective with the month and year described in § 418.1235 and for each year thereafter until one of the following occurs:

(a) We receive your modified adjusted gross income from IRS for the more recent tax year we used or a later tax year;

(b) Your more recent tax year modified adjusted gross income that we used is for a tax year more than 3 years prior to the income-related monthly adjustment amount effective year;

(c) You request we use a more recent tax year based on another major life-changing event as described in § 418.1201; or

(d) You notify us of a change in your modified adjusted gross income for the more recent tax year we used as described in § 418.1245.

§ 418.1245 Should you notify us if your modified adjusted gross income for the more recent tax year changes?

If you know that the information you provided to us about the more recent tax year that we used has changed, you should tell us so that we can determine if your income-related monthly adjustment amount should be eliminated or adjusted. We will accept

new modified adjusted gross income information at any time after your request until the end of the calendar year following the more recent tax year(s) that we used. For us to make a new initial determination using your new modified adjusted gross income information, you must provide evidence as described in § 418.1230 to support the reduction or increase in your modified adjusted gross income. If you amend your Federal income tax return for the more recent tax year we used, we will use the rules in § 418.1150.

§ 418.1250 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from IRS, as described in § 418.1135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.1135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive adjustments that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.1240 occurs.

(d) We will make an initial determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from IRS, as described in § 418.1140(d).

Determinations and the Administrative Review Process

§ 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?

An initial determination is the determination we make about your income-related monthly adjustment amount that is subject to administrative review. For the purposes of administering the income-related

monthly adjustment amount, initial determinations include but are not limited to determinations about:

(a) The amount of your income-related monthly adjustment amount based on information provided by IRS; and

(b) Any change in your income-related monthly adjustment amount based on one of the circumstances listed in § 418.1320(a)(1) through (a)(4).

§ 418.1303 What is not an initial determination regarding your income-related monthly adjustment amount?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process as provided by §§ 418.1310 through 418.1330 and they are not subject to judicial review. These actions include, but are not limited to, our dismissal of a request for reconsideration as described in § 418.1335 and our dismissal of a request for a new initial determination as described in § 418.1320(c).

§ 418.1305 How will we notify you and what information will we provide about our initial determination?

(a) We will mail a written notice of all initial determinations to you. The notice of the initial determination will state the important facts and give the reasons for our conclusions. Generally, we will not send a notice if your income-related monthly adjustment amount stops because of your death.

(b) The written notice that we send will tell you:

(1) What our initial determination is;

(2) The reason for our determination;

(3) The effect of the initial determination; and

(4) Your right to a reconsideration or a new initial determination.

§ 418.1310 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the time period described in §§ 404.909 and 404.911 of this chapter or we revise the initial determination or issue a new initial determination.

§ 418.1315 When may you request a reconsideration?

If you are dissatisfied with our initial determination about your income-related monthly adjustment amount, you may request that we reconsider it. In addition, a person who shows in writing that his or her rights may be adversely affected by the initial determination may request a reconsideration. When you request a reconsideration, we will use the rules in

§§ 404.907 through 404.922 of this chapter. If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for reconsideration and notify you that you may contact IRS as explained in § 418.1335.

§ 418.1320 When may you request that we make a new initial determination?

(a) You may request that we make a new initial determination in the following circumstances:

(1) You provide a copy of your filed Federal income tax return for the tax year 2 years prior to the effective year when IRS has provided information for the tax year 3 years prior to the effective year. You may request a new initial determination from the date you receive a notice from us regarding your income-related monthly adjustment amount until the end of the effective year, with one exception. If you receive the notice during the last three months of a calendar year, you may request a new initial determination from the date you receive the notice until March 31 of the following year. We will follow the rules and procedures in § 418.1120(b) and § 418.1140(b) to make a new initial determination and any necessary retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled in Medicare Part B if later than January.

(2) You provide a copy of an amended tax return filed with IRS, as defined in § 418.1010(b)(1). We will use your amended tax return for the same tax year as the year used to determine your income-related monthly adjustment amount. You must request the new initial determination within the timeframe described in § 418.1150.

(3) You provide proof from IRS of a correction of your modified adjusted gross income information or Federal income tax filing status for the year we used. We will use your proof of the correction for the same tax year as the year used for your modified adjusted gross income provided by IRS, as explained in § 418.1340. Within 60 days following the date you receive a notice from us regarding your income-related monthly adjustment amount, you may request a new initial determination. We will use the rules and procedures in § 418.1340.

(4) You have a major life-changing event. You may request a new initial determination based on a major life-changing event when you meet all the requirements described in § 418.1201. You may make such a request at any time during the calendar year in which you experience a significant reduction

in your modified adjusted gross income caused by a major life-changing event. When you have a major life-changing event that occurs in the last 3 months of a calendar year and your modified adjusted gross income for that year is significantly reduced as a result of the event, you may request that we make a new initial determination based on your major life-changing event from the date of the event until March 31 of the next year. We will follow the rules in § 418.1235 when we make a new initial determination based on your major life-changing event.

(b) We will notify you of the new initial determination as described in § 418.1305.

(c) We will dismiss your request to make a new initial determination if it does not meet the conditions specified above. Our dismissal of your request for a new initial determination is not an initial determination subject to further administrative or judicial review.

§ 418.1325 What are the rules for the administrative review process?

For the purpose of this subpart, in making initial determinations and reconsiderations, we will use the same rules for the administrative review process that we use for determinations and decisions about your rights regarding non-medical issues under title II of the Act, as described in subpart J of part 404 of this chapter. If you are dissatisfied with our reconsideration, you may request further review, including a hearing before an administrative law judge of the Office of Medicare Hearings and Appeals at HHS, review by the Medicare Appeals Council, and judicial review, consistent with HHS' regulations at 42 CFR part 405, subpart I. A request for a new initial determination is not the same as a request for reconsideration or further administrative review.

§ 418.1330 Is reopening of a determination or decision ever appropriate?

The rules in §§ 404.987 through 404.991a of this chapter will apply to reopenings of determinations made by us. The rules in 42 CFR 405.980 through 405.986 will apply to reopenings of decisions by an administrative law judge of the Office of Medicare Hearings and Appeals at HHS and by the Medicare Appeals Council.

§ 418.1335 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain

proof of a correction from IRS and request a new initial determination (§ 418.1340). Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.1340 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?

If you believe that IRS or you provided incorrect modified adjusted gross income information to us that we used to determine your income-related monthly adjustment amount, you can request information from us on how to contact IRS regarding the information we used.

(a) If IRS determines that the information it provided is not correct, IRS will provide you with documentation of the error, such as a copy of your Federal income-tax return. If you would like us to use the revised or corrected information to determine your income-related monthly adjustment amount, you will need to request that we use that information and provide us with the IRS documentation confirming the error. We will make any necessary retroactive corrections as defined in § 418.1120 to your income-related monthly adjustment amount.

(b) If you provided information to us about your modified adjusted gross income that we used to determine your income-related monthly adjustment amount, and that information is not correct, you may provide revised or corrected information. We will use the revised or corrected information if it reduces or eliminates your income-related monthly adjustment amount. We will make any necessary retroactive corrections as described in § 418.1120 to your income-related monthly adjustment amount. If you are providing corrected information about a more recent tax year's modified adjusted gross income that we used due to your major life-changing event, as described in § 418.1245, we will use the rules in § 418.1250 to determine how it will affect your income-related monthly adjustment amount.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-107722-00]

RIN 1545-AY22

Corporate Estimated Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations and withdraws proposed regulations relating to corporate estimated taxes.

DATES: The public hearing originally scheduled for March 15, 2006, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the *Federal Register* on Monday, December 12, 2005 (70 FR 73393) announced that a public hearing was scheduled for March 15, 2006, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 6425 and 6655 of the Internal Revenue Code.

The public comment period for these regulations expired on February 22, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 28, 2006, no one has requested to speak. Therefore, the public hearing scheduled for March 15, 2006, is cancelled.

LaNita VanDyke,

Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6-3062 Filed 3-2-06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024-AD25

Glacier Bay National Park, Vessel Management Plan Regulations

AGENCY: National Park Service, Interior
ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing this rule to more effectively manage motor vessel use in Glacier Bay National Park and Preserve. It proposes to revise existing regulations regarding vessel quotas and operating requirements for five types of motor vessels—cruise ships, tour vessels, charter vessels, private vessels, and passenger ferries—within Glacier Bay National Park and Preserve. This rule is proposed in conjunction with the Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD) for Vessel Quotas and Operating Requirements in Glacier Bay National Park and Preserve, completed in October and November 2003, respectively, and implements decisions made in the ROD.

DATES: Comments must be received by May 2, 2006.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 1024-AD25, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail NPS at: akro_regulations@nps.gov. Use RIN 1024-AD25 in the subject line.
- Mail: Superintendent, Proposed Vessel Management Plan Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.
- Hand Delivery/Courier: Superintendent, Glacier Bay National Park and Preserve Headquarters Office at Bartlett Cove. Clearly identify the delivery as Proposed Vessel Management Plan Regulations Comments.

All submissions received must include the agency name and RIN. For additional information see "Public Participation" under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Tomie Patrick Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697-2230.

SUPPLEMENTARY INFORMATION: Glacier Bay National Park and Preserve is

located in southeast Alaska, approximately 65 miles west of Juneau. Accessible by boat and airplane, it is a popular destination due to its spectacular scenery, tidewater glaciers, wilderness, and wildlife. In this document the term "Glacier Bay" generally refers to the bay proper rather than the entire park and preserve.

History of Glacier Bay National Park and Preserve

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925 (No. 1733, 43 Stat. 1988). The monument was expanded by a second presidential proclamation on April 18, 1939 (No. 2330, 53 Stat. 2534). The expanded monument added adjacent lands, including glaciers and geologic features of scientific interest, and the marine waters of all of Glacier Bay; portions of other waters outside Glacier Bay proper; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather.

The Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980, expanded the 2.8-million-acre Glacier Bay National Monument to 3.3 million acres and redesignated this area as Glacier Bay National Park and Preserve (16 U.S.C 410-1, 94 Stat. 2382). The new park and preserve included all lands and waters of the previously existing monument.

Under proclamations that established Glacier Bay as a national monument, the NPS Organic Act and its amendments (16 U.S.C 1, *et seq.*) governed the management of the former Glacier Bay National Monument. Along with ANILCA and several additional statutory provisions enacted by Congress, they continue to govern the present Glacier Bay National Park and Preserve. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. In addition, the Redwood National Park Act of 1978 (amending the General Authorities Act) states: "The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various

areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. 1a-1. The NPS Organic Act also grants the Secretary of the Interior the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addition to general regulatory authority, the NPS has been delegated specific authority to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." 16 U.S.C. 1a-2(h). None of the actions in this proposed rule are intended to preclude vessel management actions for safety, resource protection, or other reasons pursuant to applicable regulations.

Vessel Management in Glacier Bay

Measures to address vessel traffic in Glacier Bay were first implemented in 1979 to respond to concerns regarding the effects of motor vessels on the endangered humpback whale. Regulations went into effect in 1980, influenced largely by the alternatives included in a 1979 biological opinion issued by the National Marine Fisheries Service (NMFS, now known as NOAA Fisheries) in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The opinion concluded that a continued increase in the amount of vessel traffic, particularly charter/pleasure craft, in Glacier Bay was likely to jeopardize the continued existence of the humpback whales in southeast Alaska.

The NMFS issued another biological opinion in 1983 concerning the regulation of vessel traffic and resultant interactions with humpback whales in Glacier Bay National Park and Preserve. This opinion was prepared in response to a request from NPS to reinstate section 7 consultation for the endangered humpback whale in Glacier Bay. This opinion considered the impacts to humpback whales from existing levels of vessel traffic and from the effects of proposed increases in the levels of vessel traffic in Glacier Bay. The opinion concluded that existing traffic, as well as some additional increase in vessel traffic, could occur in Glacier Bay without jeopardizing the southeast Alaska stock of humpback whales. This determination was based on the ability of NPS to monitor and control both the amount of vessel traffic and the operation of vessels in Glacier

Bay. NMFS also recommended vessel operating restrictions and a rationale for regulating vessel entries into Glacier Bay. The agency recommended that any vessel increases be contingent on monitoring studies of whale presence, noise levels, and prey showing no adverse effects. The opinion stated: (1) "no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remains equal to or is greater than the 1982 level" (22 whales were observed between June 1 through August 31, 1982) and (2) "a minimum of two years should be allowed for monitoring and evaluating the effects of such an increase before additional increases are proposed."

Additional vessel regulations were subsequently promulgated in 1985. Consistent with the recommendations in the NMFS 1983 biological opinion, these regulations allowed for up to a 20 percent increase in vessel quotas above the 1976 level for large ship and small motor vessel classes. The NPS implemented increases in two increments, and the 20 percent increase was reached in 1988. Since these regulations were promulgated, concerns have broadened to encompass potential effects on other biota, the physical environment, and visitor experience.

In 1993 NMFS issued another biological opinion—based on a review of a 1992 draft NPS proposal for vessel management in Glacier Bay, available data, and previous biological opinions—addressing the effects of vessel traffic in Glacier Bay on the threatened Steller sea lion, the endangered gray whale, and the endangered North Pacific population of humpback whales. NMFS concluded that the level of activity described in the 1992 draft NPS proposal would not jeopardize the continued existence and recovery of any threatened or endangered species. Nonetheless, due to concern about the decline in humpback whale use of Glacier Bay, NMFS, in its opinion, "urged the NPS to take a conservative approach in all management actions that may affect humpback whales" and recommended that NPS "implement a humpback whale feeding ecology research program" and "continue humpback whale monitoring programs that identify the number of humpback whales that feed in the National Park waters, and their individual identity, age, reproductive status, and length of stays."

Based on the park's management objectives from the 1984 General Management Plan and the 1993 NMFS opinion, the NPS completed a 1996 Vessel Management Plan (VMP)/revised

environmental assessment (EA) and issued a finding of no significant impact (FONSI) regarding vessel quotas and operating requirements. The NPS decision regarding vessel management provided for increases in quotas for cruise ships, charter vessels, and private vessels in Glacier Bay. With respect to cruise ships, it allowed for 139 cruise ships throughout the June through August season, with potential for incremental increases to 184 ships (*i.e.*, up to two cruise ships per day during the 3-month season), based on scientific and other information and applicable authorities. Regulations adopting the VMP vessel quotas became effective in May 1996. Based in part on recommendations in the 1993 biological opinion, research and monitoring were initiated to better understand the effects of motor vessels on park resources and values.

Subsequent legislation affecting Glacier Bay National Park and Preserve included the Omnibus Parks and Public Lands Management Act of 1996 (Pub. L. 104-333). Section 703 of this Act directed NPS to not impose additional operating conditions in the areas of air, water, and oil pollution beyond those determined and enforced by appropriate regulatory agencies. Operating conditions or limitations relating to noise abatement can be imposed only when the Secretary determines it necessary to protect park values and resources. However, when competitively awarding concession contracts to enter Glacier Bay, the relative impact particular concessioners will have on park values and resources are considered in determining which are the best proposals.

In a May 1997 complaint filed in the U.S. District Court, the National Parks Conservation Association (NPCA) challenged the validity of the NPS 1996 VMP/revised EA and FONSI. The District Court upheld the decision made by the NPS. However, the U.S. Court of Appeals for the Ninth Circuit subsequently determined that the portion of the VMP/EA and the 1996 implementing regulations that authorized an increase in vessels into Glacier Bay violated the National Environmental Policy Act of 1969 (Pub. L. 91-190, hereafter NEPA) because an environmental impact statement (EIS) had not been prepared. The court prohibited vessel traffic above the pre-1996 levels unless an EIS was prepared. The court decision went into effect in late summer 2001. Following this decision, the Congress, as part of the U.S. Department of the Interior Appropriations Act of 2002 (Pub. L. 107-63, section 130), required NPS to:

(1) Prepare an EIS by January 1, 2004, to identify and analyze the possible effects of the 1996 increases; and (2) set the maximum level of vessel entries into Glacier Bay based on the analysis in the EIS. Until the maximum level of vessel entries is set based on the new EIS, the Act provided that the number of vessel entries into the park would be the same as in effect during the 2000 calendar year, and that the NPS decision and final rule, issued in 1996, relating to vessel entries were approved and would be in effect, notwithstanding any other provision of law. On January 18, 2002, the U.S. District Court modified the previous injunction accordingly.

The Draft and Final Environmental Impact Statements

In addressing the requirements of section 130 and pursuant to NEPA, the NPS prepared a draft EIS (DEIS) and final EIS (FEIS) and approved a Record of Decision (ROD) on November 21, 2003. The DEIS described and evaluated the environmental effects of a no action alternative and four action alternatives for managing motorized vessels within Glacier Bay and Dundas Bay. Based on comments received during the public comment period and additional NPS considerations, modifications were made in the FEIS. These documents are discussed in more depth below under "Compliance with Other Laws."

Description of the Proposed Rule

Regulations concerning vessel quotas and operating requirements for cruise ships and tour, charter and private vessels have been in effect and enforced by NPS for many years. Many of these regulations regarding vessel management are being retained consistent with the ROD. New elements and a number of adjustments to the current regulations are included in this proposed rule:

- Establishing two separate seasonal vessel quota periods for cruise ships. First, for May and September establish an initial quota of 92 cruise ships with potential to increase to 122. Second, for June 1–August 31 re-establish an initial quota of 139 cruise ships with potential for incremental increases to 184 as under the 1996 regulations;
- Eliminating two private vessel seasonal categories—total entries and total vessel use days—thus increasing the total number of private vessels allowed in a season;
- Adding a passenger ferry category to Bartlett Cove with a year-round daily vessel quota of one, in accordance with section 127 of P.L. 105–83 (Nov. 14, 1997);

- Modifying the definitions for cruise ship, charter, and tour vessels;
- Adding a definition for a passenger ferry;
- Closing the waters at Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay to cruise ships and tour vessels;
- Eliminating the permit exemption for private vessels based in Bartlett Cove;
- Relaxing existing private vessel orientation requirements;
- Modifying the annual determination of the cruise ship quota to provide flexibility concerning timeframes to meet cruise ship industry needs;
- Increasing the 10 knot maximum speed limit in whale waters to 13 knots;
- Reducing the number of areas pre-designated as whale waters;
- Extending the seasonal speed limit in the lower bay whale waters to September 30; and
- Conforming subsection (b) to the existing question and answer format of subsection (a).

Section-by-Section Analysis

Section 13.65(b)(1) Definitions

The following changes are proposed for the Definitions:

- The term "charter vessel" would be amended to include certain uninspected vessels measuring over 100 tons under the U.S. Tonnage "Simplified Measurement System." Vessels under this class would not be any larger than vessels currently allowed under the existing 100 gross ton U.S. or 2,000 gross ton ITC limits due to the idiosyncrasies of the various measurement systems. Though USCG regulations do not set an upper limit for the tonnage of these vessels, the NPS proposes implementing an upper limit of 200 tons, as well as a specific length limit [note that the length limit is already an element of the USCG regulations controlling which vessel can use the simplified measurement system], as a safeguard against vessels qualifying under this subcategory which are larger than otherwise allowed under the existing regulations. Dropped from the definition of charter vessel would be the existing requirement that it be available for hire on an unscheduled basis, as well as the related exception to that requirement—allowing scheduled camper or kayak drop off service. Under the 1996 definitions charter vessels were required to operate on an "unscheduled" basis. This was unrealistic because, as a practical matter, many charter operators schedule trips well in advance of the season. The

new definition is more easily applied to the charter fleet. To eliminate overlap between the charter vessel and tour vessel definitions, passenger carrying capacity would be adopted as the primary criteria separating these use categories. This change in the GLBA definition was proposed by several of our charter operators and park staff during the scoping process for the Vessel Quota and Operating Requirements EIS. The ROD defines charter vessel as certificated " * * * to carry up to twelve passengers overnight or up to 49 passengers for daytime use * * * ." The proposed definition changes the word "or" to "and" resulting in: " * * * rated to carry no more than 12 passengers overnight and no more than 49 passengers for daytime use " * * * ." to more clearly convey the intent: if a vessel is licensed to carry more than twelve overnight passengers, it could not be a charter vessel and if a vessel is licensed to carry more than 49 day use passengers, it could not be a charter vessel.

- The term "cruise ship" would be revised to include only vessels certificated to carry over 12 passengers. Without this provision, a vessel with 12 or fewer passengers of 100–200 gross tonnage under the U.S. Tonnage "Simplified Measurement System" could be either a charter vessel or cruise ship. This would eliminate overlap with the new U.S. Coast Guard 200 ton uninspected class.

- Because the "seasonal entry quota" would be eliminated and the term "entry" would no longer be mentioned in this proposed rule, the term "entry" would no longer need to be defined and would be eliminated.

- A revised definition of "Glacier Bay" would include precise geographic coordinates for Point Gustavus and Point Carolus as the entrance to Glacier Bay.

- A new vessel type—"passenger ferry"—would be added in recognition of the Juneau to Bartlett Cove service authorized in Public Law 105–83, section 127.

- To provide clarity, the definition for each of the following terms would be revised slightly: "commercial fishing vessel," "speed through the water," and "private vessel."

- The definition of "tour vessel" would be changed to provide a clear distinction from the definition of "charter vessel," and to ensure that all commercial passenger-carrying vessels less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) could be categorized into the appropriate vessel type.

- The term "pursue" would be deleted from the regulatory language in (b)(1) and a description of the prohibited action instead would be incorporated into proposed paragraph (b)(3)(i). Including a description of the proposed prohibited activity would clarify the proposed regulation.

- The terms "daily vessel quota" and "seasonal vessel quota" would be added to clarify how vessel quotas would be applied to vessel use in Glacier Bay.

- The terms "vessel-use day" and "operate" would no longer be used and would be deleted from the regulation.

All other definitions would remain unchanged.

Section 13.65(b)(2) Permits

Paragraph (b)(2)(i), "Private vessel permits and conditions" would modify the existing requirement for operators of private vessels (see 36 CFR 1.4) to report to the Bartlett Cove Ranger Station for a boater orientation each time they enter Glacier Bay from June 1 through August 31. Instead, while operators of private vessels would still be required to report that they are entering or exiting Glacier Bay, they would only be required to come to Bartlett Cove for a full boater orientation at the beginning of their initial trip into Glacier Bay for that permit season. This paragraph would simplify the procedure at proposed paragraph (b)(2)(i)(B): From May 1 through September 30, operators must immediately notify the Bartlett Cove Ranger Station of the vessel's entry or exit into Glacier Bay. The notification can be accomplished by radio or phone, allowing the NPS to update operators about existing or special conditions or operating requirements.

Paragraph (b)(2)(ii), "Commercial vessel permits and conditions," would clarify that a cruise ship is required to have a concession contract, and tour, charter and passenger ferry vessels are required to have a concession authorization to operate in Glacier Bay National Park and Preserve. This paragraph also will establish the operational requirement for the passenger ferry to travel a direct route to Bartlett Cove, except as necessary for safety considerations.

The proposed rule would extend the closure area for cruise ships and tour vessels to the entrance of Adams Inlet and Beardslee Entrance prohibiting these two vessel types from operating in these two locations. Glacial rebound and silting from the Casement Glacier have caused Adams Inlet to become very shallow and unsafe. Extending the closure would reduce the risk of large-vessel accidents in these two areas. The restrictions in the Beardslee Entrance

are due to its narrow configuration which poses a hazardous area for large vessels, as well as its proximity to the ecologically sensitive Beardslee Islands. Historically, no cruise ships use the Beardslee Entrance to travel within Glacier Bay. Large vessels would have difficulty maneuvering the 90-degree turn, which is required to safely navigate the one (1) nautical mile passage between Strawberry Island and the Beardslee Islands. Additionally, opposing currents and shallow shelves add to the difficulty in maneuvering larger vessels through this area. Harbor seals, whose populations have recently declined precipitously, haul out on the Spider Island complex, Flapjack, and Eider Islands, all within the Beardslee Island complex. These populations are extremely sensitive to disturbance created by large vessel noise, wakes, and presence of vessels and people. A vessel grounding in the entrance could cause catastrophic damage to wildlife within the pristine and protected waters of the Beardslee Islands.

Paragraph (b)(2)(iii), "Exceptions from vessel permit requirements" would clarify the exception for operation of a motor vessel in certain Bartlett Cove waters. The proposed rule would drop the exemption for private vessels "based in Bartlett Cove" from the requirement to obtain a vessel permit when traveling directly between Bartlett Cove and the mouth of Glacier Bay. This exception provides insufficient management of vessel traffic through the designated lower bay whale waters. A portion of the daily private vessel quota would be reserved and made available 48 hours before the date for which the permit would be issued to equitably accommodate the varied needs of visitors and area residents. The park places a high value on providing access for local users and those who travel with limited advanced destination planning. The NPS also considered providing an exception to operating requirements when necessary to avoid an immediate threat to passenger or vessel safety. Deviations may be necessary for legitimate safety reasons but these circumstances do not require a new regulatory exception. (See 36 CFR 1.2.)

Paragraph (b)(2)(iii) also adds "non-commercial" to the exception for vessels engaged in official business of the state or federal government. This clarifies that Alaska Marine Highway System ferry vessels are not covered by this exception. These vessels are engaged in commercial operations, *i.e.*, the transport of passengers for hire.

In paragraph (b)(2)(v), "Restrictions on vessel entry," the proposed limits on

vessels in Glacier Bay will be implemented by a daily and seasonal vessel quota replacing "Allowable vessel use days per day," "Total entries allowed," and "Total vessel use days allowed." This will help simplify by using one term—quota—and by reducing the three categories to two categories.

For cruise ships, the table would establish two separate seasonal vessel quota periods—for the months of May and September an initial combined quota of 92 cruise ships with the potential to increase to 122, and for June 1–August 31, continue with an initial quota of 139 cruise ships with the potential to increase to 184. The May and September seasonal vessel quota is based on the known presence of humpback whales in Glacier Bay during this time period and is proportionally the same as the initial June 1–August 31 seasonal vessel quota. The table establishes an upper end quota level to which the seasonal vessel quotas for cruise ships could be increased by the superintendent based on stated criteria found in (b)(2)(v)(A),(B), and (C) of this rule.

The seasonal limits on charter vessel entries would be eliminated to better serve public demand and reduce the complexity of the program. The daily charter vessel quota would remain at six.

Limits on seasonal private vessel total entries and total vessel use days allowed would be eliminated. The daily vessel quota would remain at 25. This better serves public demand by reducing the complexity of the program and potentially increasing the number of private vessels from the current 1,971 to 2,300. This would also end the problematic practice of "apportioning" entries to ensure late season visitors may still enter Glacier Bay and allows flexibility to give short-notice permits to private vessels, particularly those based in Bartlett Cove.

Passenger ferry entries to Bartlett Cove, in accordance with section 127 of Public Law 105–83, are set at a year-round daily vessel quota of one.

Paragraph (b)(2)(B) has been modified for clarity and the time frames previously listed have been eliminated. This allows the Superintendent the flexibility to make cruise ship quota determinations approximately 18 months in advance of a cruise ship season. This time frame is in recognition of the cruise ship industry's need for advance planning. The proposed change also ensures that public comment is accepted prior to a determination. Current regulation provides for public comment after publication in the

Federal Register of the Superintendent's recommendation for an increase. The proposed change provides clarity on how the public comment process will occur.

Section 13.65(b)(3) Operating Restrictions

The proposed regulations would discontinue the whale waters designation and restrictions at three of the four areas in Glacier Bay—Whidbey Passage, East Arm Entrance and Russell Island Passage. The lower bay whale waters are the only location where a permanent designation of whale waters is necessary and practical. Whale water protections currently in place there from May 15 through August 31 [(3)(iv)(A)(1)] would be extended through September 30 in the proposed rule. Experience since 1996 has shown that designating whale waters in other areas where whales are not present is not effective and it makes the system overly complicated for visitors of Glacier Bay. Protection of the areas formerly designated as whale waters would be accomplished via the superintendent's authority to designate temporary whale waters when whales are found to be gathering and staying for several days in a particular location.

The existing regulations restrict vessel speed in lower bay whale waters to twenty (20) knots speed through the water and, when designated due to the presence of whales, ten (10) knots speed through the water. The proposed regulations would increase the speed limit, when designated due to the presence of whales, from ten (10) to thirteen (13) knots speed through the water. The best available information indicates that speeds of 14 knots or more are likely to lead to whale fatality in the event of a whale-vessel collision, particularly for vessels 80 meters (262 feet) or more in length. See Laist, D. W., A. R. Knowlton, J. G. Mead, A. S. Collet and M. Podesta, *Collisions between Ships and Whales. Marine Mammal Science*, 17(1): 35–75 (2001). The Superintendent may impose the new speed limit of thirteen (13) knots in any area designated as whale waters for all vessels, or may limit the imposition to vessels of a certain size or type depending upon the number of whales estimated to be present, frequency of vessel traffic, underwater topography and other relevant factors. Based on the scientific data gathered over the past decade of monitoring, (see NOAA Biological Opinion dated August 5, 2003, FEIS, Appendix K, p. 45) the NPS does not believe that increasing the speed allowed in whale waters from 10 to 13 knots will have any negative

consequences for whales or other wildlife. The public notice is proposed to follow existing public notice procedures found in 36 CFR 1.7. The current regulation which provides for submission to the U.S. Coast Guard for publication is dated, as much of this information is now provided electronically. The procedures in 36 CFR 1.7 provide better flexibility to meet the need to properly inform park visitors.

The fuel dock regulation, (b)(4)(ii)(F), would be revised by adding Superintendent discretion to authorize other uses to protect park resources or public safety. This would cover the rare instances when a vessel is unable to dock at the public dock but could dock safely at the fuel dock. The park does not believe this would be a frequent occurrence, as these two docks were constructed, to separate general vessel docking from hazardous fueling activities.

Current paragraph (b)(3)(ix) would be revised by removing sub-paragraphs (A) and (B), which are redundant, and redesignating without change the remainder as paragraph (b)(4) under the new heading "What are the rules for using Bartlett Cove waters and docks."

Section 13.65(b)(4) Bartlett Cove

As noted above, this paragraph is a redesignation of current paragraph (b)(3)(ix). Other than the addition of a heading and the provision for use of the fuel dock noted above, there are no other changes proposed for this paragraph.

Section 13.65(b)(5) Marine Vessel Visible Emissions Standards

This proposed paragraph would redesignate and revise current paragraph (b)(4) to conform to Public Law 104-333, section 703, and would adopt State of Alaska Marine Vessel Visible Emission Standards as a part of this rule.

Sections 13.65(b)(6) Through (10)

Current paragraphs (b)(5) through (b)(9) would be redesignated without change as paragraphs (b)(6) through (b)(10) to accommodate the proposed changes discussed above.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget has determined that this is not a significant rule and is not subject to review under Executive Order 12866.

This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material

way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the analysis contained in the final environmental impact statement and a report prepared on the economic impact of this regulation, "Economic Analysis of Vessel Management Alternatives in Glacier Bay National Park and Preserve", prepared for the NPS, Environmental Quality Division, by Research Triangle Institute.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It would only affect the operations of various types of motor vessels on waters managed by the park. No grants or other forms of monetary supplement are involved.

This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that there will be no incremental negative impacts on small entities because revenue losses are not expected. Possible future increases in vessel quota levels relative to the baseline are expected to lead to incremental increases in business revenue. This certification is based on information contained in the report titled, "Economic Analysis of Vessel Management Alternatives in Glacier Bay National Park and Preserve" (RTI International, Health, Social, and Economic Research, Research Triangle Park, N.C. 27709). This report is available from the NPS, Glacier Bay National Park and Preserve as indicated above under the heading **FOR FURTHER INFORMATION CONTACT**.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule—

- Does not have an annual effect on the economy of \$100 million or more.

As noted above, no incremental negative impacts on small businesses are expected and possible future increases in vessel quota levels would result in increases in business revenue;

- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed regulations of this rulemaking will generally maintain existing patterns of vessel management in the park relative to costs or prices; and
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of property will occur as a result of this proposed rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to federal lands and waters managed by the NPS and will not have a substantial direct effect on state and local government in Alaska.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule does not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not

new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of concession contracts and special use permits. Information collection associated with the award of concession contracts is covered under OMB control number 1024-0125; the information collection associated with the issuance of special use permits is covered under OMB control number 1024-0026.

National Environmental Policy Act

A Final Environmental Impact Statement (FEIS) has been completed and a Record of Decision (ROD) issued. The following topics are addressed in the EIS: soundscape; air quality; water quality; threatened and endangered species; marine mammals; marine birds and raptors; marine fishes; coastal/shoreline environmental and biological communities; cultural resources; visitor experience; vessel use and safety; wilderness resources; local and regional socio-economic conditions.

Both the DEIS and FEIS consider:

- Establishment of vessel quotas and designation of quota seasons for Glacier Bay;
- Definition of vessel classification criteria;
- Exemption of private vessels based in Bartlett Cove;
- Issuance of vessel permits on a short-notice basis;
- Establishment of vessel travel routes for cruise ships and waters closed to cruise ship and/or tour vessel use;
- Vessel speed restrictions and speed measurement methods; and
- Establishment of vessel quotas and designation of quota seasons for tour and/or charter vessels for Dundas Bay (currently no vessel quotas are in place for Dundas Bay).

Several consultations took place with government agencies during the EIS process, including with the Hoonah Indian Association, a federally recognized tribal government; the State of Alaska; NOAA Fisheries; and the U.S. Fish and Wildlife Service. Formal endangered species consultation took place with NOAA Fisheries in accordance with section 7 of the Endangered Species Act.

NOAA Fisheries issued a biological opinion on August 5, 2003. Species considered in the opinion were the Steller sea lion, specifically the threatened eastern stock and the endangered western stock, and the endangered central North Pacific humpback whale. NOAA Fisheries concluded that the "proposed vessel quota increases and operating

requirements in Glacier Bay, as proposed, are not likely to jeopardize the continued existence of listed species in the action area, or destroy or adversely modify designated critical habitat found in the action area." In formulating its opinion, NOAA Fisheries used the best available information, including information provided in the DEIS that served as the Biological Assessment for section 7 consultation along with information obtained during discussions with NPS staff regarding the new alternative included in the FEIS.

The NPS Alaska Regional Director signed a ROD on November 21, 2003. A notice announcing the decision was published in the *Federal Register* on December 16, 2003 (68 FR 70031). The ROD documents the NPS decision to modify quotas and operating requirements for four types of motor vessels—cruise ships and tour, charter and private vessels—within Glacier Bay. The ROD addresses the continuing demand for motor vessel access into Glacier Bay in a manner that protects park resources and values while also providing a range of opportunities for visitors consistent with park purposes and values. It was based on consideration of the park's purposes and mission, resources and values, NPS policies, comments received throughout the EIS process, and information and analysis in the EIS. In reaching a decision, NPS carefully considered the comments and concerns expressed by the public throughout the EIS process.

The NPS selected alternative 6, as described in the FEIS, with the following modifications—

- The July 1 through August 21 timeframe during which a 0.25-nautical-mile vessel approach distance to a seal hauled out on ice in Johns Hopkins Inlet waters will be retained as in current regulations and will not be extended to year-round;
- A 13-knot speed limit for vessels greater than or equal to 262 feet (80 meters) will be in effect in Glacier Bay as needed, rather than on a year-round basis; and
- Existing conditions do not support immediate implementation of motor vessel limits in Dundas Bay.

Studies and monitoring are insufficient to support the need for limits at this time. The NPS will undertake study and monitoring of use and resource conditions in Dundas Bay and will impose limits when a clearer need is established. A research framework, developed with the assistance of a scientific advisory board, will help ensure that appropriate studies and monitoring will be

undertaken to guide vessel management, including a decision(s) regarding possible increases in seasonal-use day numbers for cruise ships in Glacier Bay.

None of the effects resulting from any of the alternatives evaluated during the EIS process, including the alternative presented in the ROD, would impair park resources and values.

The FEIS and ROD are available online at: <http://www.nps.gov/glba> or at Glacier Bay National Park and Preserve, as indicated above under the heading **FOR FURTHER INFORMATION CONTACT.**

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249); the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951); the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; Part 512 of the Departmental Manual, Chapter 2, "Departmental Responsibilities for Indian Trust Resources"; and the park consultation agreement with tribal governments, the potential effects on federally-recognized Indian tribes and have been evaluated.

During the past several years, the NPS has developed an effective working relationship with the Hoonah Indian Association and other regional Native organizations with interests in matters pertaining to Glacier Bay National Park and Preserve. All parties consulted concur that Glacier Bay and Dundas Bay lie within the traditional homelands of the Hoonah Tlingits, and that the Hoonah Indian Association, a federally recognized tribal government, is the representative government for Hoonah Tlingits. During this extended consultation the full range of issues relating to vessel quotas, operating requirements, and cultural resources has been identified and discussed at length. Extensive ethnographic research had been conducted to gather detailed information about cultural resources important to Hoonah Tlingits. Meetings were held with the tribal government and with community and tribal members.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1)

Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example § 7.XX) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Drafting Information: The primary authors of this regulation were: Tomie Lee, Superintendent; Chuck Young, Chief Ranger; Dave Nemeth, Chief of Concessions; and Nancy Swanton, Park Planner at Glacier Bay National Park and Preserve; Jay Liggett, Paul Hunter, and Andee Hansen at the Alaska Regional Office; Russel J. Wilson, Deputy Superintendent, Sequoia and Kings Canyon National Parks and Jerry Case, Regulations Program Manager, Washington, DC.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. The Regulatory Information Number (RIN) must be included. It is 1024-AD25. Your name and return address must be included in the body of your Internet message. You also may mail comments to Superintendent Tomie Patrick Lee, Glacier Bay National Park and Preserve, P.O. Box 140 Gustavus, AK 99826. Finally, you may hand deliver comments to Superintendent Tomie Patrick Lee at Glacier Bay National Park and Preserve Headquarters Office at Bartlett Cove.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will

honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all 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.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 152, Pub. L. 105-277, 112 Stat. 2681-2688.

Section 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Sec. 703, Pub. L. 104-333, 110 Stat. 4185; Sec. 127, Pub. L. 105-83, 111 Stat. 26; Sec. 123, Pub. L. 105-277, 112 Stat. 2681-259, October 21, 1998; Sec. 501, Pub. L. 106-31, 113 Stat. 72, May 21, 1999; and Sec. 130, Pub. L. 107-63, 115 Stat. 442.

Section 13.66(c) also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240, November 12, 1996.

2. Section 13.65 is amended as follows:

A. In paragraph (b)(1), remove the definitions of "Entry", "Operate or operating", "Pursue", and "Vessel use-day".

B. In paragraph (b)(1), revise the introductory language and the definitions of "Charter vessel", "Commercial fishing vessel", "Cruise ship", "Glacier Bay", "Private vessel", "Speed through the water", and "Tour vessel".

C. In paragraph (b)(1), add in alphabetical order definitions of "Daily vessel quota", "Passenger ferry", and "Seasonal vessel quota".

D. Revise paragraph (b)(2).

E. In paragraph (b)(3), revise the introductory language and paragraphs (b)(3)(i) through (v).

F. Redesignate paragraphs (b)(4) through (9) as paragraphs (b)(5) through (10).

G. In paragraph (b)(3)(ix), remove paragraphs (b)(3)(ix)(A), (B), and (C), and redesignate the paragraph and its constituent subparagraphs as shown in the following table:

Current paragraph designation	New paragraph designation
(b)(3)(ix), introductory text	(b)(4), introductory text.
(b)(3)(ix)(C)(1), introductory text	(b)(4)(i), introductory text.
(b)(3)(ix)(C)(1)(i)	(b)(4)(i)(A).
(b)(3)(ix)(C)(1)(ii)	(b)(4)(i)(B).
(b)(3)(ix)(C)(1)(iii)	(b)(4)(i)(C).
(b)(3)(ix)(C)(1)(iv)	(b)(4)(i)(D).
(b)(3)(ix)(C)(1)(v)	(b)(4)(i)(E).
(b)(3)(ix)(C)(2), introductory text	(b)(4)(ii), introductory text.
(b)(3)(ix)(C)(2)(i)	(b)(4)(ii)(A).
(b)(3)(ix)(C)(2)(ii)	(b)(4)(ii)(B).
(b)(3)(ix)(C)(2)(iii)	(b)(4)(ii)(C).
(b)(3)(ix)(C)(2)(iv)	(b)(4)(ii)(D).
(b)(3)(ix)(C)(2)(v)	(b)(4)(ii)(E).
(b)(3)(ix)(C)(2)(vi)	(b)(4)(ii)(F).
(b)(3)(ix)(C)(2)(vii)	(b)(4)(ii)(G).
(b)(3)(ix)(C)(2)(viii)	(b)(4)(ii)(H).

H. Redesignate paragraphs (b)(3)(x) and (b)(3)(xi) as paragraphs (b)(4)(ii)(I) and (b)(4)(ii)(J), respectively.

I. Revise redesignated paragraph (b)(4) introductory text.

J. Revise redesignated paragraph (b)(4)(ii)(F).

K. Revise redesignated paragraph (b)(5).

L. In redesignated paragraphs (b)(6) through (10), revise the heading of each paragraph.

The additions and revisions read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

* * * * *

(b) * * *

(1) *What terms do I need to know?*

* * * * *

Charter vessel means any motor vessel of less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certificated to carry no more than 12 passengers overnight and no more than 49 passengers for daytime use. Charter vessels also include any uninspected motor vessel measuring less than 200 tons gross (U.S. Tonnage "Simplified Measurement System") and not more than 24 meters (79 feet) in length engaged in transport of passengers for hire.

Commercial fishing vessel means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as authorized under paragraph (a) of this section.

Cruise ship means any motor vessel of at least 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) certificated to carry more than 12 passengers for hire.

Daily vessel quota means the maximum number of vessels allowed,

by vessel category, on any one calendar day.

Glacier Bay means all waters inside a line drawn between Point Gustavus (58.37914 N. Latitude; 135.915445 W. Longitude) and Point Carolus (58.37824 N. Latitude; 136.042250 W. Longitude).

* * * * *

Passenger ferry means a motor vessel authorized by the Superintendent to engage in the transport of passengers for hire to Bartlett Cove.

Private vessel means any motor vessel that is not engaged in business (business includes, but is not limited to, transportation of passengers for hire or commercial fishing).

* * * * *

Seasonal vessel quota means the maximum number of vessels allowed, by vessel category, during a specific seasonal period.

Speed through the water means the speed at which a vessel moves through the water (which itself may be moving), as distinguished from "speed over the ground" (speed measured in relation to a fixed point on the earth).

Tour vessel means any motor vessel of less than 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) engaged in transport of passengers for hire and certificated to carry no more than 12 passengers overnight or more than 49 passengers for daytime use.

* * * * *

(2) *Is a permit required for a vessel in Glacier Bay?* A permit from the superintendent is required for motor vessels in accordance with this section and applicable regulations in this part.

(i) *Private vessel permits and conditions.* In Glacier Bay from June 1 through August 31 an individual must have a permit from the NPS issued for a specific vessel for a specific period of time.

(A) From June 1 through August 31, when the operator of a private vessel

enters Glacier Bay for the first time that calendar year, the operator must go directly to the Bartlett Cove Ranger Station for orientation.

(B) From May 1 through September 30, the operator of a private vessel must immediately notify the Bartlett Cove Ranger Station of the vessel's entry to or exit from Glacier Bay.

(ii) *Commercial vessel permits and conditions.* Each commercially operated motor vessel must have a permit to operate in Glacier Bay National Park and Preserve in accordance with § 5.3 of this chapter.

(A) A cruise ship must have a concession contract to operate in Glacier Bay.

(B) A tour vessel, charter vessel, and passenger ferry must have a commercial authorization to operate in Glacier Bay.

(C) The operator of a cruise ship, tour vessel, charter vessel, and passenger ferry must notify the Bartlett Cove Ranger Station of the vessel's entry into Glacier Bay within 48 hours in advance of entering Glacier Bay or immediately upon entry.

(D) Cruise ships and tour vessels are prohibited from operating in the Beardslee Entrance and at the entrance to Adams Inlet, as defined as waters within the Wilderness boundaries in those respective areas.

(E) Off-boat activity from a cruise ship, tour vessel, or charter vessel is prohibited, unless authorized by the superintendent.

(F) Off-boat activity from a passenger ferry is prohibited, except for passenger access at the Bartlett Cove docks.

(G) A passenger ferry must travel a direct course between the mouth of Glacier Bay and Bartlett Cove, except as provided in paragraph (b)(1)(iii)(E) of this section.

(iii) *Exceptions from vessel permit requirement.* A vessel permit is not required in Glacier Bay when—

(A) A motor vessel is engaged in official, non-commercial business of the state or federal government;

(B) A motor vessel is operating in Bartlett Cove waters east of a line extending from the long axis of the fuel dock to the wilderness boundary at Lester Island;

(C) One motor vessel is launched from a motor vessel that has a permit and only while the authorized motor vessel remains at anchor or operated in

accordance with a concession agreement from a permitted motor vessel while that vessel is not underway.

(D) A commercial fishing vessel authorized under paragraph (a) of this section is actively engaged in commercial fishing; or

(E) A vessel is granted safe harbor by the superintendent.

(iv) *Prohibitions.* (A) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(B) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(C) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

(v) *Restrictions on vessel entry.* The superintendent will allow vessel entry in accordance with the following table:

Type of vessel	Daily vessel quotas (DVQ)	Period covered by DVQ	Seasonal vessel quota (SVQ)	Period covered by SVQ
Cruise ship	2	Year-round	Up to 184 Up to 122	June 1–August 31. May and September.
Tour vessel	3	Year-round	n/a	n/a.
Charter vessel	6	June 1–Aug. 31	n/a	n/a.
Private vessel	25	June 1–Aug. 31	n/a	n/a.
Passenger ferry	1	Year-round	n/a	n/a.

Note: Cruise ships and tour vessels are limited to the daily vessel quota year-round. Charter and private vessels are not subject to quotas from September through May.

(A) The director will reduce the vessel quota levels for any or all categories of vessels in this section as required to protect the values and purposes of Glacier Bay National Park and Preserve. The director will make these reductions based on the controlling biological opinion issued by the National Oceanic and Atmospheric Administration Fisheries under section 7 of the Endangered Species Act, applicable authority, and any other relevant information.

(B) The superintendent will annually determine the cruise ship quota. This determination will be based upon applicable authorities, appropriate public comment and available scientific and other information. The number will be subject to the maximum daily vessel quota of two vessels.

(C) Nothing in this section will be construed to prevent the superintendent from taking any action at any time to protect the values and purposes of Glacier Bay National Park and Preserve.

(3) *What are the rules for operating vessels?* (i) Operating a vessel within one-quarter nautical mile of a whale is prohibited, except for a commercial fishing vessel authorized under paragraph (a) of this section that is actively trolling, setting, or pulling long lines, or setting or pulling crab pots.

(ii) The operator of a vessel inadvertently positioned within one-quarter nautical mile of a whale must immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator must direct or maintain the vessel on as steady a course as possible away from

the whale until at least one-quarter nautical mile of separation is established. Failure to take such action is prohibited.

(iii) The operator of a vessel or seaplane positioned within one-half nautical mile of a whale is prohibited from altering course or speed in a manner that results in decreasing the distance between whale and the vessel or seaplane.

(iv) *Whale water designations and restrictions.* (A) From May 15 through September 30, the following waters are designated whale waters—

(1) Waters north of a line drawn from Point Carolus to Point Gustavus and south of a line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, and following that line south and west to the Bartlett Cove shore (so as to include the Beardslee Entrance and Bartlett Cove); and

(2) Other waters designated by the superintendent as temporary whale waters.

(B) The public will be notified of other waters designated as temporary whale waters in accordance with § 1.7 of this chapter.

(C) Violation of a whale water restriction is prohibited. The following restrictions apply in whale waters unless otherwise provided by the superintendent in the designation:

(1) Operating a motor vessel less than one nautical mile from shore (where the width of the water permits), or in narrower areas navigating outside of

mid-channel is prohibited. This restriction does not apply to motor vessels less than 18 feet in length, or vessels actively engaged in fishing activities or operating solely under sail.

(2) Unless other restrictions apply, operators may perpendicularly approach or land on shore (i.e., by the most direct line to shore) through designated whale waters, but they may not transit along the shore.

(3) Operators must follow motor vessel speed limits in paragraph (b)(3)(v)(A) of this section.

(v) *Speed restrictions.* (A) From May 15 through September 30 in designated whale waters the following are prohibited—

(1) Operating a motor vessel at more than 20 knots speed through the water; or

(2) Operating a motor vessel at more than 13 knots speed through the water, when the superintendent has designated a maximum speed of 13 knots.

(B) From July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet waters south of 58°54.2' N. latitude (a line running due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

* * * * *

(4) *Other restrictions.* The superintendent will make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The superintendent will notify the public of these rules by posting a sign or a copy of them at the dock. Failure to obey a sign or posted rule is prohibited.

* * * * *

(ii) * * *

(F) Utilizing the fuel dock for activities other than fueling and waste pump-out is prohibited. Other uses may be authorized by the Superintendent to protect park resources or public safety.

* * * * *

(5) *What are the emission standards for vessels?* (i) The State of Alaska statutes and regulations applicable to marine vessel emission standards are adopted as a part of these regulations.

(ii) Violating a State of Alaska statute or regulation applicable to marine vessel visible emission standards is prohibited.

(6) *May I collect or burn interstadial wood?* * * *

(7) *May I collect rocks and minerals?* * * *

(8) *May I collect goat hair?* * * *

(9) *Do I need a camping permit in Glacier Bay?* * * *

(10) *Is a permit required to transport passengers between Bartlett Cove and Gustavus?* * * *

Dated: February 7, 2006.

Matthew J. Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06-2000 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-70-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2005-VA-0014; FRL-8039-9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Technical Documents Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia consisting of revised citations, editions, and corrected addresses to documents which are incorporated by reference in Virginia's SIP-approved regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-VA-0014 by one of the following methods:

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

B. E-mail: frankford.harold@epa.gov.

C. Mail: EPA-R03-OAR-2005-VA-0014, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2005-VA-0014. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes 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.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. 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 www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814-2108, or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the Virginia rule that are not the subject of an adverse comment.

Dated: February 22, 2006.

William Early,

Acting Regional Administrator, Region III.

[FR Doc. 06-1942 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 71, No. 42

Friday, March 3, 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

Submission for OMB Review; Comment Request

February 28, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Stocks Reports.

OMB Control Number: 0535-0007.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain and including rice, oilseeds, potatoes, peanuts, hops, and dry beans. Grain and oilseed stocks in all positions are estimated quarterly. Grain stock estimates are one of the most important NASS estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code Title 7, section 2204. The Hop Growers of America provides the data collection for much of the production information because of sensitivity issues an impartial third party, NASS, collects stocks and price information.

Need and Use of the Information: NASS collects information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. Farmers and agribusiness firms use these estimates in their production and marketing decisions. Collecting this information less frequently would eliminate data needed by government, industry and farmers to keep abreast of changes at the State and national level.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 12,661.

Frequency of Responses: Reporting: Monthly; Quarterly; Semi-annually; Annually.

Total Burden Hours: 14,388.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-3046 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Pamela_Beverly_OIRA_Submission@omb.eop.gov or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Cooperative State Research, Education, and Extension Application Kit for Research and Extension Programs.

OMB Control Number: 0524-0039.

Summary of Collection: The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) administers several competitive, peer-reviewed research and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and a variety of other legislative authorities. Before awards can be awarded, certain information is required from applicants as part of an overall package. Because the proposals submitted are competitive in nature and necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all. CSREES will collect information using several forms.

Need and Use of the Information: The fundamental purpose of the information requested is for USDA proposal evaluation, award, management, reporting, and recordkeeping, as part of the overall administration of the research, education, and extension programs administered by CSREES. CSREES will collect the following information: Program Summary and Narrative, Credentials, Budget, Identification of Conflicts of Interest, and Collect of Environmental Impact Information. The information will be used to respond to inquiries from Congress, other governmental agencies, and the grantee community.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or household; Federal Government; State, local or tribal government.

Number of Respondents: 9,450.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 53,776.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-3047 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-09-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2005-0117]

National Animal Identification System (NAIS); Administration of Official Identification Devices With the Animal Identification Number

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: This notice makes available a document describing how an animal identification number (AIN) may be used in conjunction with official identification devices in the National Animal Identification System (NAIS). The document includes performance and printing requirements for visual identification tags with AINs and provides an explanation of the process by which these AIN tags will be authorized for use in the NAIS. Performance standards for radio frequency identification tags or devices that may be used on cattle or bison to supplement visual AIN tags are also presented. Finally, the document describes the AIN Management System, a Web-based system for distributing and administering AINs in the NAIS, and discusses the roles and responsibilities of key participants in the system.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, NAIS Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737-1231; (301) 734-5571.

SUPPLEMENTARY INFORMATION:

Background

As part of ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). Its long-term goal is to track all animal movements, from birth to harvest, as part of USDA's National Animal Health Monitoring and Surveillance Program.

In order to facilitate the implementation of the NAIS, on November 8, 2004, we published in the *Federal Register* (69 FR 64644-64651, Docket No. 04-052-1) an interim rule that, among other things, amended the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and

State/Federal/industry cooperative disease control and eradication programs and to redefine the numbering system used to identify premises where animals are managed or held.

Specifically, the interim rule recognized the animal identification number (AIN) as an official numbering system for the identification of individual animals, the group/lot identification number (GIN) for the identification of groups or lots of animals within the same production system, and the seven-character premises identification number (PIN) for the identification of premises in the NAIS. Use of the new numbering systems was not, however, required as a result of the interim rule. Finally, the interim rule amended the regulations to prohibit the removal of official identification devices and to eliminate potential regulatory obstacles to the recognition of emerging technologies that could offer viable alternatives to existing animal identification devices and methods.

In May 2005, we made available for public review and comment a Draft Strategic Plan and a Draft Program Standards document (70 FR 29269-29270, Docket No. 05-015-2, May 20, 2005). The Draft Strategic Plan described the process of developing the NAIS, in particular the timeline for full implementation, while the Draft Program Standards document presented our view of how the system would work when fully implemented.

The current document, entitled "Administration of Official Identification Devices with the Animal Identification Number," expands upon certain aspects of the NAIS that were presented in the Draft Program Standards. Specifically, we describe the use of the AIN in conjunction with official identification devices in the NAIS; present performance and printing requirements for visual AIN tags and explain the process by which these tags will be authorized for use in the NAIS; and provide performance standards for radio frequency identification (RFID) tags or devices that may be attached to cattle or bison to supplement visual AIN tags. We also describe the AIN Management System, a Web-based system for distributing and administering AINs in the NAIS, and discuss the roles and responsibilities of key participants in the system.

For producers who choose to participate in the NAIS, tags (generally eartags) imprinted with AINs will be an option for use with certain species, such as cattle, when visual, unique, individual official animal identification is necessary. These AIN tags will have to satisfy the requirements currently

contained in the Code of Federal Regulations (CFR) for tags used for the identification of animals. For example, eartags imprinted with AINs will have to meet the criteria for recognition as official eartags in 9 CFR 71.1, including requirements that the eartags be tamper resistant and have a high retention rate in the animal. The document that we are now making available contains additional standards for AIN tag security (the tags must be tamper evident, i.e., impossible to remove and reapply without visual evidence of tampering), durability, readability, and printing characteristics.

The document also describes the process by which APHIS will authorize AIN tags for use in the NAIS. During the initial, voluntary phase of the NAIS, AIN tags that meet USDA standards for AIN tags will qualify for "USDA Approval Pending" status. When the NAIS becomes fully operational, more complete testing and evaluation procedures and an approval process for official identification devices will be available. At such time, a designation of "USDA Approved" will be established. APHIS will reserve the right to evaluate identification devices independently, using resources within the Agency or through contractual services with universities or private research firms, to verify compliance with tag specifications, either before or following issuance of USDA Approval Pending or USDA Approved status. Official identification devices may lose their USDA Approval Pending or USDA Approved status at any time if APHIS determines that the devices are substandard.

In addition to the visual AIN tags described above, which will be the official identifiers in the NAIS for certain species, producers may elect to incorporate supplemental identification methods or technologies. These supplemental technologies or methods may vary among species.

Cattle are a priority in the initial rollout of the NAIS. RFID devices appear, at this point, to be the preferred technology among cattle producers for use as a supplemental identification method. The document that we are now making available to the public contains standards for RFID AIN tags. These standards cover ISO compliance, electronic read rates and ranges, expected tag life, transponder security, and transponder failure rates.

As noted in the NAIS Draft Program Standards document, a key component of the NAIS is the AIN Management System. The AIN Management System is a Web-based system for distributing and administering AINs in the NAIS. Under

the AIN Management System, AINs are allocated to companies that manufacture official identification devices or technologies. Other individuals and organizations may perform such roles as distributing these devices and technologies to producers, educating producers on their use, and maintaining records of AIN allocations.

The current document offers a more comprehensive description of the AIN Management System than did the Draft Program Standards, focusing, in particular, on the roles and responsibilities of key participants in the system. These key participants will include AIN tag manufacturers, AIN tag managers, and AIN tag resellers.

AIN tag manufacturers are companies that will be authorized by APHIS to manufacture approved identification devices. In order to be recognized as an AIN tag manufacturer, a company will have to enter into an AIN tag manufacturer agreement with APHIS and a marketing agreement with one or more tag managers and complete a training program provided by APHIS. AIN tag manufacturers will be responsible for the overall production and quality of AIN tags. They may only produce AIN tags with the AINs that have been allocated to them by APHIS and will have to maintain records of the tags that they distribute. AIN tag manufacturers may also be AIN tag managers.

AIN tag managers are individuals, organizations, or companies that will provide AIN tags to other AIN tag managers or resellers or directly to premises. In addition to distributing AIN tags, other responsibilities of the AIN tag manager will include validating the PINs of premises that are to receive the tags; maintaining records of tags received from manufacturers and distributed to premises; other managers, or resellers; submitting these records to the AIN Management System; and educating customers on the proper use of official identification devices. In order to be recognized as an AIN tag manager, the individual or entity will be required to agree to certain terms and conditions set forth by APHIS, which include the completion of a training program provided by APHIS, and to enter into a marketing agreement with an AIN tag manufacturer.

AIN tag resellers will perform the same functions as AIN tag managers, but will receive their AIN tags from AIN tag managers rather than directly from manufacturers. In order to be recognized by APHIS as an AIN tag reseller, the individual or entity will have to enter into a marketing agreement with an AIN tag manager and agree to APHIS' terms

and conditions, which include the successful completion of a training program provided by APHIS.

The document regarding the administration of official identification devices employing the AIN may be viewed on the Internet at <http://www.usda.gov/nais> or on the Regulations.gov Web page.¹ You may request paper copies of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document ("Administration of Official Identification Devices with the Animal Identification Number") when requesting copies.

Done in Washington, DC, this 27th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-3036 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Recreation Fee Administration

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of information collection for the administration of recreation fees on National Forest System lands. The information provides for consistent collection of fees for use of government facilities and services. Respondents will include individuals.

DATES: Comments must be received in writing on or before May 2, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jennifer Eberlien, Recreation Staff, Mailstop 1125, USDA, Forest Service 1400 Independence Avenue, SW., Washington, DC 20250-1125.

Comments also may be submitted via facsimile to Jennifer Eberlien (202) 205-1145 or by e-mail to:

¹ Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS-2005-0117 then click on "Submit." The document described in this notice will appear in the resulting list of documents.

recreation2300@fs.fed.us. If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via mail. Please confine comments to issues pertinent to the proposed extension with revisions of the currently approved information collection, explain the reasons for any recommended changes, and where possible, reference the specific item being addressed.

The public may inspect comments received in the Office of the Director, Recreation and Heritage Staff, 4th Floor South, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC 20024 on business days between the hours of 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead to (202) 205-1169 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT:

Jennifer Eberlien, Recreation and Heritage Staff, at (202) 205-1169. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Recreation Fee Administration.
OMB Number: 0596-0106.
Expiration Date of Approval: July 1, 2006.

Type of Request: Extension with Revision.

Abstract: The Federal Lands Recreation and Enhancement Act (16 U.S.C. 6801-6814) authorizes the Forest Service to collect recreation fees for use of government facilities and services.

Two categories of information are collected through two forms. The first, FS-2300-26, Recreation Fee Envelope, is a form used to document when visitors pay a required recreation fee. The second, FS-2300-43, The Rules of Occupancy for Short-term, Non-Commercial Use of Government Facilities, is used to schedule requests for use and occupancy of government owned facilities. Previously designated as FS-2700-3e under 0596-0082, the Forest Service proposes to redesignate this form under 0596-0106 as FS-2300-43.

Currently, the information collected for FS-2300-26 includes a visitor's vehicle license number and registered state, Golden Passport Number (if applicable), number of days paid, and dollar amount enclosed. The Forest Service is not proposing to change this information. This information is used to ensure that visitors have paid a required recreation fee.

Currently, the information collected for FS-2300-43 includes a renter's

contact information such as name, address, and phone number. The information will be collected when the visitor is paying the recreation fee or when a person is applying for rental of a government owned facility. The Forest Service is proposing to change only the number of the form.

The information will be collected by Federal employees and agents who are authorized to collect the recreation fees or rent government facilities. A national forest may use zip codes to help determine where the national forest's visitor base originates. Personal information such as names, addresses, and vehicle registration will not be maintained. Collecting this information is important to ensure that the national forests are able to evaluate whether a visitor has paid a required recreation fee and to rent a government owned facility.

If unable to collect this information, national forests would not be able to verify who has paid a recreation fee. National forests would not be able to schedule and rent government-owned facilities to the public successfully.

Estimate of Annual Burden: (1) FS-2300-26 estimated 3 minutes; (2) FS-2300-43 estimated 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: FS-2300-26 estimated 2 million. FS-2300-43 estimated 10,000.

Estimated Annual Number of Responses per Respondent: FS-2300-26-1; FS-2300-43-1

Estimated Total Annual Burden on Respondents: FS-2300-26-1,666 hours; FS-2300-43-42 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: February 27, 2006.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E6-3078 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Health Screening Questionnaire

AGENCIES: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of the information collection process for health screening of individuals who seek certification or recertification for firefighter positions. This process is known as the Health Screening Questionnaire. The process applies to individuals applying for firefighter positions and to Forest Service firefighters to determine if they meet the qualifications to perform safely their assigned duties as a firefighter.

DATES: Comments must be received in writing on or before May 2, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Ron Hanks, Forest Service National Aviation Safety and Training Officer, National Interagency Fire Center, Forest Service, USDA, 3833 South Development Avenue, Boise, ID 83705-5354.

Comments also may be submitted via facsimile to (208) 387-5607 or by e-mail to: rhanks@fs.fed.us.

The public may inspect comments received at the National Safety Office, National Interagency Fire Center, Forest Service, USDA, 3833 Development Avenue, Boise, ID, from 8 a.m. to 4:30 p.m. Monday through Friday m.d.t. Visitors are encouraged to call ahead to (208) 387-5607 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Ron Hanks, Forest Service National Aviation Safety and Training Officer, at (208) 387-5607. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Health Screening Questionnaire.

OMB Number: 0596-0164.

Expiration Date of Approval: June 30, 2006.

Type of Request: Extension with Revision.

Abstract: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands. The individuals that perform firefighter jobs are subjected to strenuous working conditions requiring long hours of arduous labor. It is imperative they be in peak physical condition to avoid injury to themselves or their coworkers.

Current or prospective firefighters must complete the Health Screening Questionnaire (HSQ) when seeking employment as a new firefighter with the Forest Service or seeking recertification as a firefighter. The information collected pertains to an individual's health status and health history in an effort to determine if any physical conditions exist or have developed that might result in injury or death during fitness testing or when fighting a wildfire. Forest Service employees will evaluate the collected information to determine if the individual seeking certification or recertification may begin a fitness program to train for the arduous level "Pack Test" of the Work Capacity Tests. If Forest Service employees determine, based on the collected information, that an individual may not be physically able to train for the arduous level of the Work Capacity Test, the agency will require the individual to undergo a physical examination from a physician.

Information collected will be evaluated by a human resource specialist within the specific unit office to ensure that individuals applying for a position or seeking recertification meet the fitness requirements of the position. Forest Service employees will collect general information about the current health of the individual such as height, weight, current level of fitness activity, previous serious health injuries, diseases, or heart conditions, and special current conditions such as allergies and diabetes. The form will be revised to exclude the words "or over the counter" from the second item under "Section A" under subhead "Other Health Issues." We make this change because prescription medications indicate a condition being treated by a physician, and therefore, represent an indication of the individual's health. Individuals determined in sufficient health will be asked to complete the "Work Capacity Tests," which would include testing the level of an individual's aerobic fitness,

level of muscular strength, and muscle endurance.

Failure to collect this data will result in a higher number of unwanted injuries, or even deaths, during the "Work Capacity Test" and while working on wildland fires. If the data is not collected annually, there will be no way to determine if an individual's condition has changed since the previous year.

The information provided by an individual will be placed in the person's Official Employee Medical File and any release of the information will be in accordance with the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). Data gathered in this information collection is not available from other sources.

Estimate of Annual Burden: 5 Minutes.

Type of Respondents: Current employees requesting certification or recertification as a firefighter (Incident Qualifications and Certification Card) and applicants seeking Forest Service firefighter positions.

Estimated Annual Number of Respondents: 15,000.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 1,250 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agencies, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: February 17, 2006.

Robin L. Thompson,

Associate Deputy Chief, S&PF.

[FR Doc. E6-3080 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce National Forest; Idaho County, ID; Meadow Face Stewardship Pilot Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

(Authority: 40 CFR 1502.9)

SUMMARY: The Forest Service will prepare a supplemental environmental impact statement ("SEIS") for the Meadow Face Stewardship Pilot Project on the Nez Perce National Forest, Clearwater Ranger District, in Idaho County, Idaho, for the purpose of completing the cumulative effects analysis referred to in United States District Court Judge Edward J. Lodge's March 31, 2005 unpublished order in *Friends of the Clearwater v. Lohn*, Case No. CV04-384-C-EJL (D. Idaho). The court in that case issued a preliminary injunction against further timber harvesting under the Meadow Face Project until the Forest Service complies with the requirements for a cumulative effects analysis under the National Environmental Policy Act ("NEPA"). The court stated, quoting *Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005), that the final environmental impact statement ("FEIS") for the Meadow Face Project "should have provided adequate data of time, type, place and scale of past timber harvest and should have explained in sufficient detail how different project plans and harvest methods affected the environment." *Friends of the Clearwater*, unpub. ord. at 31 (quoting *Lands Council*, 395 F.3d 1019 at 1028). Regarding the FEIS's analysis of cumulative effects from grazing, the court stated as follows:

The Forest Service's analysis of grazing * * * does not specifically describe the history of grazing in the Project Area, i.e., by providing a catalog of where, and how much, grazing has occurred in the Watershed, or where and the extent to which it is occurring now. The agency's failure to provide adequate data of time, type, place and scale of past, present and reasonably foreseeable grazing activities in the Project Area precludes the public and the decision maker from having necessary information to evaluate the alternatives presented in the FEIS.

Id. at 32. The Forest Service hereby gives notice that it will prepare a SEIS in response to the court's preliminary injunction order.

DATES: Comments concerning the cumulative effects analysis must be received by April 17, 2006.

ADDRESSES: Send written comments to Darcy Pederson, District Ranger, 1005 Highway 13, Grangeville, ID 83530, Attn: Meadow Face Stewardship.

FOR FURTHER INFORMATION CONTACT: David Harper, Interdisciplinary Team Leader, Clearwater Ranger District, at the address above, or via telephone at (208) 983-1963.

SUPPLEMENTARY INFORMATION: The Meadow Face Stewardship Pilot Project was initially scoped on August 15, 2000. The Notice of Intent to prepare the EIS was published in the **Federal Register**, 66 FR 13700, on March 7, 2001. The Draft EIS was sent out for a 45-day comment period in April of 2001. The Notice of Availability for the Draft EIS was published in the **Federal Register**, 66 FR 37956, on July 20, 2001. A Notice of Availability for the Final EIS was published in the **Federal Register**, 67 FR 40923, on June 7, 2002. The Record of Decision ("ROD") was signed by the Nez Perce National Forest Supervisor on February 11, 2003. The supervisor selected Alternative 4B as displayed in the FEIS, with some modifications described on page 12 of the ROD, for implementation.

On June 14, 2004, several environmental groups (led by Friends of the Clearwater out of Moscow, Idaho) filed a lawsuit against D. Robert Lohn (National Oceanic and Atmospheric Administration); William T. Hogarth (National Oceanic and Atmospheric Administration); the National Oceanic and Atmospheric Administration; Donald L. Evans (Secretary of the Department of Commerce); Gail Kimbell (Northern Regional Forester, USDA Forest Service); Ann N. Veneman (Secretary of the Department of Agriculture); and the United States Forest Service; Plaintiffs include Friends of the Clearwater, Alliance for the Wild Rockies, Idaho Sporting Congress, and the Ecology Center. Plaintiffs sought a preliminary injunction against the Meadow Face Project, and on March 31, 2005, the court issued an order enjoining "further timber harvesting * * * until the Forest Service complies with the requisite NEPA cumulative effects analysis." *Friends of the Clearwater*, unpub. ord. at 57.

Purpose and Need for Action

The Final Environmental Impact Statement (February 2002) provided a detailed description of the purpose and need for action. It was noted that the existing condition of aquatic and soil resources and vegetation in the analysis area does not meet the desired condition and/or departs from the historic range.

The project was proposed to begin remediation of the effects of past actions, and to return various resource conditions to within the historic range of variability. The purpose and need for action from the Final Environmental Impact Statement (February 2002) remains unchanged. The purpose for preparing the proposed SEIS is to complete the cumulative effects analysis referred to by the court in *Friends of the Clearwater*.

Proposed Action

The FEIS (February 2002) and ROD (February 2003) provided a detailed description of the original proposed action (Alternative 2). Alternative 2 focused on activities that would improve aquatic and vegetative elements of the analysis area. The proposal was formulated to address conditions and changes needed to achieve the desired conditions and specific goals and objectives described in the Nez Perce Forest Plan.

With the record of decision of February 11, 2003, the Nez Perce National Forest Supervisor selected Alternative 4B as displayed in the FEIS, with some modifications for implementation. The decision included the following activities: Maintain 102 miles of road (12.5 deferred maintenance), construct 12 miles of temporary road, decommission 91 miles of road, convert 5 miles of road to trail, construct 0.1 mile of new OHV trail, maintain dispersed campsites where roads are decommissioned, rehabilitate about 3 miles of stream, harvest timber on up to 3,735 acres, prescribe burn 7,100 acres, replace 45 culverts, apply dust abatement to 5 miles of road, treat 200 acres of existing noxious weeds, restore native plant species in McComas Meadows, restore 550 acres of compacted soils, stabilize the Meadow Creek Slide, and install improvements at McComas/Blacktail Junction, Camp 58, and Quartz Ridge dispersed recreation sites. Additionally, the Forest Supervisor decided to make three site specific amendments to the Nez Perce Forest Plan.

A portion of the timber harvest covered by the Record of Decision (Yew Rock Timber Sale) commenced on March 26, 2004 and was ordered to be ceased following the court's preliminary injunction order of March 31, 2005. To date, the following activities have been implemented in the Environmental Impact Statement project area: replacement of two culverts, stabilization of three sites along an irrigation ditch, decommissioning of 23 miles of road, treatment of noxious weed on 141 acres, maintenance of 34

miles of road, development of one rock source, timber harvest on 730 acres, and construction of 8.6 miles of temporary road.

Responsible Official

The responsible official for this project is Jane Cottrell, the Nez Perce National Forest Supervisor. Comments regarding the cumulative effects analysis for this project should be sent to the address and contacts identified above and should be submitted within 45-days of publication of this notice in the **Federal Register**. A Draft Supplemental Environmental Impact Statement (SEIS) is expected to be available by late May 2006 and the Final SEIS is expected in late summer 2006.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to continue implementation of Alternative 4B, as planned, or whether to modify or terminate implementation of the alternative in light of the revised cumulative effect analysis.

Scoping Process

The U.S. Forest Service uses the scoping process required by the National Environmental Policy Act (NEPA) for all major Federal actions. NEPA requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decision-making that affects the human environment (42 U.S.C. 4332(2)(A)).

Recently, the Council on Environmental Quality issued guidance on the preparation of cumulative effects analyses. Memorandum from James L. Connaughton, Chairman, Council on Environmental Quality, to Heads of Federal Agencies (June 24, 2005). To determine what information is necessary for a cumulative effects analysis, the CEQ Guidance recommends agencies use scoping to determine the extent to which information is "relevant to reasonably foreseeable significant adverse impacts," is "essential to a reasoned choice among alternatives," and can be obtained without exorbitant cost. *Id.* (quoting 40 CFR 1502.22). Based on scoping, agencies have discretion to determine whether, and to what extent, information about the specific nature, design, or present effects of a past action is useful for the agency's analysis of the effects of a proposal for agency action and its reasonable alternatives. *Id.*

The CEQ Guidance further states agencies "should be guided in their cumulative effects analysis by the scoping process, in which agencies

identify the scope and 'significant' issues to be addressed in an environmental impact statement." *Id.* at 2 (quoting 40 CFR 1500.1(b), 1500.4(g), 1501.7, 1508.25). "With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects." *Id.* at 3.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the supplemental environmental impact statement. Comments regarding the revised cumulative effects analysis will be accepted for 45 days after this notification in the **Federal Register**. These comments will help the Forest Service determine the scope of the requisite cumulative effects analysis, and what information regarding past actions is useful and relevant. Send written comments to Darcy Pederson, District Ranger, 1005 Highway 13, Grangeville, Idaho 83530, Attn: Meadow Face Stewardship.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplemental environmental impact statement will be prepared after consideration of responses to this scoping and completion of the requisite cumulative effects analysis. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

It is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft supplemental environmental impact statement must structure their comments so they are meaningful and alert the 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 supplemental environmental impact statement stage, but that are not raised until after completion of the final supplemental 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). It is very important that those interested in the cumulative effects analysis for the

Meadow Face Stewardship Pilot Project participate by the close of the 45-day comment period on the draft supplemental environmental impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in completing the final supplemental environmental impact statement, comments on the draft supplemental environmental impact statement will need to be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this scoping notice as well as comments received on the subsequent Supplemental Environmental Impact Statement, 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: February 10, 2006.

Jane L. Cottrell,

Forest Supervisor.

[FR Doc. 06-1982 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites on the Shasta-Trinity National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee site—Harris Springs Guard Station.

SUMMARY: The Shasta-Trinity National Forest will begin charging a \$35 fee for the overnight rental of the Harris Springs Guard Station. Rentals of other cabins and lookouts on the Shasta-Trinity National Forest have shown that visitors appreciate and enjoy the availability of historic rental facilities. Funds from the rental will be used for the continued operation and maintenance of the Harris Springs Guard Station.

DATES: The Harris Springs Guard Station will become available for rent August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Brenda Tracy, Assistant Forest Public Staff Officer, USDA Forest Service, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directs the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to inform publics of a new fee site.

The Shasta-Trinity National Forest currently has three other cabin/lookout rentals. These rentals are popular and often fully booked throughout their rental season. A business analysis of the Harris Springs Guard Station has shown that people desire having this sort of recreation experience on the Shasta-Trinity National Forest. A market analysis indicates that the \$35/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent the Harris Springs Guard Station will need to do so through the National Recreation Reservation Service, at <http://www.reserveusa.com> or by calling 1-877-444-6777. The National Recreation Reservation Service charges a \$9 fee for reservations.

Dated: February 3, 2006.

Valerie Guardia,

Deputy Director, Recreation, Wilderness and Heritage Resources.

[FR Doc. 06-2024 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AC02

Directive for Environmental Management Systems

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency final directive.

SUMMARY: The Forest Service is issuing a final directive to Forest Service Manual 1330, Environmental Management Systems (EMS), to provide overall guidance to Forest Service line officers and employees on how to include EMS in carrying out national forest land management planning regulations at 36 CFR part 219, subpart A, published in the **Federal Register** on

January 5, 2005 (70 FR 1023), as it relates to Forest Service units and facilities.

DATES: Final directive number 1300-2006-1 is effective March 3, 2006.

ADDRESSES: The directive is available on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives/fsm/1300/1330.doc>.

FOR FURTHER INFORMATION CONTACT: Joe Carbone by e-mail jcarbone@fs.fed.us, by phone at 202-205-0884, or by mail at Joe Carbone, USDA Forest Service, Mailstop 1104, EMC, 3 Central, 1400 Independence Avenue, SW., Washington, DC 20050-1104.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department adopted final planning regulations for the National Forest System (NFS) at 36 CFR part 219, subpart A (70 FR 1023). The planning rule provides broad programmatic direction in developing and carrying out land management planning. The planning rule included requirements for EMS. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives system (36 CFR 219.1(c)). On March 23, 2005, the Forest Service issued 12 interim directives, including FSM 1330 (EMS), 1900, and 1920 and FSH 1909.12 asking for public comment (70 FR 14637). This notice of issuance involves a final amendment for FSM 1331—Environmental Management Systems, addressing EMS responsibilities under the planning rule, as well as Executive Order 13148. Directives to FSMs 1900 and 1920 and FSH 1909.12, chapters zero code, 10, 20, 30, 40, 50, 60 and 80 were issued on January 31, 2006 (71 FR 124-5153) along with responses to comments on the interim directives, including those for FSM 1330.

The Forest Service directives contain the agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities. The directives for all agency programs are set out on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>.

Dated: February 24, 2006.

Dale N. Bosworth,
Chief.

[FR Doc. 06-2022 Filed 3-2-06; 8:45 am]

BILLING CODE 3410-11-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: April 2, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail SKennerly@jwv.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On January 6, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 909) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSNs: Bag, T-Shirt Style & Bag, Produce, Star Bottom.

NSN: 8105-00-NIB-1046—Bag, Produce, Star Bottom.

NPA: Envision, Inc., Wichita, Kansas.

Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Product/NSNs: Pen, Rollerball, Executive and Refill.

NSN: 7520-01-424-4882—Pen, Rollerball, Executive and Refill.

NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6-3022 Filed 3-2-06; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013006H]

Availability of Two Reports: Treated Wood in Aquatic Environments: Technical Review and Use Recommendations; and Creosote-Treated Wood in Aquatic Environments: Technical Review and Use Recommendations

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS is providing this notice in order to allow Federal and state agencies and the public an opportunity to review and provide comments on two reports, prepared for NMFS by an independent consulting firm, regarding the use of treated wood products in aquatic environments. The intent of the reports is to ensure NMFS is informed of relevant studies and recommendations when making decisions related to the use of treated wood in aquatic environments. This information may be used for future development or revision of NMFS treated wood-use guidelines. NMFS is soliciting public comment on whether the treated wood documents sufficiently summarize the existing body of knowledge concerning copper and creosote treated wood products,

including the fate and transport of leached materials, the appropriate use of treated wood products, and the potential effects on living marine resources and their habitats. In addition to this public comment opportunity, the reports will also be subject to independent peer review.

DATES: Public comments must be received by 5 p.m., Pacific standard time May 2, 2006.

ADDRESSES: Comments on these reports may be submitted by mail to the National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95409, Attn: Water Quality Coordinator/Treated Wood Comments. Comments concerning the Treated Wood in Aquatic Environments report may be sent via facsimile to (301) 427-2538. Comments concerning the Creosote-Treated Wood in Aquatic Environments report may be sent via facsimile to (301) 427-2540. Comments may also be submitted electronically. For comments regarding the Treated Wood in Aquatic Environments report, please e-mail your comments to SWR.CopperWood@noaa.gov. For comments regarding the Creosote-Treated Wood in Aquatic Environments report, please e-mail your comments to SWR.CreosoteWood@noaa.gov. The reports are available at <http://swr.nmfs.noaa.gov/> or may be requested by calling or emailing the contact person listed below. Please include appropriate contact information when requesting the documents.

FOR FURTHER INFORMATION CONTACT: Joseph Dillon, Southwest Region Water Quality Coordinator at 707-575-6093 or by email, Joseph.J.Dillon@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the technical review documents is to present a summary of existing literature, prepared independently by Stratus Consulting, Inc. for NMFS, that analyzes the potential effects and mitigations for the use of treated wood products in aquatic environments. The documents focus on copper treated wood, primarily ammoniacal copper zinc arsenate (ACZA), as this is the most prominent material used on the west coast of the United States and in Alaska, and creosote treated products.

These products are being examined by NMFS to determine the risks generated by their usage to the living marine resources that NMFS is responsible for managing. These include anadromous salmonids managed by NMFS under the Endangered Species Act (ESA), as well as other marine fishery resources including Essential Fish Habitat (EFH) as identified and described under

Federal fishery management plans pursuant to Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The use of treated wood in or near aquatic environments commonly requires a permit issued by the U.S. Army Corps of Engineers pursuant to the Clean Water Act and the Rivers and Harbors Act of 1899. Under the ESA, Federal agencies must consult with NMFS pursuant to section 7 of the statute to ensure that any action authorized, funded or carried out by the Federal agency does not jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. Federal action agencies are also required by the Magnuson-Stevens Act to consult with NMFS on any action that may adversely affect EFH. In issuing this permit, the U.S. Army Corps of Engineers will have to conduct an EFH assessment pursuant to 60 CFR 600.920(e) to determine whether the proposed permitted action will adversely affect EFH.

Effects of treated wood that need to be examined under the ESA and Magnuson-Stevens Act regulations include direct, indirect, and cumulative effects. An example of direct effects includes the acute and sublethal impacts of copper and polycyclic aromatic hydrocarbons to salmonids and the EFH of managed species. An example of an indirect effect includes the adverse impacts to the prey base upon which ESA listed and EFH managed species depend. An example of a cumulative effect includes the impacts of multiple structures and contaminants in an area with or without additional loading from urban sources, historic mining, smelters, ships' hulls or any other source. The synthesis of these effects to habitat and to individuals, coupled with local environmental conditions and specific species of concern, defines the risk of a project proposing the use of treated wood.

Since the use of treated wood materials in situations that may expose aquatic ecosystems is widespread along the west coast of the United States and in Alaska, development of guidelines from the information presented in these reports should help to streamline the review of permitting processes as well as the permitting processes themselves. These reports may be used in the future to create new or update existing NMFS policies regarding treated wood.

Dated: February 27, 2006.

James W. Balsiger,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6-3048 Filed 3-2-06; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Recognition of Multilateral Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing an Order pursuant to Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"). Section 409 provides that the Commission (or one of several other authorized U.S. financial regulators) may determine that the supervision by a foreign financial regulator of a multilateral clearing organization for over-the-counter derivative instruments satisfies appropriate standards. The Commission is issuing this Order pursuant to Section 409(b)(3) of FDICIA with respect to the Alberta Securities Commission and its supervision of NetThruPut, Inc., a recognized clearing agency in Alberta, Canada.

DATES: Effective Date: February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430. Email: achapin@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order: *Order Issued Pursuant to Section 409 of the Federal Deposit Insurance Corporation Improvement Act Regarding the Multilateral Clearing Activities of NetThruPut, Inc., in Connection with Transactions Entered into on NTP's Online Trading Platform.*

The Commodity Futures Modernization Act ("CFMA") substantially revised the Commodity Exchange Act ("CEA") and other Federal statutes, including FDICIA.¹ In particular, new Section 409 of FDICIA provides that a clearing organization may operate a multilateral clearing

¹ See Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

organization ("MCO")² for over-the-counter derivatives instruments ("OTC derivatives")³ if, among other alternatives, it is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commission, as applicable, has determined satisfies appropriate standards.

NetThruPut, Inc. ("NTP") has requested that the Commission determine that the oversight of its activities by the Alberta Securities Commission satisfies the criteria for operating as an MCO set forth in Section 409(b)(3) of FDICIA.⁴ NTP intends to operate as an MCO with respect to OTC derivatives transactions to be executed on its online trading platform. NTP's online trading platform provides anonymous trading of crude oil, condensate and other energy contracts.

In its request, NTP provided the Commission with a detailed description of the regulatory program applicable to clearing organizations in Alberta, Canada. NTP also provided the Commission with information comparing the regulatory requirements applicable to NTP and the regulatory requirements applicable to derivatives clearing organizations ("DCOs") in the U.S.,⁵ as set forth in Section 5b of the CEA and Part 39 of the Commission's regulations.⁶ The Commission evaluated the regulatory program of the ASC in the context of the Principles and Objectives

² Section 408(1) of FDICIA defines MCO to mean "a system utilized by more than [two] participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss."

³ Section 408(2) of FDICIA defines OTC derivative instrument to include any agreement, contract, or transaction exempt under Section 2(h) of the CEA.

⁴ Letter from Kenneth M. Raisler, Esq., Sullivan & Cromwell, counsel to NTP, to Jean Webb, Secretary, Commodity Futures Trading Commission, dated November 7, 2005, with exhibits.

⁵ As a matter of first impression, the ASC determined to direct NTP to address in its application for recognition compliance with the fourteen Core Principles set forth under Section 5b(c)(2) of the CEA for registration as a DCO and to provide supporting documentation manifesting its compliance with the Core Principles. See Letter from Allan R. Twa, counsel for NTP, to the ASC, dated November 10, 2004 ("Recognized Clearing Agency Application—NetThruPut Inc.").

⁶ See 66 FR 45604 (August 29, 2001). Part 39 of the Commission's regulations stipulates the form and provides guidance for what should be included in applications for DCO registration. Part 39 also addresses ongoing compliance by DCOs with the Core Principles and other provisions of the CEA and regulations thereunder. The guidance set forth in Part 39 merely illustrates the manner in which a clearing organization may meet a Core Principle and is not intended to be a mandatory checklist

of Securities Regulation issued by the International Organization of Securities Commissions.

In support of NTP's request for relief, the ASC confirmed that:

- The ASC is authorized, under the Alberta Securities Act to supervise the clearing of financial instruments by persons located in Alberta, Canada, and has the ability to enforce compliance with the applicable laws, rules and regulations;
- Clearing in Alberta, Canada, of exchange contracts, as defined in the Alberta Securities Act, may be conducted only by a clearing agency recognized by the ASC;⁷
- The clearing of contracts entered into on NTP's online trading platform is subject to regulatory oversight by the ASC;
- The ASC is an associate member of IOSCO, has adopted IOSCO's Principles and Objectives of Securities Regulation, and has established systems consistent with those Principles and Objectives; and
- The ASC has the ability and undertakes to share with the Commission, upon request, information in its possession regarding NTP's activities as a recognized clearing agency and to otherwise cooperate with the CFTC, subject to Alberta law.⁸

Based upon the information and materials submitted by NTP, and the representations made by the ASC, the Commission has determined that the supervision by ASC of an MCO for OTC derivatives operated by NTP satisfies the criteria set forth in Section 409(b)(3) of FDICIA. Any material changes or omissions in the facts and circumstances pursuant to which this Order is issued might require the Commission to reconsider this matter.

Issued in Washington, DC on February 27, 2006.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06-1940 Filed 3-2-06; 8:45 am]

BILLING CODE 6351-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

⁷ See Alberta Securities Act Section 67.

⁸ See Securities Act, Sections 46 and 46.1; see also the Freedom of Information and Protection of Privacy Act.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed marketing questionnaire to help inform volunteer and member recruitment efforts for its various programs and initiatives. The survey, which would be completed voluntarily by current and prospective volunteers or program participants (for example, AmeriCorps members or RSVP volunteers), would be conducted online with visitors to the Corporation's website domains and in focus groups and public discussions with current and prospective volunteers and program participants. Completion of the survey is voluntary.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 2, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Public Affairs; Attention Shannon Maynard, Senior Marketing Specialist, Room 10304C; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8102C at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606-3460, Attention Shannon Maynard, Senior Marketing Specialist.

(4) Electronically through the Corporation's e-mail address system: smaynard@cns.gov.

FOR FURTHER INFORMATION CONTACT: Shannon Maynard, (202) 606-6713 or by e-mail at smaynard@cns.gov.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose to enhance the quality, utility, and clarity of the information to be collected; and
- Propose to minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation for National and Community Service is committed to fostering civic engagement through service and volunteering. As part of its efforts to inspire all Americans to serve their communities, the Corporation conducts public service campaigns and awareness activities to recruit participants for its programs—Senior Corps, AmeriCorps, and Learn and Serve America—as well as volunteers for its special initiatives such as Martin Luther King, Jr. Day of Service. In order to be more effective in its marketing and recruitment efforts, the Corporation proposed the creation of a uniform marketing survey for all its programs and initiatives. Survey findings will educate the Corporation about how best to reach potential volunteers with information about volunteer and national service opportunities.

Current Action

The Corporation is soliciting comments concerning its proposed marketing questionnaire to help inform volunteer and member recruitment efforts for its various programs and initiatives. The survey, which would be completed voluntarily by current and prospective volunteers or program participants (for example, AmeriCorps members or RSVP volunteers), would be conducted online with visitors to the Corporation's website domains and in focus groups and public discussions with current and prospective volunteers

and program participants. Completion of the survey is voluntary.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: CNCS Marketing and Recruitment Questionnaire.

OMB Number: None.

Agency Number: None.

Affected Public: Corporation program participants and volunteers.

Total Respondents: 1000.

Frequency: On occasion.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 50 hours

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 27, 2006

Sandy Scott,

Director of Public Affairs.

[FR Doc. E6-3038 Filed 3-2-06; 8:45 am]

BILLING CODE 6050-SS-P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Enzymatic Template Polymerization

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,001,996 B1 entitled "Enzymatic Template Polymerization" issued February 21, 2006. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233-4928 or e-mail:

Robert.Rosenkrans@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06-1989 Filed 3-2-06; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Louisiana Coastal Protection and Restoration Project

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

ACTION: Notice of intent.

SUMMARY: This notice of intent (NOI) is for the Louisiana Coastal Protection and Restoration (LACPR) Project. This notice of intent addresses the coastal area of southern Louisiana from the state boundary of Louisiana and Mississippi at the Pearl River in the east to the state boundary of Louisiana and Texas at the Sabine River in the west as identified in the Coast 2050 coastal Louisiana restoration plan.

ADDRESSES: Scoping meeting comments regarding the draft Programmatic Environmental Impact Statement (DPEIS) for the LACPR may be provided orally or in writing at the scoping meetings; sent via e-mail to LACPR_EIS@mvn02.usace.army.mil; sent via the worldwide Web at <http://www.lacpr.usace.army.mil/>; or sent via letter postmarked not later than the close of the scoping comment period to the LACPR EIS Environmental Manager, CEMVN-PM-R, P.O. Box 60267, New Orleans, LA 70160-0267. Comments will not be accepted if submitted by facsimile (fax).

FOR FURTHER INFORMATION CONTACT: LACPR EIS Environmental Manager, Bruce Baird, (504) 862-2526.

SUPPLEMENTARY INFORMATION:

1. *Background:* On August 29, 2005, Hurricane Katrina, a major hurricane (sixth strongest Atlantic basin cyclone on record), made landfall in southeast Louisiana and left in its path the costliest natural disaster recorded in the relatively young history of the United States of America. On September 24, 2005, Hurricane Rita (fourth strongest Atlantic basin cyclone on record), made landfall in southwest Louisiana leaving in its path a trail of severely impacted communities and infrastructure.

Congress has directed the Corps of Engineers, New Orleans District, in

close coordination with the State of Louisiana, to begin a six-month endeavor, titled the South Louisiana Comprehensive Coastal Protection and Restoration Report, also referred to as the LACPR Report, to identify, describe and propose a full range of flood control, coastal restoration, and hurricane protection measures for south Louisiana. A preliminary technical report for comprehensive Category 5 protection is due within six months from December 30, 2005, while a final technical report for Category 5 protection is due within 24 months from December 30, 2005. A final PEIS, without a Record of Decision, will be submitted in conjunction with the 24-month final technical report.

Applicable legislation includes Corps of Engineers—Civil Investigations, The Energy and Water Appropriations Act, 2006 (Pub. L. 109-103), November 19, 2005, Section 5009, The Department of Defense Appropriations Act, 2006 (Pub. L. 109-148), December 30, 2005, and Chapter 3, The Department of Defense Appropriations Act, 2006 (Pub. L. 109-148), December 30, 2005, for assessment of Louisiana Coastal Protection and Restoration.

The DPEIS will document the NEPA (National Environmental Policy Act of 1969) process identifying and assessing reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. Specifically, the DPEIS will analyze the potential direct, indirect, and cumulative impacts of implementing flood control, coastal restoration, and hurricane protection measures for south Louisiana.

2. Proposed Action and Reasonable Alternatives. Four alternatives, including the no-action alternative, have been preliminarily proposed for further evaluation in the six and 24-month technical reports. Those alternatives are as follows: (1) A structural alternative, which is flood protection consisting of a continuous line of earthen or concrete walls, along southern coastal Louisiana connected at various locations, as needed, by floodgates and other devices to provide protection against a storm surge originating from the Gulf of Mexico produced by a catastrophic Category 5 hurricane; (2) a structural alternative with coastal restoration commensurate to the level of structural fortification to provide protection against a storm surge originating from the Gulf of Mexico produced by a catastrophic Category 5 hurricane; (3) and a non-structural alternative consisting of environmental or coastal restoration measures only to provide

protection against a storm surge originating from the Gulf of Mexico produced by a Category 5 hurricane. Other non-structural measures such as, raising or moving structures to meet existing or revised flood plain base elevations, would be a part of any proposed action alternative. The no-action alternative would maintain current levels of flooding protection against a major Category 3 hurricane.

3. Scoping Process. The Council on Environmental Quality (CEQ) regulations implementing the NEPA process directs federal agencies that have made a decision to prepare an environmental impact statement to engage in a public scoping process. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the draft environmental impact assessment. Scoping is the process used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient EIS preparation process; (c) define the issues and alternatives that will be examined in detail in the EIS; and (d) save time in the overall process by helping to ensure that the draft statements adequately address relevant issues. Scoping is a process, not an event or a meeting. It continues throughout the planning for a draft EIS and may involve meetings, telephone conversations, and/or written comments. Public scoping meetings will be conducted during a two-week scoping meeting comment period. Locations for public scoping meetings are as follows: New Orleans, Thibodaux, Lafayette, and Lake Charles, Louisiana. Dates, times, and physical locations of the public scoping meetings are to be determined. Public scoping meeting comments will be accepted up to seven business days following the final scoping meeting.

4. Request for Scoping Comments. The Corps will conduct scoping meetings to determine the scope of issues to be addressed and for identifying the significant issues related to the DPEIS for the LACPR project. Notices will be mailed to the affected and interested public once the dates and locations of the scoping meetings have been established. The Corps invites scoping input concerning the following scoping focus questions: Question #1: What are the critical natural and human environmental problems and needs that should be addressed in the DPEIS? Question #2: What are the significant resources that should be considered in the DPEIS? Question #3: What are the reasonable restoration alternatives that should be considered in the DPEIS?

Interested parties are encouraged to provide their input and recommendations for all significant issues of the study.

Scoping comments will be compiled, analyzed, and utilized in the plan formulation process. A Scoping Report, summarizing the comments, will be made available to all scoping participants and published on the LACPR Web site (<http://www.lacpr.usace.army.mil/>). Scoping comments will be accepted throughout the scoping comment period.

5. Public Involvement. Scoping is a critical component of the overall public involvement program. An intensive public involvement program will continue throughout the study to solicit input from affected Federal, state, and local agencies, Indian tribes, and other interested parties.

6. Interagency Coordination and Cooperation. Pursuant to section 1501.6 of the NEPA (30 CFR parts 1500-1508), the following agencies have been invited to participate in the study as cooperating agencies on the EIS: Minerals Management Service, National Marine Fisheries Service, Natural Resources Conservation Service, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Service, Louisiana Department of Environmental Quality, Louisiana Department of Natural Resources, and the Louisiana Department of Wildlife and Fisheries. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the National Marine Fisheries Service regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the "Swampbuster" provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, "Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations." Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone

Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Streams.

7. *Availability of DPEIS.* It is anticipated that the DPEIS will be available for public review May 2007. A 45-day review period will be provided so that all interested agencies, groups and individuals will have an opportunity to comment on the DPEIS. In addition, public meetings will be held during the review period to receive comments and address questions concerning the DPEIS.

Dated: February 21, 2006.

Richard P. Wagenaar,

Colonel, U.S. Army, District Commander.

[FR Doc. E6-3050 Filed 3-2-06; 8:45 am]

BILLING CODE 3710-84-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Adopt a Final Environmental Impact Statement

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

ACTION: Notice.

SUMMARY: The Army Corps of Engineers, Los Angeles District (Corps), has reviewed the Final Environmental Impact Statement (FEIS) prepared by the U.S. Department of Transportation, Federal Highway Administration (FHWA), dated July 2004, for the proposed "Route Location, Adoption, and Construction of State Route 905 Between the Otay Mesa Port of Entry and Interstate 805 in the County of San Diego, California." The Corps intends to adopt the FEIS for purposes of compliance with the National Environmental Policy Act (NEPA). This notice only solicits comments on the Corps' intent to adopt the FEIS.

DATES: Written comments must be received by March 14, 2006.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CESPL-CO-R, San Diego Regulatory Field Office, 168885 West Bernardo Drive, Suite 300A, San Diego, California 92127. Comments may also be submitted, via electronic mail, to: terrence.dean@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Dean, San Diego Regulatory Field Office, at (858) 674-5386.

SUPPLEMENTARY INFORMATION: The proposed project is to construct State Route 905 from Interstate 805 (I-805) to the Otay Mesa Port of Entry (POE) with Mexico, a distance of approximately 10

kilometers (6.2 miles). Each of the proposed alternatives would include six travel lanes (three in each direction) and each would have a wide median for possible, future high occupancy vehicle (HOV) lanes. Local interchanges would be constructed at Caliente Avenue, Heritage Road, Britannia Boulevard, and La Media Road, as would a freeway-to-freeway interchange at State Route 125. The project purpose is to provide for effective transportation of people, goods, and services between I-805 and the Otay Mesa POE. Project objectives include alleviating existing traffic congestion, improving safety on Otay Mesa Road, providing adequate transportation facilities for the associated growth from planned and approved developments, and completing a major transportation corridor between Interstate 5 and the POE. Alternatives assessed in the FEIS issued by FHWA include: A no-build alternative and six build alternatives. The Freeway-Central Alignment Alternative has been identified as the Preferred Alternative and the Least Environmentally Damaging Practicable Alternative (LEDPA).

On August 10, 2005, the Caltrans submitted an application for a Department of the Army permit under section 404 of the Clean Water Act (CWA) to discharge fill material into 7.68 acres of jurisdictional waters of the United States to construct State Route 905 as a six-lane controlled access highway from I-805 to the Otay Mesa POE with Mexico in San Diego County, California. The project includes: (1) Constructing local interchanges at Caliente Avenue, Heritage Road, Britannia Boulevard, La Media Road, (2) a freeway-to-freeway interchange at State Route 125, and (3) constructing a bridge structure at Spring Canyon.

A Notice of Intent to prepare an EIS was published by FHWA in the *Federal Register* on March 30, 1995. Prior to the development of the draft EIS (DEIS), several scoping meetings were held by the FHWA/California Department of Transportation (Caltrans) to identify local issues and areas of concern. On July 27, 2001, the DEIS was filed with the U.S. Environmental Protection Agency (EPA). The DEIS was circulated for public review from August 13, 2001 to October 16, 2001. During the public review period, a public hearing was held by FHWA/Caltrans on September 20, 2001. The FEIS was signed by the FHWA on July 23, 2004, and distributed to the public. On September 24, 2004, the FHWA signed the Record of Decision.

The Corps' regulations at 33 CFR parts 320-331 requires compliance with the

NEPA, the EPA's CWA section 404(b)(1) Guidelines, and a public interest evaluation. Accordingly, for purposes of the Corps' compliance with the NEPA and to prevent duplication of effort, the Corps intends to adopt the FEIS issued by the FHWA. This notice solicits comments on the Corps' intent to adopt the FEIS only.

However, we have determined further analysis is necessary to document compliance with our public interest requirements and the CWA 404(b)(1) Guidelines. We initially distributed a notice to the public of the receipt of a permit application by the Caltrans and to solicit comments on the proposed project. This initial notice solicited comments from August 17 to September 18, 2005. As a result of our election to adopt the FEIS, we will be distributing a second notice to the public seeking comments on the proposed project as analyzed in the FEIS. An Environmental Assessment will be prepared to address the additional analysis and comments received in response to both public notices.

Comments concerning the Caltrans' proposed project must be provided in response to the Los Angeles District Second Public Notice, which we anticipate, will be circulated on February 21, 2006. The public notice can be obtained by submitting a written request to Mr. Terry Dean at the address or e-mail above or by accessing our Internet Web page at <http://www.spl.usace.army.mil/regulatory>.

Mark R. Blackburn,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. E6-3045 Filed 3-2-06; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th

Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 27, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants Under the Minority Science and Engineering Improvement Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 8000.

Abstract: This Minority Science and Engineering Improvement Program application is designed to effect long-range improvement where enrollments are predominantly Alaska Native, American Indian, Blacks (not of Hispanic origin), Hispanics (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islanders or any combination of these.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary

Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2986. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-3041 Filed 3-2-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No. 84.184L]

Safe Schools/Healthy Students

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of intent to fund down the grant slate for the Safe Schools/Healthy Students program.

SUMMARY: The Secretary intends to use the grant slate developed for the Safe Schools/Healthy Students program in Fiscal Year (FY) 2005 to make new grant awards in FY 2006. The Secretary takes this action because a significant number of high-quality applications remain on last year's grant slate and limited funding is available for new grant awards in FY 2006.

FOR FURTHER INFORMATION CONTACT:

Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E336, Washington, DC 20202-6450. Telephone: (202) 708-4647 or via Internet: Karen.Dorsey@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative

format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On March 10, 2005, we published a notice in the **Federal Register** (70 FR 11948) inviting applications for new awards under the Safe Schools/Healthy Students program. This notice indicated that the final priority, selection criteria, requirements, and definitions published in a notice in the **Federal Register** on May 28, 2004 (69 FR 30756) would apply to the FY 2005 grant competition.

We received a significant number of applications for grants under the Safe Schools/Healthy Students program in FY 2005 and made 40 new grants. Because such a large number of high-quality applications were received, many applications that were awarded high scores by peer reviewers did not receive funding last year.

Limited funding is available for new awards under this program in FY 2006. In order to conserve funding that would have been required for a peer review of new applications submitted under the program, we intend to select grantees in FY 2006 from the existing slate of applicants. This slate was developed during the FY 2005 competition using the final priority, selection criteria, requirements, and definitions referenced in the March 10, 2005 notice. No changes to the final priority, selection criteria, requirements, and definitions will be required by this action.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency

Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Dated: February 28, 2006.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E6-3083 Filed 3-2-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06-40-000, et al.]

Xcel Energy Services, Inc. et al.; Electric Rate and Corporate Filings

February 24, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Xcel Energy Services, Inc.

[Docket No. EC06-40-000]

Take notice that on February 17, 2006, Xcel Energy Services Inc. on behalf of Southwestern Public Service Company tenders for filing a notice of withdrawal of section 203 Federal Power Act application filed on December 13, 2005.

Comment Date: 5 p.m. Eastern Time on March 10, 2006.

2. Cadillac Renewable Energy LLC, Decker Energy Cadillac, Inc., Seville Energy LLC

[Docket No. EC06-82-000]

Take notice that on February 15, 2006, Cadillac Renewable Energy LLC, Decker Energy Cadillac, Inc. and Seville Energy LLC (Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of disposition of jurisdictional facilities.

Comment Date: 5 p.m. Eastern Time on March 8, 2006.

3. NewCorp Resources Electric Cooperative, Inc.

[Docket No. EC06-83-000]

Take notice that on February 17, 2006, NewCorp Resources Electric Cooperative, Inc. (NewCorp) tendered for filing pursuant to section 203 of the Federal Power Act an application requesting all authorizations and approvals necessary for the indirect disposition of jurisdictional facilities in connection with the proposed acquisition of all of the capital stock of Cap Rock by Cap Rock Holding Corporation.

Comment Date: 5 p.m. Eastern Time on March 10, 2006.

4. Avista Corporation; Avista Energy, Inc.; Spokane Energy, LLC; Avista Turbine Power, Inc.; Rathdrum Power, LLC

[Docket Nos. EC06-85-000; ER99-1435-012; ER96-2408-024; ER98-4336-014; ER99-3320-004]

Take notice that on February 17, 2006, Avista Corporation d/b/a Avista Utilities, Avista Energy, Inc., Spokane Energy, LLC, Avista Turbine Power, Inc., and Rathdrum Power, LLC (collectively Applicants) submitted an Application pursuant to section 203 of the Federal Power Act seeking authorization for the disposition of jurisdictional facilities resulting from a proposed corporate reorganization, and providing notice of a change in status relating to Applicants' market-based rate authorization.

Comment Date: 5 p.m. Eastern Time on March 10, 2006.

5. TransCanada Energy, Ltd.

[Docket No. EC06-38-000]

Take notice that on February 19, 2006, TransCanada Energy, Ltd. filed pursuant to section 366.1 of the Commission's regulations, as recently promulgated in Order No. 665, a notice of self-certification that it is an exempt wholesale generator within the meaning of section 366.1 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on March 10, 2006.

6. Pittsfield Generating Company, L.P.

[Docket No. ER06-262-001]

Take notice that on February 16, 2006, Pittsfield Generating Company, L.P. (Applicant) tendered for filing its responses to the January 23, 2006 deficiency letter requesting additional information for the cost-of-service Reliability Must Run Agreement between ISO-New England, Inc. (ISO-NE) and Sempra Energy Trading Corporation, as agent for Applicant, filed November 30, 2005. In addition, ISO-NE tendered for filing its responses to the deficiency letter on February 22, 2006.

Comment Date: 5 p.m. Eastern Time on March 9, 2006.

7. Southwest Power Pool, Inc.

[Docket No. ER06-578-001]

Take notice that on February 15, 2006, Southwest Power Pool, Inc. (SPP) submitted for filing a revised unexecuted service agreement for Network Integration Transmission Service between SPP and Southwestern Public Service Company filed on January 1, 2006.

Comment Date: 5 p.m. Eastern Time on March 6, 2006.

8. International Transmission Company

[Docket No. ES06-26-000]

Take notice that on February 14, 2006, International Transmission Company (International Transmission) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to extend the maturity date on its existing revolving credit facility until March 10, 2010.

International Transmission also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. Eastern Time on March 10, 2006.

9. El Paso Electric Company

[Docket No. ES06-27-000]

Take notice that on February 17, 2006, El Paso Electric Company (El Paso Electric), submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term indebtedness in an amount not to exceed \$200 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on March 15, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6-3042 Filed 3-2-06; 8:45 am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6672-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050532, ERP No. D-FRC-G03029-LA, Creole Trail Liquefied National Gas (LNG) Terminal and Pipeline Project, Construction and Operation, Cameron, Calcasieu, Beauregard, Allen, Jefferson, Davis and Acadia Parishes, LA.

Summary: EPA expressed environmental concerns about potential impacts to aquatic resources, and requested additional information regarding contaminant testing and suitability of dredge material for beach nourishment.
Rating EC2.

EIS No. 20050472, ERP No. DA-AFS-J65277-CO, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Additional Information Regarding Wildlife Resources, Grand Mesa Uncompahgre and Gunnison National Forests, Grand Valley Ranger District, Mesa County, CO.

Summary: EPA expressed environmental concerns about potential impacts from sedimentation to surface water, the adequacy of the buffer zones and mitigation measures.
Rating EC2.

Final EISs

EIS No. 20050524, ERP No. F-BLM-K08028-CA, Desert Southwest Transmission Line Project, New Substation/Switching Station Construction, Operation and Maintenance, Issuance of Right-of-Way Grant and U.S. Army COE Section 10 and 404 Permits, North Palm Springs and Blythe, CA.

Summary: EPA does not object to the proposed project.

EIS No. 20050547, ERP No. F-AFS-L65472-ID, Paddy Flat Vegetation Project, Harvesting and Regenerate Timber Stands Precommercially Thin Plantations, Rapid, Kennally and Camp Creeks, Payette National Forest, McCall Ranger District, Valley County, ID.

Summary: EPA continues to have environmental concerns about potential impacts to water quality from stream bank erosion and encourages source water mapping and protection if necessary be included as part of the project.

EIS No. 20060009, ERP No. F-NPS-L61228-AK, Denali National Park and Preserve Revised Final Backcountry Management Plan, General Management Plan Amendment, Implementation, AK.

Summary: The final EIS adequately responded to EPA's concerns with potential impacts to water quality, wetlands, permafrost soils and impacts to wildlife from snowmobile use; therefore, EPA does not object to the proposed project.

EIS No. 20060018, ERP No. F-COE-G39044-TX, Upper Trinity River Basin Project, To Provide Flood Damage Reduction, Ecosystem Improvement, Recreation and Urban Revitalization, Trinity River, Central City, Fort Worth, Tarrant County, TX.

Summary: EPA does not object to the proposed action.

EIS No. 20060020, ERP No. F-COE-E11055-NC, Fort Bragg Headquarters for XVII Airborne Corps and Army Special Operations Command, To Determine the Level of Training on the Overhills Tract Program, Cumberland and Harnett Counties, NC.

Summary: EPA does not object to the proposed training upgrade.

Dated: February 28, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6-3079 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6672-9]

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 February 21, 2006 Through February 24, 2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060060, Final EIS, HUD, NE, Ashburton Avenue Master Plan and Urban Renewal Plan/Mulford Hope VI Revitalization Plan, Development, Implementation, Yonkers City, Westchester County, NY, Wait Period Ends: April 3, 2006, Contact: Daisy Colon 914-377-6560.

EIS No. 20060061, Final EIS, HUD, CA, Stillwater Business Park, New and Revised Information, Development of Business Park, Annexation AN1-01, Shastec Redevelopment Project Area, Airport Land Use Plan Amendment, Pre-Zone, General Plan Amendment GPA-2-01, Rezone RZ-1-01, Funding and U.S. Army COE 404 Permit, City of Redding, Shasta County, CA, Wait Period Ends: April 3, 2006, Contact: Nathan Cherpeski, 530-225-4519.

This document is available on the Internet at http://ci.redding.ca.us/cm/major_pr/still_buspk.html.

EIS No. 20060062, Final EIS, AFS, CO, Copper Mountain Resort Trails and Facilities Improvements, Implementation, Special Use Permit, White River National Forest, Dillon Ranger District, Summit County, CO, Wait Period Ends: April 3, 2006, Contact: Joe Foreman, 970-468-5400.

EIS No. 20060063, Draft EIS, FHW, CA, Big Bear Lake Bridge Replacement Project, near Big Bear Lake on CA-18 from Kilopost 71.1/71.9, Realignment and Widening Roadways, U.S. COE Section 404 Permit, Funding, San Bernardino National Forest, San Bernardino County, CA, Comment Period Ends: April 17, 2006, Contact: Lisa Cathcart-Randall, 916-498-5048.

EIS No. 20060064, Draft EIS, FHW, PA, Willow Creek All-Terrain Vehicle Trail Expansion, Improvements, located in Marshburg/Stickney Intensive Use Area, Alleghany National Forest, McKean County, PA, Comment Period Ends: April 17, 2006, Contact: Mark Conn, 814-723-5150.

EIS No. 20060065, Draft EIS, FRC, WA, Priest Rapids Hydroelectric Project,

FERC Project #2114 Relicensing Application for New License, Columbia River, Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, WA, Comment Period Ends: April 17, 2006. Contact: Todd Sedmak, 1-866-208-3372.

EIS No. 20060066, Draft EIS, CGD, 00, Beacon Port Deepwater Port License Application, Construction and Operation, Deepwater Port and Offshore Pipeline, U.S. COE Section 404 and 10 Permits, Gulf of Mexico, San Patricio County, TX, Comment Period Ends: April 17, 2006, Contact: Ray Martin, 202-267-1683.

Amended Notices

EIS No. 20050545, Draft EIS, FHW, CA, Doyle Drive Project, South Access to the Golden Gate Bridge, Propose to Improve Seismic, Structural, and Traffic Safety, Presido of San Francisco, San Francisco County Transportation Authority, Marin and San Francisco Counties, CA, Comment Period Ends: March 31, 2006, Contact: Leland W. Dong 916-498-5860. Revision to FR Notice Published December 30, 2005. Reopening and Extending Comment Period from March 1, 2006 to March 31, 2006.

EIS No. 20050554, Draft EIS, IBR, ND, Red River Valley Water Supply Project, Development and Delivery of a Bulk Water Supply to meet Long-Term Water Needs of the Red River Valley, Implementation, ND, Comment Period Ends: March 30, 2006, Contact: Signe Snortland 701-250-4242, ext. 3619 Revision of FR Notice Published on January 6, 2006: Correction to Comment Period from February 28, 2006 to March 30, 2006.

EIS No. 20060004, Final EIS, FHW, MD, Intercountry Connector (ICC) from I-270 to US-1, Funding and U.S. Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD, Wait Period Ends: March 23, 2006, Contact: Dan Johnson 410-779-7154. Revision of FR Notice Published January 13, 2006: Extending Wait Period from February 27, 2006 to March 23, 2006.

EIS No. 20060046, Draft EIS, BIA, CA, Scotts Valley Band of Pomo Indians, Proposed 29.87 Acre Fee-to-Trust Transfer and Casino Project, Contra Costa County, CA, Comment Period Ends: April 28, 2006, Contact: John Rydzik 916-978-6042.

Revision to FR Notice Published January 6, 2006. Correction to Comment Period from April 3, 2006 to April 28, 2006.

Dated: February 28, 2006.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6-3077 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2006-0117; FRL-7765-8]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FQSTTA) to enable state and tribal leaders to collaborate with EPA on environmental protection and pollution prevention issues. Representatives and invited guests of the Chemical Information and Management Project (CIMP), the Pollution Prevention (P2) Project, and the Tribal Affairs Project (TAP), components of FOSTTA, will be meeting March 13-14, 2006. The meeting is being held to provide participants an opportunity to have in-depth discussions on issues concerning the environment and human health. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

DATES: A plenary session is being planned for the participants from 8:30 a.m. to 9:45 a.m. on Monday, March 13, 2006. The three projects will meet on Monday, March 13, 2006, from 10 a.m. to 5 p.m., and on Tuesday, March 14, 2006, from 8:30 a.m. to 12 noon.

Requests to participate in the meeting, identified by docket identification (ID) number EPA-HQ-OPPT-2006-0117, must be received on or before March 9, 2006.

ADDRESSES: The meeting will be held at the Courtyard Arlington Crystal City, 2899 Jefferson Davis Highway, Arlington, VA.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: For general information contact Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-hotline@epa.gov.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8814; fax number: (202) 564-8813; e-mail address: harrod.darlene@epa.gov, or Margaret Sealey, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624-3662; fax number: (202) 624-3666; e-mail address: msealey@sso.org.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and in hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxic chemicals. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, federal, and local environmental and public health organizations.
- 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. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. **Docket.** EPA has established an official public docket for this action under docket ID number EPA-HQ-OPPT-2006-0117. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading

Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0280.

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/>.

Agency Website: EDocket, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.

I. Background

The Toxic Substances Control Act (TSCA), 15 U.S.C. 2609 section 10(g), authorizes EPA and other Federal agencies to establish and coordinate a system for exchange among Federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the CIMP focuses on EPA's chemical program and works to develop a more coordinated effort involving Federal, state, and tribal agencies. P2 promotes the prevention ethic across society, helping to integrate P2 into mainstream environmental activities at the Federal level and among the states and tribes. TAP concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to focus on major policy-level issues of importance to states and tribes, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 Federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and often times controversial environmental issues.

The Environmental Council of the States (ECOS), in partnership with the National Tribal Environmental Council (NTEC) and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS and NTEC facilitate ongoing efforts of the state and tribal leaders and OPPT to increase

understanding and improve collaboration on toxic chemicals and pollution prevention issues, and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA-HQ-OPPT-2006-0117, must be received on or before March 9, 2006.

IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and pollution prevention issues. The states and the tribes identified the following tentative agenda items:

1. National High Production Volume Data Users Conference.
2. Demonstration of the High Production Volume Information System.
3. Pollution Prevention Project Work Plan.
4. Pollution Prevention Measurement.
5. Healthy School Environments Assessment Tool.
6. Proposed Rule Lead: Renovation, Repair, and Painting Program.

List of Subjects

Environmental protection, Chemical information and management Pollution prevention.

Dated: February 23, 2006.

Pamela S. Myrick,

*Director, Environmental Assistance Division,
Office of Pollution Prevention and Toxics.*

[FR Doc. 06-2090 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2006-0129; FRL-7764-8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 1, 2006 thru February 10, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments, identified by the docket ID number EPA-HQ-OPPT-2006-0129 and the specific PMN number or TME number, must be received on or before April 3, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter

of the premanufacture notices addressed in the 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. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA-HQ-OPPT-2006-0129. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0280.

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/>.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number EPA-HQ-OPPT-2006-0129. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number EPA-HQ-OPPT-2006-0129 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official

public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-200X-0129 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 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 any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 1, 2006 thru February 10, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 16 PREMANUFACTURE NOTICES RECEIVED FROM: 02/01/06 TO 02/10/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-06-0283	02/02/06	05/02/06	Cytec Surface Specialties Inc.	(G) Resin coating	(G) Fatty acids, polymers with alkanolic acid, and epoxy resin
P-06-0284	02/02/06	05/02/06	Cytec Surface Specialties Inc.	(G) Resin coating	(G) Fatty acids, polymers with alkanolic acid, and alkoxyated
P-06-0285	02/03/06	05/03/06	BASF Corporation	(S) Roofing adhesive; construction sealant	(G) Mdi polyether polyol prepolymer
P-06-0286	02/03/06	05/03/06	PPG Industries, Inc.	(G) Coating formulation ingredient	(G) Alkyl and hydroxylated diester of a triamine
P-06-0287	02/03/06	05/03/06	PPG Industries, Inc.	(G) Coating formulation ingredient	(G) Alkyl and hydroxylated diester of a triamine
P-06-0288	02/03/06	05/03/06	PPG Industries, Inc.	(G) Coating formulation ingredient	(G) Hydroxylated diester of a triamine
P-06-0289	02/03/06	05/03/06	CBI	(G) open non-dispersive (sizing agent	(G) Polyurethane urea
P-06-0290	02/06/06	05/06/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid

I. 16 PREMANUFACTURE NOTICES RECEIVED FROM: 02/01/06 TO 02/10/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-06-0291	02/06/06	05/06/06	Septon Company of America	(S) Compatibilizer of resins and adhesive between polar and non-polar resins modifier of resins	(S) Hexanedioic acid, polymers with 1,4-butanediol, hydrogenated butadiene-isoprene-styrene polymer and 1,1'-methylenebis[4-isocyanatobenzene]
P-06-0292	02/06/06	05/06/06	CBI	(G) Highly dispersive use	(G) Olefinic carbamate
P-06-0293	02/06/06	05/06/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P-06-0294	02/06/06	05/06/06	CBI	(G) container use in energy production	(G) Polyacrylate
P-06-0295	02/08/06	05/08/06	Halocarbon Products Corporation	(S) Pharmaceutical intermediate; chemical intermediate	(S) 2-(difluoromethoxy)-1,1,1-trifluoroethane
P-06-0296	02/08/06	05/08/06	CIBA Specialty Chemicals Corporation	(S) Exhaust application to cotton fabrics	(G) Naphthalenesulfonic acid azo substituted naphthalenesulfonic acid amino substituted triazine amino substituted phenyl azo phenyl sulfonyl compound
P-06-0297	02/08/06	05/08/06	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P-06-0298	02/08/06	05/08/06	CBI	(G) Antistatic agent	(G) 1h-imidazolium, 1-alkyl-3-alkyl-, alkyl sulfate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

II. 13 NOTICES OF COMMENCEMENT FROM: 02/01/06 TO 02/10/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P-02-0749	02/03/06	12/29/05	(S) Pentacyclo[9.5.1.13,9.15,15.17,13]octasiloxane, octakis(2-methylpropyl)-
P-03-0865	02/06/06	01/05/06	(G) N-acrylic betaine
P-05-0019	02/08/06	01/19/06	(G) Norrish type I acetophenone acetoacetic ester
P-05-0252	02/03/06	01/23/06	(S) 1,3-butadiene, homopolymer, hydroxy-terminated, bis[[(isocyanatophenyl)methyl]phenyl]carbamate]
P-05-0636	02/08/06	01/13/06	(S) Fatty acids, C ₁₆₋₁₈ , polymers with butyl acrylate, 2-hydroxyethyl methacrylate, phthalic anhydride, styrene, 3,5,5-trimethylhexanoic acid and trimethylolpropane
P-05-0637	02/08/06	01/13/06	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, polymers with ethylene glycol, glycerol, maleic anhydride and phthalic anhydride
P-05-0638	02/08/06	01/13/06	(S) Castor oil, dehydrated, polymer with benzoic acid, phthalic anhydride and trimethylolpropane
P-05-0643	02/03/06	01/11/06	(G) Phosphonomethylated amine
P-05-0737	02/09/06	12/14/05	(S) Germanium arsenide selenide
P-05-0790	02/08/06	01/30/06	(G) 2-propenoic acid, multifunctional alcohol with 2-hydroxyethyl acrylate and propylene glycol mono[[3-(carboxyamino)methylphenyl]carbamate] ether with glycerol (3:1)
P-05-0822	02/01/06	01/14/06	(G) Hydrocarbon resin
P-06-0049	02/07/06	01/27/06	(G) Alkyl ester polymer with alkyl esters and alkyl benzene
P-94-2149	02/08/06	01/21/06	(G) Dibasic acid/glycol ester

List of Subjects

Environmental Protection, Chemicals, Premanufacturer Notices.

Dated: February 23, 2006.

Carolyn Thornton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6-3051 Filed 3-2-06; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—March 8, 2006.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Revocation of Licenses for Failure to Comply with the Bonding Requirements of Section 19 of the Shipping Act of 1984—Order to Show Cause.

2. Docket No. 02-04—Anchor Shipping Co. v. Alianca Navegacao E Logistica Ltda.

FOR MORE INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523-5725.

Karen V. Gregory,
Assistant Secretary.

[FR Doc. 06-2093 Filed 3-1-06; 1:20 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-1s and supporting statements and approved collection of information instruments 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.

Request for comment on information collection proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections,

including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 2, 2006.

ADDRESSES: You may submit comments, identified by Reg W or Reg Z, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00a.m. and 5:00p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83-1), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to approve under OMB delegated authority the extension for three years, without revision, of the following collections of information:

1. *Report title:* Notice Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates)

Agency form number: Reg W
OMB control number: 7100-0304

Frequency: Event-generated
Reporters: Insured depository

institutions and uninsured member banks

Estimated annual reporting hours:
250 hours

Estimated average hours per response:
Loan participation renewal notice, 2 hours; Acquisition notice, 6 hours; Internal corporate reorganization transactions notice, 6 hours; and Section 23A additional exemption notice, 10 hours.

Estimated number of respondents: 45

General description of report: This information collection is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c-1(e)).

Confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice 12 CFR 223.15(b)(4) may be protected under the authority of the Freedom of Information Act (5 U.S.C. § 552(b)(4) and (b)(8)). Section (b)(4) exempts information deemed competitively sensitive from disclosure and Section (b)(8) exempts information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

Abstract: Effective April 1, 2003, the Federal Reserve issued Regulation W to implement comprehensively sections 23A and 23B. The Federal Reserve decided to issue such a rule for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. In addition, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Finally, issuing a comprehensive rule allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B. On December 12, 2002, the Federal Reserve published a Federal Register notice (67 FR 76603) adopting Reg W.

2. *Report title:* Recordkeeping and Disclosure Requirements of Regulation Z

Agency form number: Reg Z
OMB control number: 7100-0199
Frequency: Event-generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: Open-end credit—initial disclosure, 28,463 hours; open-end credit—updated disclosures, 41,250 hours; periodic statements, 125,952 hours; error resolution—credit cards, 22,260 hours; error resolution—other open-end credit, 1,312 hours; credit & charge card—solicitations and applications, 29,952 hours; home equity plans—applications disclosure, 13,983 hours; home equity plan—restrictions disclosure, 354 hours; closed-end credit disclosures, 351,354 hours; HOEPA pre-closing disclosures, 425 hours; and advertising, 2,733 hours.

Estimated average hours per response: Open-end credit—initial disclosure, 1.5 minutes; open-end credit—updated disclosures, 1 minute; periodic statements, 8 hours; error resolution—credit cards, 30 minutes; error resolution—other open-end credit, 30 minutes; credit & charge card—solicitations and applications, 8 hours; home equity plans—applications disclosure, 1.5 minutes; home equity plan—restrictions disclosure, 3 minutes; closed-end credit disclosures, 6.5 minutes; HOEPA pre-closing disclosures, 3 minutes; and advertising rules, 25 minutes.

Number of respondents: State member banks, 947; branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), 287; commercial lending companies owned or controlled by foreign banks, 3; and organizations operating under section 25 or 25A of the Federal Reserve Act, 75.

General description of report: This information collection is mandatory (15 U.S.C. 1601, 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take-one applications are available to the public.

Abstract: TILA and Regulation Z require disclosure of the costs and terms of credit to consumers. For open-end credit (revolving credit accounts) creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. There are special disclosure requirements for credit and charge card applications and solicitations, as well as for home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

Board of Governors of the Federal Reserve System, February 27, 2006.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E6-2990 Filed 3-2-06; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-0208; 30-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection;

Title of Information Collection:

Applicant Background Survey;

Form/OMB No.: OS-0990-0208;

Use: This form will be used to ask applicants for employment, how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities, in compliance with EEOC management directives.

Frequency: Reporting;

Affected Public: Individuals or households;

Annual Number of Respondents: 30,000.00;

Total Annual Responses: 30,000.00;

Average Burden Per Response: 1/2 hour;

Total Annual Hours: 1,000;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/ocio/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to naomi.cook@hhs.gov, or call the Reports Clearance Office on (202) 690-6162.

Written comments and recommendations for the proposed information collections must be received within 30-days, and directed to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990-0208), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 22, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6-3033 Filed 3-2-06; 8:45 am]

BILLING CODE 4153-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-New] [30-Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is

publishing the following summary of 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Adolescent Family Life Prevention Demonstration Project End of Year Template;

Form/OMB No.: OS-0990-New;

Use: The Adolescent Family Life Prevention Demonstration Projects provide services to promote abstinence to adolescents. The End of Year Template will provide an outline and forms to report annually on program and evaluation services and outcomes.

Frequency: Annually.

Affected Public: State, local, or tribal governments, business or other for profit, not for profit institutions.

Annual Number of Respondents: 60.

Total Annual Responses: 60.

Average Burden Per Response: 30 minutes.

Total Annual Hours: 65.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/ocio/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to naomi.cook@hhs.gov, or call the Reports Clearance Office on (202) 690-8356.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990-New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 16, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6-3034 Filed 3-2-06; 8:45 am]

BILLING CODE 4150-30-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-New; 30-Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Adolescent Family Life Care Demonstration Project End of Year Template;

Form/OMB No.: OS-0990-New;

Use: The Adolescent Family Life Care Demonstration projects provide and evaluate services for pregnant and parenting adolescents. The End of Year Template will provide an outline and forms to report annually on program and evaluation services and outcomes.

Frequency: Annually.

Affected Public: State, local, or tribal governments, business or other for profit, not for profit institutions.

Annual Number of Respondents: 50.

Total Annual Responses: 50.

Average Burden Per Response: 30 minutes.

Total Annual Hours: 106.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/ocio/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to naomi.cook@hhs.gov, or call the Reports Clearance Office on (202) 690-8356.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990-New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 18, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6-3035 Filed 3-2-06; 8:45 am]

BILLING CODE 4150-30-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06-0314]

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

Cycle 7 of the National Survey of Family Growth (NSFG-7)—OMB No. 0920-0314—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention.

Background and Brief Description

The National Survey of Family Growth (NSFG) has been conducted periodically since 1973 by the CDC's National Center for Health Statistics. The first five cycles were based on in-person interviews with national samples of women 15-44 years of age. Cycle 6, in 2002, was based on interviews with a national sample of 12,571 persons—4,928 men and 7,643 women ages 15-44. Interviews provide national estimates of behavior related to birth and pregnancy rates; marriage, divorce, and adoption; behavior related to the risk of Human Immunodeficiency Virus (HIV) and other sexually transmitted

diseases; attitudes toward marriage, childbearing, and parenthood; and men's and women's roles in raising children.

While the content of Cycle 7 will be similar to that of Cycle 6, the interviewing will be conducted over a 4.5-year period rather than all in one year, as in previous cycles. This continuous interviewing design is intended to reduce costs, increase efficiency, and contribute to continuous improvement in the collection, processing, and dissemination of the data. Sample size is expected to increase

from 12,571 in Cycle 6 to 17,400 total in the 4.5 years of data collection in Cycle 7. For this cycle, the "Pretest" will be conducted initially in the first 8 weeks of interviewing and, if no problems are found, those weeks will become part of the Main Study. If operational problems are found in that period, they will be corrected, and the "Main Study" will begin at that point. Emerging public policy issues may necessitate the addition of a few new questions. The burden table represents the survey collection averaged over the first three years of the survey.

Users of the NSFG include the National Institutes of Health National Institute of Child Health and Human Development; the Office of Population Affairs; NCHS/CDC; the Division of Reproductive Health, CDC; the Divisions of HIV/AIDS Prevention, CDC; the Office of the Assistant Secretary for Planning and Evaluation; and the Administration for Children and Families.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 6,457

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents/instruments	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pretest Screener	403	1	5/60
Males	109	1	1.00
Females	133	1	1.33
Main study screener	7,250	1	5/60
Males	1,957	1	1.00
Females	2,393	1	1.33
Verification	725	1	5/60
Test new questions	2,000	1	10/60

Dated: February 24, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-3024 Filed 3-2-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Health Department Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry: Teleconference Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), The National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR), CDC announces the following subcommittee teleconference meeting:

Name: Health Department Subcommittee (HDS), BSC, NCEH/ATSDR.

Time and Date: 1 p.m.-2:30 p.m., March 15, 2006.

Place: Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the BSC, NCEH/ATSDR the Health Department Subcommittee will provide the BSC, NCEH/ATSDR with advice and recommendations on local and state health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

Matters to be Discussed: The meeting agenda will include a discussion of NCEH/ATSDR's inventory list of environmental health training activities; a discussion of the Office of Workforce and Career Development; a discussion on the list of Environmental Health training activities being conducted by groups other than CDC; and a discussion on formulating possible recommendations to the BSC.

Items are subject to change as priorities dictate.

Supplementary Information: To participate in the meeting, public comment period will be from 2-2:10 p.m. Eastern Standard Time. Dial (877) 315-6535 and enter conference code 383520.

For Further Information Contact: Shirley D. Little, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E-28, Atlanta, GA 30303; telephone 404/498-0003, fax 404/498-0059; E-mail: slittle@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register**

notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: February 24, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6-3025 Filed 3-2-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-668B and CMS-10181]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

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) 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Post Clinical Laboratory Survey Questionnaire and Supporting Regulations in 42 CFR 493.1771, 493.1773, and 493.1777; *Use:* To provide an opportunity and a mechanism for Clinical Laboratory Improvement Amendments of 1988 (CLIA) laboratories surveyed by CMS or CMS' agents to express their satisfaction and concerns about the CLIA survey process.; *Form Number:* CMS-668B (OMB #0938-0653); *Frequency:* Recordkeeping, Reporting—Biennially; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 21,000; *Total Annual Responses:* 10,500; *Total Annual Hours:* 2,625.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Enrolling Low-Income Beneficiaries into the Medicare Prescription Drug Program—Survey of State Agency Experiences; *Use:* The Centers for Medicare and Medicaid Services (CMS) will conduct a survey of State Medicaid agencies, State health insurance plans (SHIPs), and State pharmaceutical assistance programs (SPAPs) to identify best practices for the successful enrollment of all types of low-income Medicare beneficiaries into a low-income subsidy and the Medicare Part D Prescription Drug Benefit Program. The evaluation will assist in identifying the best practices, the factors that make them effective, and how the information can be disseminated in an effective manner. The information will be used to help CMS as it designs its outreach and communication campaigns in subsequent open enrollment periods.; *Form Number:* CMS-10181 (OMB #0938-NEW); *Frequency:* Reporting—Other, one-time; *Affected Public:* State, Local or Tribal governments, Federal government; *Number of Respondents:* 126; *Total Annual Responses:* 126; *Total Annual Hours:* 63.

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.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on May 2, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—A, Attention: Melissa Musotto (CMS-668B), Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: February 22, 2006.

Michelle Shortt,

Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 06-1919 Filed 3-2-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10110 and CMS-10170]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

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:* Manufacturer Submission of Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals And Supporting Regulations in 42 CFR 414.804; *Form No.:* CMS-10110 (OMB #0938-0921); *Use:* In accordance with section 1847A of the Social Security Act (the Act), Medicare Part B covered drugs and biologicals not paid on a cost or prospective payment basis are paid based on the average sales price of the drug or biological, beginning in CY 2005. The ASP data reporting requirements are specified in section 1927 of the Act. The reported ASP data are used to establish the Medicare payment amounts. CMS will utilize the ASP data to determine the drug payment amounts for CY 2005 and beyond. In the interim final rule which published April 6, 2004 (69 FR 17935), the ASP reporting format. (Addendum A), was specified. In addition, we stated that, as we gain more experience with the ASP methodology, we may seek to modify the reporting requirements (data elements and format for submission) in the future. Based on our experience during the initial six reporting periods, we have found it necessary for carrying out section 1847A of the Act, to expand the ASP data collected from manufacturers.

We are proposing that, in addition to the original data elements (manufacturer name, National Drug Code (NDC), manufacturer's ASP, and number of units), the following data elements must be submitted quarterly by manufacturers:

- Name of drug or biological;
- Strength of the product;
- Volume per item;
- Number of items per NDC;
- Wholesale acquisition costs (applies to NDCs assigned to single source drug and biological billing codes and NDCs during the initial period under section 1847A(c)(4) of the Act);

• Expiration date of the last lot sold;

- Date NDC was first available for sale; and
- Date of first sale.

We are also proposing that manufacturers would no longer report ASP data for an NDC beginning the reporting period after the expiration date of the last lot sold. For NDCs first made available for sale or sold on or after October 1, 2005, we are also proposing to collect the date the NDC was first available for sale and the date of first sale. We are also proposing that manufacturers be required to submit these dates to us once with the first or second, if applicable, data submission for new NDCs. In addition, we are

proposing that the expiration date of the last lot sold must be reported to CMS once at the end of utilization of the NDC or when there are no sales for three consecutive quarters.

On November 21, 2005, we published an interim final rule (70 FR 70478) stating that, during the first three years of the Part B Drug Competitive Acquisition Program (CAP), sales and price concessions associated with units administered to a beneficiary by a participating CAP vendor are excluded from the ASP units and price. We propose to collect the number of CAP units excluded from the ASP calculation. *Frequency:* Recordkeeping and Reporting—Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 120; *Total Annual Responses:* 480; *Total Annual Hours:* 17,760.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Retiree Drug Subsidy (RDS) Payment Request and Instructions; *Form Number:* CMS-10170 (OMB #0938-0977); *Use:* Under section 1860D-22 of the Social Security Act (Act), added by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, plan sponsors (employers, unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28 percent tax-free subsidy for allowable drug costs. To receive the subsidy, plan sponsors must submit required prescription cost data. CMS has contracted with an outside vendor (ViPS) to assist in the administration of the retiree drug subsidy (RDS) program; this effort is called the RDS Center. Plan sponsors will request subsidy payments on-line by logging on to the RDS secure Web site. Cost data required for each payment request may be entered into the RDS secure Web site, or uploaded to the RDS Center mainframe. Once the plan sponsor submits the payment request, the RDS Center will process the request to determine if payment is due and the amount of the payment; *Frequency:* Recordkeeping and Reporting—Monthly, Quarterly and Annually; *Affected Public:* Not-for-profit institutions, Business or other for-profit, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 6,000; *Total Annual Responses:* 6,000; *Total Annual Hours:* 222,000.

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 within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 23, 2006.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory
Affairs.*

[FR Doc. 06-1920 Filed 3-2-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10185]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management

and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. CMS does not have sufficient time to complete the normal PRA clearance process. We request this Paperwork Reduction Act clearance under an emergency approval process to meet the statutorily-mandated reporting requirement under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and to accommodate the operational schedule for the bidding process for prospective and renewing Part D Sponsors. In order to uphold the MMA reporting requirement in conjunction with the bid deadline for contract year 2007, key preceding events must occur. If these events do not occur, prospective and renewing Part D Sponsors will be unable to adjust their bids to reflect compliance with these reporting requirements. Inaccuracies in Part D bids will cause many adverse consequences to Part D Sponsors, their enrolled Medicare beneficiaries, and CMS.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part D Reporting Requirements; *Use:* Data collected via Medicare Part D Reporting Requirements will be an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries. Data will be validated, analyzed, and utilized for trend reporting by CMS. If outliers or other data anomalies are detected, CMS will work in collaboration with other CMS divisions for follow-up and resolution. *Form Number:* CMS-10185 (OMB #0938-New); *Frequency:* Reporting: Quarterly and Semi-annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 3,203; *Total Annual Responses:* 12,812; *Total Annual Hours:* 102,496.

CMS is requesting OMB review and approval of these collections by April 14, 2006, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by April 3, 2006.

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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed to the designees referenced below by *April 14, 2006*:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850, Attn: Bonnie L Harkless,

and,

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 23, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 06-1921 Filed 3-2-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N-0427]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 3, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA

has submitted the following proposed collection of information to OMB for review and clearance.

Filing Objections and Requests for a Hearing on a Regulation or Order —(OMB Control Number 0910-0184)—Extension

Under part 12 (21 CFR part 12), § 12.22, issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), sets forth the instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection for which a hearing has been requested must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 12.24 and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

In the **Federal Register** of November 16, 2005 (70 FR 69577), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.22	10	1	10	20	200

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-3020 Filed 3-2-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 17, 2006, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD, 301-977-8900.

Contact Person: Darrell Lyons, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, e-mail: Darrell.Lyons@fda.hhs.gov or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572) in the Washington, DC area), code 3014512543. Please call the information line for up-to-date information on this meeting.

Agenda: The committee will discuss supplemental new drug application (NDA) 20823, SE1-016, EXELON (rivastigmine tartrate) Capsules (1.5 milligrams (mg), 3.0 mg, 4.5 mg, and 6.0 mg), Novartis Pharmaceuticals Corp., for the proposed indication of the treatment of mild to moderate dementia associated with Parkinson's disease. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm> under the heading "Peripheral and Central Nervous System Drugs Advisory Committee." (Click on the year 2006 and scroll down to the previously named committee).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 3, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 3, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to

a disability, please contact Darrell Lyons at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 24, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6-3021 Filed 3-2-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Commitment Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is required, under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to report annually in the *Federal Register* on the status of postmarketing study commitments made by sponsors of approved drug and biological products. This is the agency's report on the status of the studies sponsors have agreed to or are required to conduct.

FOR FURTHER INFORMATION CONTACT: Beth Duvall-Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6466, Silver Spring, MD 20993-0002, 301-796-0700; or Robert Yetter, Center for Biologics Evaluation and Research (HFM-25), Food and Drug Administration, 1400 Rockville Pike, Rockville, MD 20852, 301-827-0373.

SUPPLEMENTARY INFORMATION:

I. Background

Section 130(a) of the Modernization Act (Public Law 105-115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision requiring reports of certain postmarketing studies (section 506B of the act (21 U.S.C. 356b)) for human drug and biological products. Section 506B of the act provides FDA with additional authority to monitor the progress of a postmarketing study commitment that an applicant has been required or has agreed to conduct by requiring the applicant to submit a report annually

providing information on the status of the postmarketing study commitment. This report must also include reasons, if any, for failure to complete the commitment.

On December 1, 1999 (64 FR 67207), FDA published a proposed rule providing a framework for the content and format of the annual progress report. The proposed rule also clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The final rule, published on October 30, 2000 (65 FR 64607), modified annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). These regulations became effective on April 30, 2001. The regulations apply only to human drug and biological products. They do not apply to animal drug or to biological products that also meet the definition of a medical device.

Sections 314.81(b)(2)(vii) and 601.70 apply to postmarketing commitments made on or before enactment of the Modernization Act (November 21, 1997) as well as those made after that date. Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study that is required by FDA (e.g., accelerated approval clinical benefit studies) or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of other types of postmarketing commitments (e.g., those concerning chemistry, manufacturing, production controls, and studies conducted on an applicant's own initiative) are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70, and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii).

According to the regulations, once a postmarketing study commitment has been made, an applicant must report on the progress of the commitment on the anniversary of the product's approval until the postmarketing study commitment is completed or terminated, and FDA determines that the postmarketing study commitment has been fulfilled or that the postmarketing study commitment is

either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the postmarketing study commitment, a schedule for completing the study commitment, and a characterization of the current status of the study commitment. The report must also provide an explanation of the postmarketing study commitment's status by describing briefly the postmarketing study commitment's progress. A postmarketing study commitment schedule is expected to include the actual or projected dates for the following: (1) Submission of the study protocol to FDA, (2) completion of patient accrual or initiation of an animal study, (3) completion of the study, and (4) submission of the final study report to FDA. The postmarketing study commitment status must be described in the annual report according to the following definitions:

- Pending: The study has not been initiated, but does not meet the criterion for delayed;
- Ongoing: The study is proceeding according to or ahead of the original schedule;
- Delayed: The study is behind the original schedule;
- Terminated: The study was ended before completion, but a final study report has not been submitted to FDA; or
- Submitted: The study has been completed or terminated, and a final study report has been submitted to FDA.

Databases containing information on postmarketing study commitments are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). Information in this report covers any postmarketing study commitment that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including those required (e.g., to demonstrate clinical benefit of a product following accelerated approval) and those agreed to with the applicant. Information summarized in this report includes: (1) The number of applicants with open (uncompleted) postmarketing commitments, (2) the number of open postmarketing commitments, (3) the status of open postmarketing commitments as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded postmarketing studies as determined by FDA, and (5) the number of applications with open postmarketing commitments for which sponsors did not submit an annual report within 60 days of the anniversary date of U.S. approval.

Additional information about postmarketing study commitments made by sponsors to CDER and CBER are provided on FDA's Web site at <http://www.fda.gov/cder>. Like this notice, the site does not list postmarketing study commitments containing proprietary information. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. The numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site. This notice incorporates totals for all postmarketing study commitments in FDA databases, including those undergoing review for accuracy. The report in this notice will be updated annually while the Web site is updated quarterly (in January, April, July, and October).

II. Summary of Information From Postmarketing Study Progress Reports

This report summarizes the status of postmarketing commitments as of September 30, 2005. If a commitment did not have a schedule or a postmarketing progress report was not received, the commitment is categorized according to the most recent information available to the agency.

Data in table 1 of this document are numerical summaries generated from FDA databases. The data are broken out according to application type (NDAs/ANDAs or BLAs).

TABLE 1.—SUMMARY OF POST-MARKETING STUDY COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2005)

	NDAs/ ANDAs (% of Total)	BLAs ¹ (% of Total)
Applicants With Open Post-marketing Commitments	154	44
Number of Open Postmarketing Commitments	1,231	321
Status of Open Post-marketing Commitments		
• Pending	797 (65%)	118 (37%)
• Ongoing	231 (19%)	94 (29%)
• Delayed	28 (2%)	53 (17%)
• Terminated	3 (<1%)	0
• Submitted	172 (14%)	56 (17%)

TABLE 1.—SUMMARY OF POST-MARKETING STUDY COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2005)—Continued

	NDAs/ ANDAs (% of Total)	BLAs ¹ (% of Total)
Concluded Studies (October 1, 2004 Through September 30, 2005)	156	56
• Commitment Met	136 (87%)	41 (73%)
• Commitment Not Met	5 (3%)	0
• Study No Longer Needed or Feasible	15 (10%)	15 (27%)
Applications With Open Post-marketing Commitments With Annual Reports Due, but Not Submitted Within 60 Days of the Anniversary Date of U.S. Approval	170 (47%) ²	37 (50%)

¹ On October 1, 2003, FDA completed a consolidation of certain products formerly regulated by the CBER into the CDER. The previous association of BLA reviews only with CBER is no longer valid; BLAs are now received by both CBER and CDER. Fiscal year (FY) statistics for CDER BLA postmarketing study commitments will continue to be counted under BLA totals in this table.

² The search strategy was improved for the FY 2005 report and may explain, in part, the increased number of applications categorized as having overdue annual reports. Note that this statistic counts all annual reports submitted more than 60 days after the anniversary date of U.S. approval as overdue, including reports that may have been submitted on a modified reporting schedule in accordance with prior FDA agreement. Of the applications categorized as having overdue annual reports using this definition, annual reports were subsequently submitted in FY 2005 for 170/170 (100 percent) of NDAs/ANDAs and 19/37 (51 percent) of BLAs.

Dated: February 23, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-3019 Filed 3-2-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with the National Environmental Policy Act, 42 U.S.C. 4321-4347, the NIH is issuing this notice to advise the public that an environmental impact statement will be

prepared for the Rocky Mountain Laboratories Campus Master Plan, Hamilton, Ravalli County, Montana.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Chief, Environmental Quality Branch, Division of Environmental Protection, Office of Research Facilities, NIH, B13/2W64, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone 301-496-7775; fax 301-480-8056; or e-mail nihnepa@mail.nih.gov.

SUPPLEMENTARY INFORMATION: Rocky Mountain Laboratories (RML) is located on 33 acres in the City of Hamilton, a small community in southwestern Montana. The laboratory is a component of the National Institute of Allergy and Infectious Diseases (NIAID), which is one of the 27 Institutes or Centers that comprise the NIH, one of the world's largest biomedical research facilities and the Federal government's focal point for medical and behavioral research. RML conducts and supports research of infectious diseases and the human immune system, with an emphasis on vector-borne transmission of infectious diseases and prion diseases. RML's mission also includes biomedical research into diseases caused by the intentional release of biological agents into civilian populations, as well as advancing basic knowledge about biological agents. Total building space on the campus amounts to approximately 207,000 sq. ft. Approximately 260 people work at the RML site.

A Master Plan is an integrated series of documents that present in graphic, narrative, and tabular form the current composition of NIH campuses and the plan for their orderly and comprehensive development over a 20-year period. The plan provides guidance in coordinating the physical development of NIH campuses, including building locations, utility capacities, road alignments, parking facilities, and the treatment of open spaces. General design guidelines are also used to provide detailed guidance for the placement and design of physical improvements.

The proposed action is to develop a long-range physical master plan for RML. The plan will cover a 20-year planning period and address the future development of the RML site, including placement of future construction; vehicular and pedestrian circulation on- and off-campus; parking within the property boundaries; open space in and around the campus; required setbacks; historic properties; natural and scenic resources; noise; and lighting. The plan will examine potential growth in RML

personnel, possible land acquisitions, and consequent construction of space over the planning period. Future construction on the site could include such facilities as new animal holding, research laboratories, and support facilities.

In accordance with 40 CFR parts 1500-1508 and DHHS environmental procedures, NIH will prepare an Environmental Impact Statement (EIS) for the proposed master plan. The EIS will evaluate the impacts of the master plan should development occur as proposed. Among the items the EIS will examine are the implications of the master plan on community infrastructure, including, but not limited to, utilities, storm water management, traffic and transportation, and other public services. To ensure that the public is afforded the greatest opportunity to participate in the planning and environmental review process, NIH in inviting oral and written comments on the master plan and related environmental issues.

The NIH will be sponsoring a public Scoping Meeting to provide individuals an opportunity to share their ideas on the master planning effort, including recommended alternatives and environmental issues the EIS should consider. The meeting is planned for 7 p.m. on March 23, 2006 at the Hamilton High School commons in Hamilton, Montana. All interested parties are encouraged to attend. NIH has established a 45-day public comment period for the scoping process. Scoping comments must be postmarked *no later than* April 18, 2006 to ensure they are considered. All comments and questions on the EIS should be directed to Valerie Nottingham at the address listed above, telephone 301-496-7775; fax 301-480-8056; or e-mail nihnepa@mail.nih.gov.

Dated: February 24, 2006.

Juanita Holler-Mildenberg,

FAIA, Acting Director, Office of Research Facilities Development and Operations, National Institutes of Health.

[FR Doc. 06-2015 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Replicators in Gene Therapy

Mirit Aladjem, Cindy Tseng, Haiqing Fu and Lixin Wang (NCI).

U.S. Provisional Application No. 60/715,113 filed 07 Sep 2005 (HHS Reference No. E-309-2005/0-US-01).

Licensing Contact: Susan Carson, D. Phil.; 301/435-5020; carsonsu@mail.nih.gov.

There remains a need for a gene therapy vector capable of delivering a stably maintained, appropriately-regulated therapeutic transgene without adverse side effects. Lack of expression of a therapeutic transgene is still a major obstacle for gene therapy and the extent of transcriptional silencing of gene therapy vectors depends on their chromosomal location and on the presence of nearby heterochromatin. Most active genes replicate early during S phase, while transcriptional silencing correlates with late replication. The location of DNA replication initiation events on chromatin is affected by DNA sequences termed replicators, which interact with distal sequences to establish an epigenetic permissive state that directs the replication machinery to the replicator at a specific time during S phase. NIH researchers at the National Cancer Institute have now shown that inclusion of functional replicators in transgenes are able to prevent gene silencing, suggesting that replicator sequences have an important role in stabilizing gene expression patterns. The ideal gene delivery vector system would include functional elements that permit stable maintenance and long-term regulated transgene expression and the inclusion of replicators may be key

in the prevention of gene silencing and replication delay.

Claims are directed to specific constructs and methods of using replicators and transgene constructs to inhibit, delay or prevent gene silencing and are available for licensing. The addition of these sequences to non-replicating or self-replicating gene delivery systems may be key in the development of effective gene delivery vectors.

Related portfolios available for licensing include: (1) the Mammalian Artificial Chromosome Portfolio [HHS Ref. No. E-128-2005/0-US-01, U.S. Provisional Patent Application No. 60/669,589 filed 08 Apr 2005 and HHS Ref. No. E-253-2000/0-US-03, U.S. Patent Application Publication No. U.S. 2004/0245317 filed 08 Apr 2002] and (2) the TAR Cloning Portfolio [HHS Ref. No. E-121-1996/0-US-06 and HHS Ref. No. E-158-2001/0-US-02, U.S. Patent Application Publication No. U.S. 2004/0248289 filed 04 Oct 2002].

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

TNF-alpha Converting Enzyme Inhibitory Agents and Stimulatory Agents

Stewart J. Levine *et al.* (NHLBI). U.S. Provisional Application No. 60/505,394 filed 24 Sep 2003 (HHS Reference No. E-208-2003/0-US-01); PCT Application No. PCT/US2004/031608 filed 24 Sep 2004, which published as WO 2005/030798 on 07 Apr 2005 (HHS Reference No. E-208-2003/0-PCT-02).

Licensing Contact: Marlene Astor; 301/435-4426; shinnm@mail.nih.gov.

The action of Tumor Necrosis Factor alpha (TNF-alpha) has been implicated in such diseases as arthritis, sepsis, ulcerative colitis, multiple sclerosis, Crohn's disease, septic shock, graft rejection, cachexia, insulin resistance, post-ischemic reperfusion injury, tumor metastasis, tissue ulceration, abnormal wound healing, periodontal disease, bone disease, proteinuria, aneurysmal aortic disease, degenerative cartilage loss, demyelinating diseases of the nervous system, and HIV infection. TNF-alpha converting enzyme (TACE) or ADAM 17 (A Disintegrin And Metalloprotease) is a member of a family of zinc metalloproteases, and is an important regulator of inflammation, immune regulation, and cellular proliferation as a consequence of its ability to catalyze the activation of TNF-alpha from a membrane bound to a soluble form.

The NIH announces the identification of a protein, corresponding to the amino-terminus of the TACE prodomain, that possesses a TACE inhibitory activity that is independent of a cysteine-switch mechanism. This TACE inhibitory protein could be used as a new therapeutic agent against chronic inflammatory diseases that are mediated by TNF-alpha.

Dated: January 21, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6-3013 Filed 3-2-06; 8:45 am]

BILLING CODE 4167-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, SEPA Review.

Date: March 14-15, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Democracy Blvd., Dem. 1, Room 1074, MSC 4874, Bethesda, MD 20892-4874, (301) 435-0824, dunnbo@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1971 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biotechnology SEP.

Date: March 2-3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Steven Birken, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, Bethesda, MD 20892, (301) 435-0815, birkens@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1972 Filed 3-2-06; 8:45am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Training Applications (T).

Date: March 10, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference Call).

Contact Person: Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd, room 1082, Bethesda, MD 20892, (301) 435-0810, duffy@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1973 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Program Projects (P01s).

Date: March 22, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709. (919) 541-7571. nesbitt@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1970 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mental Retardation & Developmental Disabilities Research Centers 2006.

Date: March 27-29, 2006.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435-6911, hopmann@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1974 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Related Child Disorders.

Date: March 8, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892-9608, 301-443-1959, csarampo@unil.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Career Transition Award.

Date: March 16, 2006.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892-9608, 301-443-1959, csarampo@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1975 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Research Program Projects.

Date: March 9-11, 2006.

Time: 12 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites San Diego, 701 A Street, San Diego, CA 92101.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, 919/541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1976 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Collaborative Research on Mental and Neurological Disorders.

Date: March 23-24, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892-9608, 301/443-7216, hhaigler@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1977 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 27-29, 2006.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892-1381, 301-496-3501. (Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-1978 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Roadmap.

Date: March 9-10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435-6033, rajarms@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, MRI Review.

Date: March 10, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892-9529, (301) 496-5324, mconneje@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Tissue Bank Review.

Date: March 13, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892-9529, (301) 496-5324, mconneje@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2016 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussions, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: March 26-28, 2006.

Closed: March 26, 2006, 7 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: March 27, 2006, 8:15 a.m. to 11 a.m.

Agenda: An overview of the organization and research in the Laboratory of Signal Transduction and the Laboratory of Molecular Toxicology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: March 27, 2006, 11:45 a.m. to 12:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: March 27, 2006, 1:20 p.m. to 4 p.m.

Agenda: An overview of the organization and research in the Laboratory of Signal Transduction and the Laboratory of Molecular Toxicology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: March 27, 2006, 4:50 p.m. to 5:45 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: March 28, 2006, 8:30 a.m. to 10:30 a.m.

Agenda: An overview of the organization and research in the Laboratory of Signal Transduction and the Laboratory of Molecular Toxicology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Lutz Birnbaumer, Scientific Director, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, MD A2-09, P.O. Box 12233, Research Triangle Park, NC 17709, 919/541-3205. (Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2018 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Program Projects (P01s).

Date: March 7, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAMS, 6701 Democracy Blvd, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal & Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Room 824, MSC 4872, Bethesda, MD 20892-4872, (301) 594-4955, browneri@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2019 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Service for Pre-Clinical Development of Therapeutics Agents.

Date: March 22, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: John A. Bogdan, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-496-2550, jbogdan@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-2020 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology Small Business-SRA Conflict.

Date: March 6, 2006.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301-435-0902, charlesvi@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oncology Fellowships and AREA.

Date: March 12-14 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435-2477, zargerma@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer, Chronic Pain and Treatment Strategies.

Date: March 14, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Weight Management, Physical Activity and Eating Disorders.

Date: March 14, 2006.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028-D, MSC 7759, Bethesda, MD 20892, 301-451-9956, gboyd@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Physiological Neuroscience 2.

Date: March 16, 2006.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Crystal City, VA 22202.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892-7850, (301) 435-1164, custerm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Toxicology.

Date: March 16, 2006.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435-1044, leszczynski@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.

Date: March 17, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301-435-1778, khanm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biochemistry and Cell Biology of Circadian Rhythms.

Date: March 21, 2006.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435-1257, baizerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR-04-023 Bioengineering Research Partnerships.

Date: March 22, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Hotel, Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, 301-435-2786, shonatr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Fellowships and R03 Applications—Behavioral and Social HIV/AIDS.

Date: March 23, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-435-1775, rubertm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, New Developments in Oral, Dental and Craniofacial Sciences: Small Business Panel.

Date: March 24, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301-451-1327, tthyagar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Salt-Sensitive Hypertension and Human Angiotension Receptor.

Date: March 29, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210, chaudhaa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPR Spectrometer.

Date: March 31, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435-2684, leesro@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel South East Asian Adolescent Studies.

Date: March 31, 2006.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, 301-435-0912, levinv@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 2006.

Anna Snouffer,

Acting Director, Office of Director Advisory Committee Policy.

[FR Doc. 06-2017 Filed 3-2-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Immigrant Petition for Alien Workers, Form I-140; OMB Control Number 1615-0015.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) 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 December 29, 2005, at 70 FR 77170. The notice allowed 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 April 3, 2006. 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), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail please make sure to add OMB Control Number 1615-0015 in the subject box. 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 existing information collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-140; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to classify a person under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act. The data collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 96,000 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 96,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forms/pra/index.htm>.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272-8377.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6-3027 Filed 3-2-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 30-day notice of information collection under review: Request for Fee Waiver Denial Letter, Form G-1054; OMB Control No. 1615-0089.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) 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 December 29, 2005, at 70 FR 77170. The notice allowed 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 April 3, 2006. 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), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail please make sure to add OMB Control Number 1615-0089 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver Denial Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G-1054; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The regulations at 8 CFR 103.7(c) allows U.S. Citizenship and Immigration Services (USCIS) to waive fees for benefits under the Immigration and Nationality Act (Act). This form is used to maintain consistency in the adjudication of fee waiver requests, and to collect accurate data on amounts of fee waivers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1.25 hours (75 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: <http://uscis.gov/graphics/formsfee/forins/prs/index.htm>. If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272-8377.

Dated: February 28, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6-3028 Filed 3-2-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Impact Statement for a Proposed Land Exchange in Yukon Flats National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public scoping meeting schedule.

SUMMARY: We, the Fish and Wildlife Service (FWS), plan to hold public scoping meetings to help us prepare an Environmental Impact Statement (EIS), under the National Environmental Policy Act of 1969 for a proposed land exchange within the Yukon Flats National Wildlife Refuge in Alaska. In our earlier notice of intent to prepare this EIS, we announced that scoping meetings would be held in February. However, we have extended the meeting schedule through early April. With this notice, we announce meeting dates and ask the public for suggestions and comments on the scope of issues to be addressed in our EIS.

DATES: The meeting dates are:

- April 3, 2006: Open house, 3–8 p.m., Fairbanks
- April 4, 2006: Open house, 3–8 p.m., Anchorage
- To be announced: We will also hold scoping meetings in the communities of Arctic Village, Beaver, Birch Creek, Central, Chalkyitsik, Circle, Fort Yukon, Stevens Village, and Venetie. However, the schedule for these meetings will be highly dependent on local weather conditions and other village activities and commitments. Dates and times for these meetings will be announced locally.

Comment period end date: We will accept public scoping comments received on or before April 15, 2006.

ADDRESSES: Meeting addresses:

Anchorage: FWS Regional Office, 1011 East Tudor Road.
Fairbanks: Noel Wien Library, 1215 Cowles Street.

Address comments or questions to Cyndie Wolfe, Project Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS-231, Anchorage, AK 99503. Comment forms and project information are available on the project Web site at: <http://yukonflatseis.ensr.com>.

The comment form may be used to submit comments electronically on the project Web site.

FOR FURTHER INFORMATION CONTACT: Cyndie Wolfe, Project Coordinator, 907-786-3463.

SUPPLEMENTARY INFORMATION: We plan to hold public scoping meetings to help

us prepare an EIS under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d) and its implementing regulations for a proposed land exchange and acquisition of certain lands owned by Doyon, Limited within the Yukon Flats National Wildlife Refuge in Alaska. In our earlier notice of intent to prepare this EIS (70 FR 60845, October 19, 2005), we said that we would soon announce February 2006 dates for scoping meetings. However, we have extended the timeframe for those meetings to early April 2006. With this notice, we announce scheduled meeting dates and ask the public for suggestions and information on the scope of issues to be addressed in our EIS. We will accept comments received on or before April 15, 2006. For more information about the proposed land exchange, please see our earlier notice (70 FR 60845) or visit our project Web site at <http://yukonflatseis.ensr.com>. The draft EIS, tentatively scheduled for release in February 2007, will also be available for viewing and downloading at this URL.

We will schedule additional public meetings to discuss the draft EIS. We also plan to use special mailings, newspaper articles, and other media releases to announce opportunities for the public to provide written and oral input.

Dated: February 15, 2006.

Rowan Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E6-3026 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964-1410-HY-P; FF-14945-A, DYA-2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decisions approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to MTNT, Limited, Successor in Interest to Seseui, Incorporated and Doyon, Limited. The lands are located in T. 22 S., R. 28 E., T. 23 S., R. 28 E., and T. 23 S., R. 29 E., Kateel River Meridian, Alaska, in the vicinity of Telida Alaska, and contain 5,280.36 acres. Notice of the decision will also be

published four times in the *Tundra Drums*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 3, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION, CONTACT: D. Kay Erben, by phone at (907) 271-4515, or by e-mail at kay_erben@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact Mrs. Erben.

D. Kay Erben,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6-3044 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-1310-DB]

Notice of Intent To Prepare an Environmental Impact Statement for the Continental Divide—Creston Natural Gas Project, Carbon and Sweetwater Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and to conduct public scoping for the Continental Divide—Creston Natural Gas Project, Carbon and Sweetwater Counties, Wyoming.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM), Rawlins Field Office, announces its intent to prepare an EIS on the potential impacts of a proposed natural gas development project consisting primarily of conventional natural gas well development with some coalbed natural gas wells.

In April 2005, Devon Energy Corporation (Devon), representing itself and other lease holders, submitted to BLM a proposal to drill and develop up to 1,250 wells from an estimated 1,000 well pads and associated facilities. The Devon proposal was named "Creston/Blue Gap II Natural Gas Project." The BLM published its NOI to prepare an EIS for this project in the **Federal Register** on September 8, 2005.

In November 2005, BP America Production Company (BP), representing itself and other lease holders, submitted a proposal to drill and develop up to 7,700 wells and associated facilities within a portion of the Continental Divide/Wamsutter II (CD/W2) Natural Gas Project area adjacent to the Creston/Blue Gap II EIS (CBC2) project area. Upon reviewing BP's proposal the BLM determined that the CD/W2 proposal and the CBC2 proposal were similar actions within the same geographic area, with similar timing. Based on these factors, the BLM has determined that the best way to analyze these actions and identify their cumulative impacts adequately is to treat them in a single impact statement. The combined proposals, henceforth known as the Continental Divide—Creston (CDC) Natural Gas Project, will be considered in one EIS.

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resources information are submitted within 60 days of the publication of this notice. To provide the public with an opportunity to review the proposal and project information, the BLM will host a scoping meeting in Rawlins, Wyoming. The BLM will notify the public of the meeting date, time, and location at least 15 days prior to the event. Announcement will be made by news release to the media, individual letter mailings, and posting on the BLM Web site listed below, if it is available.

ADDRESSES: Please send written comments or resource information to the Bureau of Land Management, Rawlins Field Office, Eldon Allison, Team Leader, 1300 North Third Street, Rawlins, Wyoming 82301. Electronic mail may be sent to:

rawlins_wymail@blm.gov. The scoping notice will be posted on the Wyoming BLM NEPA Web page at <http://www.wy.blm.gov/nepa/nepadocs.htm>.

Prior comments submitted in response to the September 8, 2005, NOI for the CBC2 EIS will be considered along with comments received from the CDC EIS scoping. If you have submitted comments in response to the CBC2 EIS and would like to supplement them in

light of the combined proposals announced here, the BLM will accept supplemental comments during the public scoping period for CDC Natural Gas Development EIS. In your submittal please note that you have provided comments or resource information during the initial scoping period for the CBC2 EIS.

All responses will be considered in the environmental analysis process. If you do respond, we will keep you informed of decisions resulting from this analysis. Please note that public comments and information submitted regarding this project, including names and email and street addresses of the respondents, will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name, e-mail address, or street address from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Eldon Allison, Project Manager, 1300 North Third Street, Rawlins, Wyoming 82301. Mr. Allison may also be reached by telephone at (307) 328-4291, or by e-mail to: rawlins_wymail@blm.gov.

SUPPLEMENTARY INFORMATION: The Continental Divide—Creston Natural Gas Project is located in Townships 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 North, Ranges 91, 92, 93, 94, 95, 96, 97 and 98 West, Sixth Principal Meridian, Carbon and Sweetwater Counties, Wyoming. The project area is about 25 air miles west of the city of Rawlins, Wyoming and comprises 1.1 million acres of mostly Federal (59 percent) and private (39 percent) surface, with some State land (2 percent). The BLM Rawlins Field Office manages the Federal surface lands and the Federal mineral estate.

The proposed project is further development of natural gas fields previously analyzed for field development under the Continental Divide/Wamsutter II Natural Gas Project (CDW2) EIS and Record of Decision (2000) and the Creston/Blue Gap (CBG) EIS and Record of Decision (1994).

Development to date includes 1,805 active wells and 394 plugged and reclaimed wells within the CDW2 area. Currently within the CBG project area, 369 wells are active and 105 wells have been plugged and reclaimed. Existing infrastructure developed for CDW2 and CBG projects approved under previous environmental documents include: Arterial, collector, and well pad roads; compressor stations; connecting and sales pipelines; water wells; and powerlines.

BP America Production Company, the lead applicant representing itself, Devon, and other leaseholders, has proposed drilling and developing about 8,950 natural gas wells, including 100 to 500 coalbed natural gas wells, within the Continental Divide—Creston (CDC) project area. Wells would use a combination of vertical and directional drilling techniques. The proposal calls for a 15-year construction period with a 30 to 40 year life of project development and operational period.

Associated project facilities would include additional roads, gas and water collection pipelines, compressor stations, water disposal systems, and an electrical distribution system. During the preparation of the EIS, any interim development on public lands within the CDC project area will require a detailed environmental review by the BLM.

The purpose of the development is to extract and recover natural gas from the Continental Divide—Creston area for distribution to consumers. This project would help meet the need, goals and objectives of the President's National Energy Plan. Natural gas consumption in the United States is expected to increase by 25% over the next decade.

The EIS will analyze the environmental consequences of implementing the proposed action and alternatives. Identified agency concerns include, but are not limited to direct, indirect and cumulative effects to: Surface and ground water resources; air quality; wildlife populations and their habitats; cultural and paleontological resources; threatened and endangered wildlife and plant species; and local and regional socioeconomics. Other issues of concern include access to private and public land; impacts of road development and transportation to noxious weed control and livestock grazing operations; ability to successfully reclaim disturbed areas.

In addition to the Proposed Action, the EIS will analyze the effects of a No Action alternative. Contents for alternatives being considered include: A range of drilling surface densities; phased development; a range of

mitigation measures; and best management practices.

The proposed development is in conformance with the 1990 Great Divide Resource Management Plan (RMP). This RMP is currently being revised under the title Rawlins Resource Management Plan. BLM released the Draft EIS for the Rawlins RMP in December 2004.

Robert A. Bennett,
State Director.

[FR Doc. E6-3043 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-100-05-1310-DB]

Notice of Meetings of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming, for a business meeting. Group meetings are open to the public.

DATES: The PAWG will meet March 21, April 20, May 16, June 20, and August 1, 2006, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG will be held in the Lovatt room of the Pinedale Library, 155 S. Tyler Ave., Pinedale, WY. The June 20 meeting will be a field trip.

FOR FURTHER INFORMATION CONTACT: Matt Anderson, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., PO Box 738, Pinedale, WY 82941; 307-367-5328.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The agenda for these meetings will include discussions concerning any modifications task groups may wish to make to their monitoring recommendations, a discussion on

monitoring funding sources, and overall adaptive management implementation as it applies to the PAWG. At a minimum, public comments will be heard prior to lunch and adjournment of the meeting.

Dated: February 24, 2006.

Kathy Gunderman,

Acting Field Office Manager.

[FR Doc. 06-2028 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Public Scoping Meetings on the Draft Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007-2012

SUMMARY: The Minerals Management Service (MMS) will hold Public Scoping Meetings on the Draft Environmental Impact Statement (DEIS) for the Proposed 5-Year OCS Oil and Gas Leasing Program for 2007-2012.

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), the MMS will hold Public Scoping Meetings on the Draft EIS for the 2007-2012 OCS Oil and Gas 5-Year Leasing Program. The MMS stated its intent to prepare an EIS in the August 24, 2005, **Federal Register** notice and Request for Information (RFI). In the Draft Proposed Program (DPP) and **Federal Register** notice and RFI on February 9, 2006, the MMS again solicited comments and provided procedures for submitting them, and again stated its intent to hold Public Scoping Meetings. The following Public Scoping Meetings are planned for the DEIS development.

Dates and Locations for Public Scoping Meetings

March 6, 2006—Inupiat Heritage Center, Barrow, Alaska, 7 p.m. *Contact:* Mr. Albert Barros, 907-334-5209.

March 7, 2006—Qargi Center, Kaktovik, Alaska, 7 p.m. *Contact:* Mr. Albert Barros, 907-334-5209.

March 8, 2006—Kisik Community Center, Nuiqsut, Alaska, 6 p.m. *Contact:* Mr. Albert Barros, 907-334-5209.

March 9, 2006—Arctic Slope Native Association Building, Wainwright, Alaska, 3 p.m. *Contact:* Mr. Albert Barros, 907-334-5209.

March 13, 2006—City of Dillingham Council Chambers, Dillingham, Alaska, 7 p.m. *Contact:* Mr. Albert Barros, 907-334-5209.

March 21, 2006—King Salmon Civic Center, King Salmon, Alaska, 7 p.m.
Contact: Mr. Albert Barros, 907-334-5209.

March 22, 2006—City of Sand Point Council Chambers, Sand Point, Alaska, 7 p.m. Contact: Mr. Albert Barros, 907-334-5209.

March 23, 2006—Cold Bay Community Center, Cold Bay, Alaska, 7 p.m.
Contact: Mr. Albert Barros, 907-334-5209.

March 28, 2006—Wyndham Greenspoint, 12400 Greenspoint Drive, Houston, Texas, 1 p.m.
Contact: Mr. Dennis Chew, 504-736-2793.

March 29, 2006—Hampton Inn and Suites, New Orleans-Elmwood, 5150 Mounes Street, Harahan, Louisiana, 1 p.m. Contact: Mr. Dennis Chew, 504-736-2793.

March 30, 2006—Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama, 7 p.m. Contact: Mr. Dennis Chew, 504-736-2793.

April 4, 2006—Doubletree Hotel, 880 Military Hwy., Norfolk, Virginia, 3 p.m. and 7 p.m. Contact: Mr. Norman Froomer, 703-787-1644.

April 5, 2006—Suite 101, 3801 Centerpoint Dr., Anchorage, Alaska, 5 p.m. Contact: Mr. Albert Barros, 907-344-5209.

For further information about preparation of the DEIS, please contact Mr. James Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170, (703) 787-1660.

Dated: February 28, 2006.

R.M. "Johnnie" Burton,
Director.

[FR Doc. 06-2100 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: Agenda items for the meeting of the Royalty Policy Committee (RPC) will include remarks from the Director, MMS, and the Associate Director, Minerals Revenue Management (MRM), as well as updates from the following subcommittees: Coal, Federal Oil and Gas Valuation, Oil and Gas Royalty Reporting, and Indian Oil Valuation. The RPC will also hear an update on the Royalty In Kind program.

The RPC membership includes representatives from states, Indian tribes, individual Indian mineral owner organizations, minerals industry associations, the general public, and other Federal departments.

DATES: Wednesday, April 26, 2006, from 8:30 a.m. to 4:30 p.m., central time.

ADDRESSES: The meeting will be held at the InterContinental Houston Hotel, 2222 West Loop-South, Houston, Texas, 77027, telephone 713-627-7600 or 1-800-381-9552.

FOR FURTHER INFORMATION CONTACT: Gina Dan, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B2, Denver, Colorado, 80225-0165, telephone number (303) 231-3392, fax number (303) 231-3780, e-mail gina.dan@mms.gov.

SUPPLEMENTARY INFORMATION: The RPC provides advice to the Secretary and top Department officials on minerals policy, operational issues, and the performance of discretionary functions under the laws governing the Department's management of Federal and Indian mineral leases and revenues. The RPC reviews and comments on revenue management and other mineral-related policies and provides a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and the interested public. Dates and locations of future meetings will be published in the **Federal Register** and posted on our Internet site at http://www.mms.gov/mmab/RoyaltyPolicyCommittee/rpc_homepage.htm. Meetings will be open to the public without advanced registration on a space available basis. To the extent time permits, the public may make statements during the meetings, and file written statements with the RPC for its consideration. Copies of these written statements should be submitted to Gina Dan. Transcripts of this meeting will be available 2 weeks after the meeting for public inspection and copying at our offices located in Building 85, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A-63, revised).

Dated: February 27, 2006.

Lucy Querques Denett,
Associate Director, Minerals Revenue Management.

[FR Doc. E6-3017 Filed 3-2-06; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 11, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by March 20, 2006.

John W. Roberts,
Acting Chief, National Register/National Historic Landmarks Program.

CALIFORNIA

Sacramento County

Carly, J.C., House, 2761 Montgomery Way, Sacramento, 06000143

Yolo County

Walnut Street School, 175 Walnut St., Woodland, 06000144

DELAWARE

New Castle County

Foord & Massey Furniture Company Building, 701 N. Shipley St., Wilmington, 06000145

LOUISIANA

Iberia Parish

People's National Bank, 119 W. Main St., New Iberia, 06000146

West Feliciana Parish

Macland Plantation House, 7764 Highland Rd., St. Francisville, 06000152

MASSACHUSETTS

Berkshire County

Harrison, Samuel, House, 80 Third St., Pittsfield, 06000147

MICHIGAN

Kalamazoo County

Burdick—South Historic District, 214-250 S. Kalamazoo Mall, 100 W. South, 113-125 E. South, Kalamazoo, 06000148

Oakland County

B and C Grocery Building, 417-19 S. Main St., Royal Oak, 06000149

NEW MEXICO**Bernalillo County**

New Mexico Madonna of the Trail, (Route 66 through New Mexico MPS) Jct. of Marble Ave. and 4th St., Albuquerque, 06000151

Cibola County

Bowlin's Old Crater Trading Post, (Route 66 through New Mexico MPS) 7650 Frontage Rd., Bluewater, 06000150

Dona Ana County

Bentley, L.B., General Merchandise, 16125 Old Organ Main St., Organ, 06000155

McKinley County

Cousins Bros. Trading Post, 768 A-D Cousins Rd., Chi Chil Tah, 06000153

Quay County

Cactus Motor Lodge, 1316 E. Tucumcari Blvd., Tucumcari, 06000154

Taos County

Beimer, Bernard J., House, 215 Beimer Ave., Taos, 06000156

NEW YORK**Madison County**

Oneida Lake Congregational Church, 2508 NY 31, Oneida Lake, 06000159
Spirit House, NY 26, Georgetown, 06000160

Nassau County

Cock—Cornelius House, 34 Birch Hill Rd., Locust Valley, 06000157

Suffolk County

Congregation Tifereth Israel Synagogue, 519 Fourth St., Greenport, 06000161
Tuthill, Jesse and Ira, House, Main Rd. and Cardinal Dr., Mattituck, 06000158

VIRGINIA**Southampton County**

Vaughan, Rebecca, House, 26315 Heritage Ln., Courtland, 06000162

WASHINGTON**Pierce County**

MV KALAKALA (ferry), Hulebos Creek Waterway, 1801 Taylor Way, Tacoma, 06000177

Spokane County

Nettleton's Addition Historic District, Area bounded by W. Summit, Mission, N Summit, A St. Bridge, and Chestnut, Spokane, 06000176
Richardson—Jackson House, 1226 N. Summit Blvd., Spokane, 06000178

WEST VIRGINIA**Berkeley County**

Evans, John, House, 2298 Winchester Ave., Martinsburg, 06000168
Marlowe Consolidated School, 9580 Williamsport Pike, Marlowe, 06000169
Miller Tavern and Farm, E side Golf Course Rd., Martinsburg, 06000167
Newcomer Mansion, 1735 Douglas Grove Rd., Martinsburg, 06000170
Scrabble Historic District, Scrabble Rd. and Dam No. 4 Rd., Scrabble, 06000171

Snodgrass Tavern (Boundary Increase), Hedgesville Rd., WV 9, W of Hedgesville, Hedgesville, 06000172
Strode—Morrison—Tabler House and Farm, 1270 Jacobs Rd., Hedgesville, 06000173

Jefferson County

Elmwood-on-the-Opequon, 3898 Sulphur Springs Rd., Kearneysville, 06000165

Kanawha County

Downtown Charleston Historic District, Roughly bounded by Washington St. E, Leon Sullivan Way, Kanawha Blvd. and Summers St., Charleston, 06000166

Lewis County

May—Kraus Farm, 3052 Crooked Run Rd., Alum Bridge, 06000175

Ohio County

Lang—Hess House, 1625 Wood St., Wheeling, 06000174

Raleigh County

Sophia Historic District, Main St., bet. Polk St. and Riffe St., Sophia, 06000163

Randolph County

Wees Historic District, Generally bounded by Randolph and S. Randolph Aves., Sycamore St., Diamond St. and Boundary and Terrace Aves., Elkins, 06000164

A request for removal has been made for the following resource:

LOUISIANA**St. Landry Parish**

MacLand Plantation House 3.4 mi. N of Washington on LA 10 Washington vicinity, 80004322

[FR Doc. E6-2999 Filed 3-2-06; 8:45 am]

BILLING CODE 4312-51-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-473]

Commercial Availability of Apparel Inputs (2006): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

DATES: Effective Date: February 27, 2006.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) dated February 16, 2006, the Commission instituted its sixth annual investigation No. 332-473, *Commercial Availability of Apparel Inputs (2006): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries*, under section 332(g) of the Tariff Act of 1930 (19

U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment to apparel made from fabrics or yarns that are the subject of petitions filed in 2006 with the Committee for the Implementation of Textile Agreements (CITA) under the "commercial availability" provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The Commission conducted similar investigations in the years 2001-05 to provide advice with respect to petitions filed in those years.

Background: The Commission will follow procedures similar to those followed in the commercial availability reviews in 2005 under investigation No. 332-465. Thus, in 2006, the Commission will provide advice for each commercial availability review under one investigation number. The Commission will post a notification letter announcing the initiation of each review on its Internet site (<http://www.usitc.gov>) and send the notification letter to a list of interested parties who wish to be automatically notified about any requests for which the Commission initiates analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202-205-3466, jackie.jones@usitc.gov) or Heidi Colby-Oizumi (202-205-3391, heidi.colby@usitc.gov). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. The Commission has a special area on its Internet site (http://www.usitc.gov/ind_econ_ana/research_ana/pres_cong/332/short_supply/shortsupintro.htm) to provide the public with information on the status of each request for which the Commission initiated analysis. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel, at <http://otexa.ita.doc.gov/fr.htm>).

The Commission will submit its reviews to the USTR not later than the 42nd day after receiving a request for advice. The Commission will post a public version of each review on its website as soon as possible thereafter, with any confidential business information deleted.

FOR FURTHER INFORMATION CONTACT:

Project Leader: Jackie W. Jones (202-205-3466, jackie.jones@usitc.gov).
Deputy Project Leader: Heidi Colby-Oizumi (202-205-3391, heidi.colby@usitc.gov).

Industry-specific information may be obtained from the above persons. For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202-205-3091 or william.gearhart@usitc.gov. The media should contact Margaret O'Laughlin, Office of External Relations at 202-205-1819 or margaret.olaughlin@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ONLINE) at <http://edis.usitc.gov/hvwebex>.

Written submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed by the Commission. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and should be received no later than the close of business (5:15 p.m. EST) on the date stated in the notification letter of each review of a petition. All written submissions must conform with the provisions of § 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and three (3) copies of each document be filed. In the event that confidential treatment of the document is requested, at least two (2) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see *Handbook for Electronic Filing Procedures*, ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook). Persons with questions regarding electronic filing should contact the

Office of the Secretary (202-205-2000 or edis@usitc.gov).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. Some or all of the confidential business information provided may be included in the reviews that the Commission sends to the USTR. The Commission plans to publish a public version of each review shortly after a review is sent to the USTR. However, in the public version the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202-205-2000.

By order of the Commission.

Issued: February 28, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-3082 Filed 3-2-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1089 (Final)]

Certain Orange Juice From Brazil

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of certain orange juice, provided for in subheading 2009.11.00,

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 Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson dissenting.

2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission makes a negative finding with regard to critical circumstances.

Background

The Commission instituted this investigation effective December 27, 2004, following receipt of a petition filed with the Commission and Commerce by Florida Citrus Mutual, Lakeland, FL; A. Duda & Sons, Inc., Oviedo, FL; Citrus World, Inc., Lake Wales, FL; and Southern Garden Citrus Processing Corp., Clewiston, FL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain orange juice from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 7, 2005 (70 FR 53251). The hearing was held in Washington, DC, on January 10, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 27, 2006. The views of the Commission are contained in USITC Publication 3838 (February 2006), entitled *Certain Orange Juice from Brazil: Investigation No. 731-TA-1089 (Final)*.

By order of the Commission.

Issued: February 28, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-3085 Filed 3-2-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-06-016]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
International Trade Commission.

TIME AND DATE: March 14, 2006 at 1 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-856

(Review)(Ammonium Nitrate from Russia)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 27, 2006.)

5. *Outstanding action jackets:* none. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 1, 2006.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-2102 Filed 3-1-06; 2:39 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,158]

Falcon Plastics A/K/A Grand Venture, Washington, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked January 6, 2006, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on December 30, 2005, and published in the *Federal Register* on January 17, 2006 (71 FR 2568).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Falcon Plastics, Washington, Pennsylvania engaged in production of blow molded plastics was denied because the "contributed importantly" group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of blow molded plastics during the relevant period. The subject firm did not import blow molded plastics nor did it shift production to a foreign country during the relevant period.

The petitioner states that the affected workers lost their jobs as a result of the U.S. manufacturers shifting production of blow molded plastics to China and Mexico. The petitioner stated that the sales and production at the subject firm has been negatively impacted by increasing presence of foreign imports on the market.

Upon further review of the previous investigation and further contact with the company official, the Department conducted a full investigation to determine whether imports of blow molded plastics indeed impacted production at the subject firm and consequently caused workers separations.

The Department conducted a new survey of the customers requesting information on imports of "like or directly competitive products" to those purchased from Falcon Plastics, a/k/a Grand Venture in 2002, 2003 and January through September of 2005. The survey revealed that none of the respondents reported increasing its imports of "like or directly competitive products" to blow molded plastics purchased from the subject, while decreasing its purchases from the subject firm during the relevant time period.

Moreover, the subject firm does not import blow molded plastics and did not shift production of blow molded plastics abroad.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of February, 2006.

Elliott S. Kushner,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3063 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,800]

ABCO Rents of Clinton, Clinton, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 7, 2006, in response to a worker petition filed by a company spokesman on behalf of workers at ABCO Rents of Clinton, Clinton, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 9th day of February 2006.

Elliott S. Kushner,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3076 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,341]

Alene Candles, Inc./Wizard Candles, Inc.; Including On-Site Leased Workers of Placement Pros, Valley Employment, and ET Staffing; Putnam, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 13, 2006, applicable to workers of Alene Candles, Inc., including on-site leased workers of Placement Pros, Valley Employment, and ET Staffing, Putnam, Connecticut. The notice was published in the *Federal Register* on January 31, 2006 (71 FR 5072).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of candles.

Information shows that Alene Candles, Inc. purchased Wizard Candles, Inc. in 2004. Workers separated from employment at the subject firm during 2004 had their wages reported under a separate unemployment insurance (UI) tax account for Wizard Candles, Inc.

Accordingly, the Department is amending the certification to correct the name of the subject firm to read Alene Candles, Inc./Wizard Candles, Inc.

The intent of the Department's certification is to include all workers of Alene Candles, Inc./Wizard Candles, Inc., including on-site leased workers of Placement Pros, Valley Employment, and ET Staffing, Putnam, Connecticut, who were adversely affected by increased customer imports.

The amended notice applicable to TA-W-58,341 is hereby issued as follows:

All workers of Alene Candles, Inc./Wizard Candles, Inc., Putnam, Connecticut, including workers of Placement Pros, Valley Employment, and ET Staffing working on site at Alene Candles, Inc./Wizard Candles, Inc., Putnam, Connecticut, who became totally or partially separated from employment on or after November 14, 2004, through January 13, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of February 2006.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3069 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-53,599]

American Allsafe Company; Allsafe Services & Materials Company; A Division of Jackson Products, Inc.; Tonawanda, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment

Assistance on December 12, 2003, applicable to workers of American Allsafe Company, a Division of Jackson Products, Inc., Tonawanda, New York. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2624).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced hard hats, safety glasses, safety goggles and bar guards.

The company official informed the Department that during the period of this certification the American Allsafe Company division of Jackson Products, Inc., was consolidated into Allsafe Services & Materials Company. While the certification was in effect, eight workers of American Allsafe Company (Susie Greene, Susan Brzozowski, David Smolen, Wendy Bacon, Patricia Fehr, Richard Janas, Teresa Berkel, and Jon Rothenmeyer) had wages reported under the Unemployment Insurance tax account for Allsafe Services & Materials Company.

Based on this new information, the Department is amending the certification to include the eight workers of American Allsafe Company identified above whose wages were reported to Allsafe Services & Materials Company.

The amended notice applicable to TA-W-53,599 is hereby issued as follows:

All workers of American Allsafe Company, including the workers Susie Green, Susan Brzozowski, David Smolen, Wendy Bacon, Patricia Fehr, Richard Janas, Teresa Berkel, and Jon Rothenmeyer, whose Unemployment Insurance wages were reported to Allsafe Services & Materials Company, a Division Of Jackson Products, Inc., Tonawanda, New York, who became totally or partially separated from employment on or after November 7, 2002 through December 12, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of February 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3056 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,652]

Atlantic Luggage Company; Ellwood City, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 18, 2006 in response to a worker petition filed by a company official on behalf of workers at Atlantic Luggage Company, Ellwood City, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of February 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3073 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,749]

Jackson Products, Inc.; Allsafe Services & Materials Division; Formerly Known as American Allsafe Co.; Tonawanda, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 31, 2006 in response to a worker petition filed by a company official on behalf of workers of Jackson Products, Inc., Allsafe Services & Materials Division, formerly known as American Allsafe Co., Tonawanda, New York.

The group of workers on whose behalf the petition is being filed is covered by a certification (TA-W-53,599), that expired on December 31, 2005. That certification was amended this same date (February 10, 2006), to include them.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of February 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3074 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-58,768]

O'Mara Incorporated, Rutherford College, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2006 in response to a petition filed by a company official on behalf of workers of O'Mara Incorporated, Rutherford College, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of February, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3075 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-58,177]

Rexnord Disc Coupling Operation; Coupling Division Warren, PA; Notice of Negative Determination on Reconsideration

On January 18, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's notice was published in the *Federal Register* on January 30, 2006 (71 FR 4938).

The petition for the workers of Rexnord Disc Coupling Operation, Coupling Division, Warren, Pennsylvania was denied because sales and production declined from 2003 through 2004, and January through October 2005 over the corresponding 2004 period. The initial determination also stated that productions shifted from the subject facility to another production facility in Alabama.

In the request for reconsideration, the International Association of Machinists and Aerospace Workers, Local Lodge #2304, alleged that the subject firm increased imports, is shifting production to China and importing the finished product.

During the reconsideration investigation, the Department contacted both the union representative and a

company official to discuss the union's allegations.

According to the union representative, the workers produced flexible couplings and the subject company was importing coupling components. The imported components were either assembled at the subject facility into completed flexible couplings or shipped to other domestic plants for assembly into flexible couplings. The subject facility closed in December 2005 when operations were consolidated with an affiliated coupling production plant in Auburn, Alabama.

Subsequent conversations with the company official confirmed that coupling components, and not finished flexible couplings, were imported and that operations at the Warren, Pennsylvania plant were consolidated with the Auburn, Alabama facility.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. In the case at hand, the Department must consider imports of article which are like or directly competitive with flexible couplings produced at the subject company's Warren, Pennsylvania facility. Because coupling components are not like or directly competitive with finished flexible couplings, increased imports of coupling components cannot be the basis for Trade Adjustment Assistance certification for the subject worker group.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 13th day of February 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-3067 Filed 3-2-06; 8:45 am]

BILLING CODE 4510-30-P

NATIONAL SCIENCE FOUNDATION**Agency Information Collection Activities: Proposed Collection, Comment Request**

AGENCY: National Science Foundation.
ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection.

In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 2, 2006, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to splimpton@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292-7556 or send e-mail to splimpton@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the Historically Black Colleges and Universities Undergraduate Program.

OMB Control No.: 3145-New.
Expiration Date of Approval: Not applicable.

Abstract: The National Science Foundation (NSF) funded a program, called Historically Black Colleges and Universities Undergraduate Program (HBCU-UP), designed to help institutions strengthen the quality of their undergraduate STEM programs. The Urban Institute is conducting an evaluation of the HBCU-UP program. Using a mixed-methods approach, UI researchers will conduct an evaluation

over three years to study the effectiveness of the program. The evaluation will include both process and summative components. The process component will document how different models within the Program are being implemented, thus helping evaluators to link strategies to outcomes, identify crucial components of different models, and contribute to the construction of general theories to guide future initiatives to increase the diversity of the STEM workforce. The summative component of the evaluation will focus on the extent to which the Program has produced outcomes that meet stated goals for students, faculty and institutions. The process evaluation will rely mainly on qualitative data collected during case study site visits and interviews; the summative evaluation will rely primarily on data collected through a survey of graduates.

Respondents: Graduates of undergraduate programs in STEM at Historically Black Colleges and Universities awarded an HBCU-UP grant from NSF.

Estimated Number of Annual

Respondents: 5,000 (total).

Burden on the Public: 1,250 hours.

Dated: February 27, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06-1955 Filed 3-2-06; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Reinstatement of Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing plans to request reinstatement of an annual Web-based collection for the Informal Science Education (ISE) Program. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB Clearance of this collection for no longer than 3 years.

Comments: Comments are invited on (a) Whether the proposed collection on information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's

estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 2, 2006, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292-7556 or send e-mail to splimpto@nsf.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Informal Science Education (ISE) Management Information System.

OMB Control No.: 3145-0158.

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of a Management Information System for the Informal Science Education (ISE) program. The goals for the program are to encourage and support projects that (1) engage the interest of children and adults in science, technology, engineering, and mathematics (STEM) in daily life so that they develop capabilities; scientific and technological literacy, mathematical competence, problem-solving skills, and the desire to learn; (2) bring together individuals and organizations from the informal and formal education communities, as well as from the private and public sectors, to strengthen STEM education in all settings; and (3) develop and implement innovative strategies that support the development of a socially responsible and informed public, and demonstrate promise of increasing participation of all citizens in STEM.

The ISE Management Information System will be comprised of three Web-based surveys, an initial survey that obtains background information about the ISE project, an annual survey, and a final survey. The survey that obtains background information would be completed soon after project grants are awarded (i.e., within 45 days), the annual would be completed at the end of each program year, and the final would be completed soon after the ISE grant period has ended (i.e., within 45 days). Through the use of these three surveys, the system will collect data from each ISE-funded project about the project, its grant recipient and partner organizations, participants, activities, deliverables, and impacts. Information from the system will be used by ISE program officers to evaluate the collective impact of the ISE portfolio of funded projects, to monitor project-related activities and projects' progress over time, and to obtain information that can inform the design of future ISE projects.

2. Expected Respondents

The expected respondents are principal investigators of any ISE projects that have been funded since 2004.

3. Burden on the Public

During the first year of data collection, the current year's awardees will be asked to report background data. In addition, in only the first year, awardees from the prior two years will be asked to report baseline data and to submit one annual report. The average annual reporting burden for the baseline and final reports is approximately 40 hours, and the reporting burden for the annual report is approximately 24 hours. The total elements will be 4,560 burden hours for an average number of 150 respondents per year. The burden on the public is negligible because the collection is limited to project participants that have received funding from the ISE program.

Dated: February 28, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06-2004 Filed 3-2-06; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Power Upgrades; Notice of Meeting

The ACRS Subcommittee on Power Upgrades will hold a meeting on March 15-16, 2006, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814 in the Cabinet/Judiciary Room.

The agenda for the subject meeting shall be as follows:

Wednesday, March 15, 2006—8:30 a.m. until the conclusion of business.

Thursday, March 16, 2006—8:30 a.m. until the conclusion of business.

The Subcommittee will review the application for a 17% power uprate for the R. E. Ginna Nuclear Power Plant. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, Constellation Energy and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301-415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Signs will not be permitted in the meeting room.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 24, 2006.

Cayetano Santos,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6-3039 Filed 3-2-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a

meeting on March 14, 2006 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814 in the Waterford Room.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss General Electric (GE) proprietary information pursuant to 5 U.S.C. 552b (c) (4).

The agenda for the subject meeting shall be as follows:

Tuesday, March 14, 2006—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the staff Safety Evaluation Report related to the use of TRACG to evaluate stability in the ESBWR. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, GE and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301-415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 24, 2006.

Cayetano Santos,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6-3040 Filed 3-2-06; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of a Proposed Free Trade Agreement Between the United States and Korea

AGENCIES: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of a proposed free trade agreement (FTA) between the United States and the Republic of Korea (Korea) on U.S. employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiation of the FTA. However, comments should be received by noon, March 31, 2006 to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: FR0611@ustr.eop.gov. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Substantive questions concerning the employment impact review should be addressed to Greg Schoepfle, Acting Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693-4887; or Lewis Karesh, Assistant U.S. Trade Representative for Labor, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508, telephone (202) 395-6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

In accordance with section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), on February 2, 2006, the United States Trade Representative notified the Congress of the President's intent to initiate FTA negotiations with Korea. On February 2, 2006, the United States Trade Representative also requested the U. S. International Trade Commission (ITC) to provide advice on probable economic effects of an FTA. In addition, USTR published a notice in the *Federal Register* soliciting views from the public on the negotiations in general, and the TPSC will hold a public hearing on March 14, 2006. The United

States intends to begin negotiations with Korea in May 2006.

2. Employment Impact Review

Section 2102(c)(5) of the Trade Act (19 U.S.C. 3802(c)(5)) directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public." USTR and Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a notice in the **Federal Register** soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

In order to ensure prompt and full consideration of responses, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "Employment Impact Review for a Free Trade Agreement between the United States and Korea." Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters "BC-," and the file name of the public version should begin with the character "P-." The "P-" or "BC-" should be followed by the name of the submitter. Persons who

make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395-6186. The USTR Reading Room is generally open to the public from 10 a.m.-12 noon and 1-4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6-2993 Filed 3-2-06; 8:45 am]

BILLING CODE 3190-W6-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Proposed Free Trade Agreement Between the United States and Korea; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed free trade agreement (FTA) between the United States and Korea. The TPSC is requesting written comments from the

public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than March 31, 2006.

ADDRESSES: *Submissions by electronic mail:* FR0610@ustr.eop.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Questions concerning the environmental review should be addressed to Russell Smith or David J. Brooks, Environment and Natural Resources Section, USTR, telephone (202) 395-7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On February 2, 2006, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert Portman, notified Congress of the President's intent to enter into trade negotiations with the Republic of Korea. Ambassador Portman outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at: http://www.ustr.gov/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Section_Index.html.

The TPSC also has invited the public to provide written comments and/or oral testimony at a public hearing that will take place on March 14, 2006, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (see 71 FR 6820).

Korea is the world's tenth largest economy and our seventh largest goods

trading partner. Two-way goods trade between the United States and Korea has grown significantly in the past decade, and totaled more than \$72 billion in 2005. The increased access to Korea's market that an FTA would provide would further boost trade in both goods and services, enhancing employment opportunities in both countries. An FTA also would encourage additional foreign investment between the United States and Korea. A free trade agreement with Korea would serve to strengthen our strategic alliance with Korea and would underscore U.S. commitment to promote strong economic relations with East Asia.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "FTA between the United States and Korea Environmental Review" followed by "Written Comments." Documents should be submitted as a WordPerfect, MSWord, or text (.TXT) file. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters;

information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395-6186.

USTR also welcomes and will take into account the public comments on environmental issues submitted in response to a previous notice—the **Federal Register** notice dated February 9, 2006 (71 FR 6820)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiation of an FTA between the United States and Korea, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (<http://www.ustr.gov>).

Carmen Suro-Bredie,
Chair, Trade Policy Staff Committee.
[FR Doc. E6-2995 Filed 3-2-06; 8:45 am]
BILLING CODE 3190-W6-P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data

collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Employee Representative's Status and Compensation Reports; OMB 3220-0014. Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term "employee" includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term, "employer," as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC-2a, *Employee Representative's Status Report*, and DC-2, *Employee Representative's Report of Compensation* to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

Minor editorial changes are proposed to Form DC-2a and Form DC-2. The completion time for Form DC-2 is estimated at 30 minutes per response. The RRB estimates that approximately 65 Form DC-2's are received annually. The RRB estimates that less than 10 Form DC-2a's are received annually.

Title and Purpose of Information Collection

Statement of Claimant or Other Person; OMB 3220-0183. To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicant's request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G-93, *Statement of Claimant or Other Person* to obtain the supplemental or corrective information from applicants or other persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits.

The RRB proposes no changes to Form G-93.

The completion time for Form G-93 is estimated at 15 minutes per response. The RRB estimates that approximately 900 Form G-93's are received annually. Completion is voluntary. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to Ronald.Hodapp@RRB.GOV. Written

comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.

[FR Doc. E6-3032 Filed 3-2-06; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Number 34-53360; File No. 4-511]

Roundtable on Internal Control Reporting Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussions; request for comment.

SUMMARY: The Securities and Exchange Commission and the Public Company Accounting Oversight Board announced on February 16, 2006 that they will sponsor a roundtable May 10, 2006, at the Commission's headquarters in Washington, DC, to discuss second-year experiences with the reporting and auditing requirements of the Sarbanes-Oxley Act of 2002 related to companies' internal control over financial reporting. The roundtable discussion will include issuers, auditors, investors and other interested parties.

"Last spring's informative roundtable resulted in valuable guidance," said SEC Chairman Christopher Cox. "We look forward to an update on compliance efforts after year two. I'm pleased that the PCAOB is coordinating this year's roundtable with the SEC. We will carefully consider the facts presented to help develop policies to effectively and efficiently improve the reliability of financial statements for the benefit of investors."

"I am very much open to suggestions to make the internal control assessment process more efficient, including modifications of the PCAOB's auditing standard and other actions the Board could undertake," said PCAOB Acting Chairman Bill Gradison. "This is the PCAOB's highest priority policy issue."

The Commission and the PCAOB further announced today that, in addition to the roundtable, they are seeking written feedback from registrants, auditors, investors and others on their experiences with complying with the Section 404 requirements. The Commission is not soliciting feedback on a particular set of inquiries. The information that is submitted to either organization will become part of the public record of the Section 404 roundtable.

DATES: Members of the public are encouraged to provide the submissions before May 1, 2006.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments may also be submitted using the Commission's Internet submission form at <http://www.sec.gov/news/press.shtml>. Comments may also be submitted in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All comment letters should refer to File Number 4-511; this File number should be included on the subject line if e-mail is used. Comment letters will also be posted on the Commission's Internet Web site (<http://www.sec.gov/news/press/4-511.shtml>). Comment letters will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Consuelo Hitchcock (202-551-3500) or Nancy Salisbury (202-551-5300) at Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: February 24, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. E6-3031 Filed 3-2-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53363; File No. SR-Amex-2006-18]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Licensing Fee for Options on the PowerShares Zacks SmallCap Portfolio

February 24, 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 February 15, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to 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 Amex. Amex has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract license fee for the orders of specialists, registered options traders ("ROTs"), firms, non-member market makers, and broker-dealers in connection with options transactions in the PowerShares Zacks SmallCap Portfolio (symbol: PZJ).

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the principal office of the Amex, 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

Amex proposes to adopt a per contract licensing fee for options on PZJ. These fee changes will be assessed on members commencing February 16, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange traded funds ("ETFs"), such as PZJ. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the

index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-member market makers and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.⁵

The purpose of this proposal is to charge an options licensing fee in connection with options on PZJ (the "PowerShares SmallCap ETF"). Specifically, Amex seeks to charge an options licensing fee of \$0.05 per contract side for the PowerShares SmallCap ETF option for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the PowerShares SmallCap ETF option. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the PowerShares SmallCap ETF option by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that the Amex, in recent years, has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.⁶ Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those market participants engaging in transactions in PowerShares SmallCap ETF options, a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.⁷ In

⁵ See, e.g., Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

⁶ See, e.g., Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

⁷ Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other

connection with the adoption of an options licensing fee for PowerShares SmallCap ETF options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable, given the competitive pressures in the industry.⁸ Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act⁹ regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that 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

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

At any time within 60 days of the filing of such 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.

charges among its members and issuers and other persons using its facilities.

⁸ Telephone call between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Angela Muehr, Attorney, Division of Market Regulation ("Division"), Commission, on February 22, 2006.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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-2006-18 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-2006-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2006-18 and should be submitted on or before March 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,
Secretary.

[FR Doc. E6-3015 Filed 3-2-06; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53372; File No. SR-CBOE-2006-10]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees for Fiscal Year 2006

February 24, 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 January 31, 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 prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to make various changes for fiscal year 2006. The text of the proposed rule change is included below. Proposed new language is *italicized*; proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc. Fees Schedule

[January 13] *February 1, 2006*

1. Options Transaction Fees
(1)(3)(4)(7)(16):

Equity Options (13):

	Per contract
I. Customer .....	.00
II. Market-Maker (MM) (standard rate)(10) .....	.22
III. Member Firm Proprietary: (11) .....	.20
• Facilitation Of Customer Order .....	.24
• Non-Facilitation Order .....	.25
IV. Broker-Dealer .....	.26
V. Non-Member Market Maker .....	.12
VI. Designated Primary Market-Maker (DPM) (10)(14) .....	.14
• <i>As of March 1, 2006</i> .....	.25
VII. Electronic DPM (e-DPM) (14) .....	.24
VIII. Linkage Orders (8) .....	.26
IX. Remote Market-Maker (14) .....	.26
QQQQ and SPDR Options: Unchanged.	

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The Exchange intends for the proposed changes to the Fees Schedule to take effect on February 1, 2006.

Per contract

Index Options (includes Dow Jones DIAMONDS, OEF and other ETF and HOLDERS options)[(17)(18)]: Remainder of section unchanged.

2. Marketing Fee (6)(16) Unchanged. 3. Floor Brokerage Fee (1)(5)(16)[(17)(18)]:

• [Equity & QQQQ Customer Order	\$.00]
• [All Other Equity, QQQQ And Index] DXL, OEX and SPX Options [(8)] .....	.04
• DXL, OEX and SPX Crossed Orders .....	.02

4. RAES Access Fee (Retail Automatic Execution System) (1)(4)(16): Unchanged.

Footnotes

1.-7. Unchanged.

8. Linkage order fees in effect on a pilot basis until July 31, 2006, except for Satisfaction Orders, which are not assessed Exchange fees per Linkage rules. The [floor brokerage fee for "all other equity, QQQQ and index options" and the] RAES access fee for non-customer transactions also apply to linkage orders.

9.-16. Unchanged.

[17. Transaction, floor brokerage and OBO fees are waived through December 15, 2005 for transactions involving closing a position in reduced-value SPX LEAPS and simultaneously opening a corresponding position in full-value SPX LEAPS.

18. All fees for trading in XSP options are waived through January 31, 2006.]

5.-9. Unchanged.

10. Member Dues[*] \$450 per month.

[* The Exchange will waive May 2005 member dues for CBOE Market-Makers who automatically execute 2000 contracts or more (through the use of "M" orders) during May 2005 in hybrid options classes, i.e., all equity options classes and the MNX, QQQQ and SPDR options classes.]

11.-17. Unchanged.

18. *Customer Large Trade Discount:* A customer large trade discount program in the form of a cap on customer transaction fees is in effect for the index options set forth below. [MNX is not included in the program since MNX customer fees were significantly reduced in June 2002.] Floor brokerage fees are not subject to the cap on fees.

Regular customer transaction fees will only be charged up to the following quantity of contracts per order, for options based on the following underlying indexes:

■ Dow Jones indexes (including Diamonds) and SPX—charge only the first 5,000 contracts.

■ [SPX—charge only the first 5,000 contracts].

■ OEX (including XEO & OEF), NDX & other indexes—charge only the first 3,000 contracts.

19. *Prospective Fee Reduction Program:* Fee reductions will be in effect [August 1, 2004] February 1, 2006 through [January] December 31, 2006 under the following scenarios:

• If CBOE volume exceeds [predetermined average] 2,300,000 contracts per day (CPD) [thresholds] at the end of any month on a fiscal year-to-date (YTD) basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month [according to the schedule presented below:] by 10% per contract from standard rates.

• If CBOE volume exceeds 2,550,000 contracts per day (CPD) at the end of any month on a fiscal year-to-date (YTD) basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month by 20% per contract from standard rates.

[FY05 ytd avg. CPD	Fees discount (percent)	Equities market-maker reductions	QQQQ/SPDR/ index market-maker/DPM reductions	Equities DPM trans. fees reductions	Floor brokerage reductions
1,300,000	10	\$.022	\$.024	\$.012	\$.004
1,400,000	15	.033	.036	.018	.006
1,500,000	20	.044	.048	.024	.008
1,600,000	25	.055	.060	.030	.010
1,700,000	30	.066	.072	.036	.012
1,800,000	35	.077	.084	.042	.014
1,900,000	40	.088	.096	.048	.016
2,000,000	45	.099	.108	.054	.018]

20. *Cap on Member Firm Proprietary and Firm Facilitation Fees:* Effective [February 2, 2004] February 1, 2006, the Exchange will cap Member Firm** Proprietary and Firm Facilitation fees at [\$75,000] \$100,000 per month per firm. Specifics of the plan are as follows:

• Fees eligible for the cap program include Member Firm Proprietary and Firm Facilitation transaction [and trade match] fees in all products.

• Member Firm Proprietary and Firm Facilitation orders must include

designated firm origin codes (e.g. "F") on trade input records to be eligible for the cap calculation.

• Cap calculations will be performed after each month-end and credits will be processed in the next billing period.

License fees for Member Firm Proprietary and Firm Facilitation fee cap: Due to CBOE's obligation to pay license fees on many products, the Exchange will assess a ten cent per contract license fee on all licensed products, excluding OEX, after a firm

has reached a cap on Member Firm Proprietary and Firm Facilitation fees for any month.

—*—
** This program applies to member organizations for orders for the proprietary account of any member or non-member broker dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by

certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

21. *DPM Linkage Fees Credits: PA Orders:* [Effective October 1, 2005 through January 31, 2006,] CBOE will rebate DPM transaction fees generated from transactions against customer orders that underlie outbound principal acting as agent (PA) orders. In addition, when DPMs incur fees to execute PA orders at other exchanges, those DPMs will be credited up to an additional \$.20 per contract, up to the amount of total fees CBOE receives from inbound linkage transaction fees. The foregoing credit is apportioned to DPMs pro-rata based on the number of contracts executed by each DPM at other exchanges via PA orders. *This program shall expire upon the earlier of: (i) Thirty days after Commission approval of use of an Exchange account to send and respond to PA orders; or (ii) July 31, 2006 (the expiration date of the Linkage fees pilot program).*

P Orders: Effective February 1, 2006, CBOE will rebate DPM transaction fees generated from transactions against broker-dealer orders ("B" or "F" origin) that underlie outbound principal (P) orders ("CBOE Transactions"). In addition, when DPMs incur fees to execute such P orders at other exchanges ("Away Transactions"), those DPMs will be credited up to an additional \$.20 per contract. CBOE will also credit DPMs up to an additional \$.09 per contract on both CBOE Transactions and Away Transactions to help offset Options Clearing Corporation (OCC) and clearing firm fees incurred by DPMs on those transactions. The foregoing credits are up to the amount of total fees CBOE receives from inbound linkage transaction fees. The \$.20 per contract credit is apportioned to DPMs pro-rata based on the number of contracts executed by each DPM in connection with Away Transactions. The \$.09 per contract credit is apportioned to DPMs pro-rata based on the number of contracts executed by each DPM in connection with both CBOE Transactions and Away Transactions.

22. *Reserved*

23. *Fixed Annual Fee Alternative for DPMs and e-DPMs:* Effective [October 1, 2004] February 1, 2006, DPMs and e-DPMs may elect to pay a fixed annual fee of [\$1.75] \$2.25 million instead of

being assessed transaction fees on a per contract basis for their DPM, [and] e-DPM and RMM transactions only in all equity option classes. The fixed fee does not cover any floor brokerage fees. DPMs electing to pay the fixed fee will neither be charged CBOE transaction fees for CBOE transactions related to outgoing P/A orders or P orders (as defined in section 21 of this Fees Schedule), nor will they receive the rebate for such fees as set forth in Section 21 of this Fees Schedule. However, [pursuant to the second phase of linkage fee relief set forth in section 21 of this Fee Schedule,] all CBOE DPMs, including those electing the fixed annual fee, [who pay transaction fees at other exchanges to execute P/A orders there, will receive a credit of up to \$.20 per contract (with the total of such credits not to exceed the total amount of inbound linkage transaction fees received by CBOE) to help offset the transaction fees of other exchanges that CBOE DPMs incur in filling P/A orders at those exchanges] are eligible to receive the \$.20 per contract and \$.09 per contract credits set forth in section 21 of this Fees Schedule.

[Effective July 1, 2005, DPMs and e-DPMs who elect the fixed annual fee alternative described above may elect to pay an RMM fixed annual fee of \$250,000 instead of being assessed transaction fees on a per contract basis for their RMM transactions only in all equity options.]

If a DPM or e-DPM who has elected the fixed annual fee alternative merges or combines operations with a DPM or e-DPM who has not elected the fixed annual fee alternative, then the fixed annual fee will be increased and assessed to the surviving DPM/e-DPM entity. The amount of the increase will be based on the number of contracts traded and transaction fees paid during the previous twelve months by the DPM or e-DPM organization who had not previously elected the fixed annual fee alternative. The amount of the increase will be prorated based on the amount of time remaining in the then current year of the fixed fee annual program. If two DPMs or e-DPMs who elected the fixed annual fee alternative merge or combine operations, the fixed fee paid to CBOE by these two organizations will be unaffected. No adjustments or refunds will be made to either entity.

Remainder of Fees Schedule—
Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the CBOE Fees Schedule to make various fee changes. The proposed changes are the product of the Exchange's annual budget review. The Exchange proposes to amend the fees as noted below.

a. Equity Options DPM Transaction Fee

The Exchange proposes to increase the equity options Designated Primary Market-Maker ("DPM") transaction fee. The Exchange believes that increasing this fee is appropriate given that DPM costs are expected to decrease as the result of implementation of the PAR Official program.⁶ The current equity options DPM transaction fee is \$.12 per contract. The Exchange proposes to increase the fee to \$.14 per contract as of March 1, 2006 to coincide with the PAR Official program roll-out, which is expected to be completed in February 2006.

b. Floor Brokerage Fees

The Exchange proposes to eliminate floor brokerage fees in all products except options on the Jumbo Dow Jones Industrial Average ("DXL"), options on the S&P 100 index ("OEX") and options on the S&P 500 index ("SPX"). Effective February 1, 2006, only floor brokers executing orders in DXL, OEX and SPX options will be charged the \$.04 floor

⁶On November 18, 2005, Commission approved a CBOE rule change that proposed to remove a DPM's obligation and ability to execute orders as an agent, including as a floor broker, in its allocated securities on the Exchange in any trading station and that allows the Exchange to appoint an Exchange employee or independent contractor ("PAR Official") to assume much of the functions and obligations that DPMs previously held. See Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005).

brokerage fee and the \$.02 fee for crossed orders.⁷ The Exchange believes eliminating floor brokerage fees in the foregoing manner will make the Exchange's fees more competitive with the floor brokerage fees charged by other exchanges.

c. Customer Large Trade Discount Program

The Exchange proposes to include options on the Mini-Nasdaq-100 index ("MNX") in the Customer Large Trade Discount program. The Customer Large Trade Discount program provides a discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for most CBOE index options.⁸ When the program was first established in July 2003,⁹ MNX options were not included since MNX customer transaction fees had been significantly reduced in June 2002.¹⁰ The Exchange now proposes to include MNX options in the program, effective February 1, 2006. MNX regular customer transaction fees will only be charged up to the first 3,000 contracts per order.

d. Prospective Fee Reduction Program

The Exchange proposes to modify and continue its Prospective Fee Reduction Program for fiscal year 2006. The Program is intended to limit Market-Maker and DPM fees in periods of high volume.¹¹ The thresholds for fee reductions have been reviewed and adjusted, as they are each year, to account for the anticipated working capital needs of the Exchange for the coming year. Fee reductions will be in effect February 1, 2006 under the scenarios noted below.

If CBOE volume exceeds 2,300,000 contracts per day ("CPD") at the end of any month on a fiscal year-to-date ("YTD") basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month by 10% per contract from standard rates. If

CBOE volume exceeds 2,550,000 CPD at the end of any month on a fiscal YTD basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month by 20% per contract from standard rates.

e. Member Firm Proprietary and Firm Facilitation Fee Cap

The Exchange currently caps member firm proprietary and firm facilitation fees at \$75,000 per month per firm.¹² The Exchange proposes to increase the cap to \$100,000 per month per firm. No other changes to the program are proposed.

f. Extension of DPM Linkage Fee Credit for P/A Orders

The Exchange, pursuant to section 21 of the CBOE Fees Schedule, credits DPMs for transaction fees they incur related to the execution of outbound principal acting as agent ("P/A") orders, as defined in the Linkage Plan. This "DPM Linkage Fees Credit" is accomplished via a rebate and a credit, as follows: (i) The Exchange rebates transaction fees that DPMs incur when they trade against a customer order that underlies a P/A order the DPM sent through the Linkage; and (ii) the Exchange credits the DPMs up to an additional \$.20 per contract to help offset some of the fees the DPMs incur for submitting P/A orders through the Linkage (this program is referred to herein as the "P/A Rebate Program"). The P/A Rebate Program is currently due to expire on January 31, 2006.¹³

The Exchange proposes to extend the P/A Rebate Program. A proposed amendment to the Linkage Plan has also been separately submitted to the Commission to permit an Exchange account, instead of the DPM's account, to be used by PAR Officials to send and respond to P/A orders ("Linkage Account Plan Amendment").¹⁴ When an Exchange account is used to send and respond to P/A orders, there would no longer be a need for the P/A Rebate Program. Therefore, the Exchange proposes to extend the P/A Rebate Program until the earlier of: (i) Thirty days after Commission approval of the Linkage Account Plan Amendment (*i.e.*, Commission approval of use of an Exchange account to send and respond

to P/A orders); or (ii) July 31, 2006, which is the expiration date of the Linkage fees pilot program. The thirty day time period after Commission approval of the Linkage Account Plan Amendment is intended to allow for the P/A Rebate Program to continue while the Exchange rolls-out the required systems changes needed to utilize the Exchange account.

g. DPM Linkage Fee Credit for Certain P Orders

The Exchange proposes to adopt a program similar to the P/A Rebate Program (but with one difference) to credit DPMs for transaction fees they incur related to the execution of outbound Principal orders on behalf of orders that are for the account of a broker-dealer (for purposes of the proposed program, such Principal orders are referred to as "P orders"). Specifically, the Exchange proposes to adopt a rebate program ("P Rebate Program") under which: (i) The Exchange will rebate transaction fees that DPMs incur when they trade against a broker-dealer order (orders that are marked with either a "B" or "F" origin code) that underlies a P order the DPM sent through the Linkage; and (ii) the Exchange will credit DPMs up to an additional \$.20 per contract to help offset some of the fees DPMs incur for submitting such P orders through the Linkage.¹⁵

In addition, the Exchange proposes to credit DPMs up to an additional \$.09 per contract on both P order-related executions (the CBOE transaction against the broker-dealer order underlying the outbound P order and the P order transaction at another exchange), to help offset the OCC and clearing firm fees DPMs incur on those transactions.¹⁶

As under the P/A Rebate Program, the aggregate amount of the \$.20 per contract and \$.09 per contract credits for all DPMs under the P Rebate Program will be limited to no more than the total amount of fees that the Exchange earns from fees generated by inbound Linkage transaction fees. The \$.20 per contract credit will be apportioned to DPMs pro-

¹⁵ The Exchange has represented that, although not specifically referenced in the rule text, this rebate program will be subject to the July 31, 2006 expiration of the Linkage fee pilot program noted in Footnote 8 of the Fees Schedule. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and Nancy J. Sanow, Assistant Director, Geoffrey Pemble, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission on February 13, 2006.

¹⁶ The \$.09 per contract credit is based on an estimated OCC fee of \$.02 per contract and estimated average clearing firm fee of \$.07 per contract.

⁷ See CBOE Fees Schedule, section 3. The Exchange also proposes a non-substantive change to Footnote 8 of the Fees Schedule regarding Linkage orders to reflect the changes to section 3. In addition, the Exchange notes that DXL, OEX and SPX options are currently singly-listed; therefore, orders for these options are not sent through the Intermarket Options Linkage ("Linkage"). Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and Nancy J. Sanow, Assistant Director, Geoffrey Pemble, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission on February 13, 2006.

⁸ See CBOE Fees Schedule, section 18.

⁹ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

¹⁰ See Securities Exchange Act Release No. 46045 (June 6, 2002), 67 FR 41284 (June 17, 2002).

¹¹ See CBOE Fees Schedule, Section 19.

¹² See CBOE Fees Schedule, Section 20, and Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004).

¹³ See Securities Exchange Act Release No. 53044 (December 30, 2005), 71 FR 957 (January 6, 2006).

¹⁴ Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and Nancy J. Sanow, Assistant Director, Geoffrey Pemble, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission on February 13, 2006.

rata based on the number of contracts executed by each DPM at other exchanges via such P orders. The \$.09 per contract credit will be apportioned to DPMs pro-rata based on the number of contracts executed by each DPM at CBOE against broker-dealer orders that underlie outbound P orders and at other exchanges via such P orders. A DPM will be expected to reimburse the Exchange to the extent that the funds received by the DPM via the P Rebate Program exceed the DPM's actual costs incurred in executing Linkage-related transactions.¹⁷

The purpose of the P Rebate Program is to further assist DPMs in offsetting the additional costs they incur in routing orders to other exchanges in order to obtain the National Best Bid or Offer ("NBBO"). Unlike the P/A Rebate Program, the P Rebate Program is not proposed to expire, except subject to the Linkage fees pilot specified in Footnote 8 of the CBOE Fees Schedule. The Exchange intends to implement the P Rebate Program on February 1, 2006.

h. Fixed Annual Fee

Pursuant to section 23 of the CBOE Fees Schedule, the Exchange offers a fixed annual fee program for DPMs and Electronic Designated Primary Market-Makers ("e-DPMs"). The program offers DPMs and e-DPMs the alternative of choosing a fixed annual fee of \$2 million instead of being assessed transaction fees on a per contract basis for its DPM, e-DPM and Remote Market-Maker ("RMM") transactions in equity options classes.¹⁸

The Exchange proposes to increase the DPM and e-DPM fixed annual fee for fiscal year 2006 to \$2.25 million for DPM, e-DPM and RMM equity options transactions. No other changes to the program are proposed.

i. Miscellaneous, Non-substantive Changes

The Exchange proposes a few non-substantive changes to its Fees Schedule to remove references to fee waiver programs that have expired. Specifically, the Exchange proposes to delete Footnotes 17 and 18, which relate to expired fee waiver programs applicable to SPX LEAPS and XSP

¹⁷ Section 23 of the Fees Schedule, which includes a cross reference to section 21, is also proposed to be amended to reflect the changes to section 21.

¹⁸ The DPM and e-DPM fixed annual fee for 2005 was \$1.75 million for DPM and e-DPM equity options transactions and \$250,000 for RMM equity options transactions. See Securities Exchange Act Release No. 50058 (July 22, 2004), 69 FR 45861 (July 30, 2004), and Securities Exchange Act Release No. 51746 (May 26, 2005), 70 FR 32855 (June 6, 2005).

options. The Exchange also proposes to delete a reference to an expired member dues waiver program in section 10 of the Fees Schedule.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁹ in general, and furthers the objectives of section 6(b)(4)²⁰ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act²¹ and subparagraph (f)(2) of Rule 19b-4²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²³

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

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 C.F.R. 240.19b-4(f)(2).

²³ *Id.*

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2006-10 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-CBOE-2006-10. 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 CBOE. 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-2006-10 and should be submitted on or before March 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Nancy M. Morris,
Secretary.

[FR Doc. E6-3014 Filed 3-2-06; 8:45 am]

BILLING CODE 8010-01-P

²⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53371; File No. SR-NASD-2005-144]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Order Entry and Execution Practices

February 24, 2006.

I. Introduction

On December 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 order entry and execution practices. The proposed rule change was published in the *Federal Register* on January 23, 2006.³ The Commission has received one comment on the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposal

The NASD proposed to add Rule 3380 to prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁵ particularly Section 15A(b)(6) of the Act,⁶ which requires that an association's rules be 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, in general, protect investors and the public interest.

In its comment letter on behalf of Sun Trading LLC,⁷ the commenter argues, in essence, that the rule proposal should be limited to the splitting of customer orders, and that trade shredding should be permitted for member proprietary trades, since this could allow members to make tighter and more efficient markets. Accordingly, the commenter suggests that the Commission limit the application of the rule to exclude trading by market makers and proprietary trading firms where no customer orders are involved. The commenter believes that the Commission has adequately addressed the issue of trade shredding in the newly adopted Regulation NMS and that further steps would be counter productive.

While Regulation NMS will revise the current plan formulas, which allocate market data revenues based either solely on the number of trades, or on trade and share volume, to reduce the emphasis on trade volume, the Commission believes it is appropriate for self-regulatory organizations ("SROs") to take additional steps to address trade shredding and its potentially distortive effects. The Commission notes that, to date, it has approved rule changes to address the practice of trade shredding from four SROs.⁸ The remaining SROs have filed proposed rule changes to address the issue of trade shredding.⁹

The Commission believes that the proposed rule change should further deter the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-NASD-2005-144), be and hereby is, approved.

⁷ See *supra* note 4.

⁸ See Securities Exchange Act Release Nos. 52341 (August 26, 2005), 70 FR 52455 (September 2, 2005) (SR-BSE-2005-20); 52683 (October 26, 2005), 70 FR 66480 (November 2, 2005) (SR-NYSE-2005-62); 53070 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-63); 53088 (January 10, 2006), 71 FR 2605 (January 17, 2006) (SR-CBOE-2005-92).

⁹ See SR-Amex-2005-112, SR-CHX-2006-03, SR-PCX-2006-10. National Stock Exchange expects to file a trade shredding rule change proposal in the near future.

¹⁰ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

[FR Doc. E6-3029 Filed 3-2-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53376; File No. SR-PCX-2006-12]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Clearly Erroneous Executions

February 27, 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 February 23, 2006, the Pacific Stock Exchange, Inc. ("PCX" 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 prepared by the PCX. 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 PCX proposes to amend PCX Equities, Inc. ("PCXE") Rule 7.10(e) pertaining to clearly erroneous executions of securities issued in initial public offerings. The text of the proposed rule change is set forth below.³ Brackets indicate deletions; italics indicates new text.

* * * * *

Rules of the PCX Equities, Inc.

Rule 7

Rule 7.10

Clearly Erroneous Executions

(a)-(d) No Change.
(e) Trade Nullification and Price Adjustments for UTP Securities that are Subject of Initial Public Offerings ("IPOs"). Pursuant to SEC Rule 12f-2, as amended, the Corporation may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange inadvertently indicated that the title of PCXE Rule 7.10 was new text. The Commission corrected this technical error in the text of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53132 (January 17, 2006), 71 FR 3584.

⁴ See email comment from Jefferson Wigley, Managing Member, Sun Trading LLC, dated February 15, 2006 ("Sun Trading Letter").

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).

the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error [will] may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Corporation is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Officer shall declare the opening transaction null and void or adjust the transaction price to the opening price on the listing exchange or association. Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (c)(1). Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (e) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. Each party involved in the transaction shall be notified as soon as practicable by the Corporation, and the party aggrieved by the action may appeal such action to the PCXE CRO in accordance with the provisions of subsection (c)(2)-(4) above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the procedures for trade nullifications ("busts") and price adjustments ("adjusts") for securities issued in initial public offerings ("IPOs") from an automatic to a discretionary basis. Given the unique nature of IPOs, public customers have an expectation that the opening of the

security will be orderly and that the pricing will be reasonable for the listing company. Opening execution prices transacted on the primary listed exchange (and other market centers) represent the price of the stock in the secondary market, which may not necessarily reflect the IPO pricing disseminated prior to the start of secondary market trading by the underwriters/syndicates. According to the Exchange, there may be varying first prices in a security that is issued in an IPO because market centers may have different prices at the same second.

Due to the possibility of varying prices at the same second in a security issued in an IPO, PCXE staff reviews the openings of IPOs on ArcaEx on a best efforts basis. The review of IPO opening prices utilizes criteria that also are used to judge erroneous executions during the pre-core, core and post-core sessions. IPO trades are evaluated for uniformity with the primary listed exchange as well as with other market centers' prices. Currently, initial trades on ArcaEx that are executed at prices more than \$1.00 from the primary listed exchange's opening price are automatically busted or adjusted to the primary listed exchange's opening price.

Under the proposed rule, PCXE staff would have the discretion to bust or adjust initial trades that are executed more than \$1.00 from the primary listed exchange's opening price. The Exchange believes that the change from automatic to discretionary adjustments or busts is necessary because often the primary exchange lists the IPO at multiple first prices. Many times, but not always, the first price is not indicative of the actual price of the IPO and thus the PCXE staff must review all of the first prices to determine if the trade at issue has to be adjusted or busted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, because 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2006-12 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-PCX-2006-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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-PCX-2006-12 and should be submitted on or before March 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,

Secretary.

[FR Doc. E6-3030 Filed 3-2-06; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 10, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2006-23881.

Date Filed: February 7, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC3 South Asian Subcontinent—South West Pacific. Singapore, 21 November—30 November 2005.

Intended effective date: 1 April 2006 (Memo 0930).

Minutes: TC3 South Asian Subcontinent—South West Pacific. Singapore, 21 November—30 November 2005 (Memo 0943).

Tables: TC3 South Asian Subcontinent—South West Pacific

Singapore, 21 November—30 November 2005.

Intended effective date: 1 April 2006 (Memo 0381).

Docket Number: OST-2006-23892.

Date Filed: February 8, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005.

Intended Effective Date: 1 April 2006 (Memo 0924).

Minutes: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005 (Memo 0943).

Fares: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005. Specified fare tables.

Intended effective date: 1 April 2006 (Memo 0383).

Docket Number: OST-2006-23915.

Date Filed: February 9, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote Number S 084. RP 1720a-13 Digit Numbering System for Traffic Documents Request for an Additional Form Code for Increased Usage of Electronic Tickets (ETs) in an OPTAT Environment.

Intended effective date: 20 February 2006.

Renee V. Wright,

Program Manager, Docket Operations,
Federal Register Liaison.

[FR Doc. E6-2963 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 10, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such

procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2005-23898.

Date Filed: February 8, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 2006.

Description: Application of Pacific Airways, Inc. requesting a certificate of public convenience and necessity to transport passengers, property, and mail in interstate air transportation.

Docket Number: OST-2005-22228 and OST-1997-2558.

Date Filed: February 9, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 2, 2006.

Description: Amendment of Continental Micronesia, Inc. to its application for renewal of certain segments of its certificate for Route 171 to include authority, pursuant to the Department's August 23, 2005 notice on streamlining regulatory procedures, to provide scheduled air transportation of persons, property and mail between Guam and Cairns, Australia; Guam and Nagoya, Japan; and Honolulu and Nagoya, Japan and authority to integrate this authority with authority currently held by Continental Micronesia, Inc.

Docket Number: OST-2003-16773 and OST-2003-16774.

Date Filed: February 10, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 3, 2006.

Description: Application of Ameristar Air Cargo, Inc. d/b/a Ameristar Charters requesting renewal of its certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons on a permanent basis.

Renee V. Wright,

Program Manager, Docket Operations,
Federal Register Liaison.

[FR Doc. E6-2962 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Pease International Tradeport, Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Pease Development

⁶ 17 CFR 200.30-3(a)(12).

Authority's request to dispose of approx. 69 acres of Airport property. The property is located on the North end of the Tradeport along Arboretum Drive and is known as the Newington Town Forest. The vacant land is on the National Register of Historic Places and cannot be developed. The land will be deeded to the Town of Newington, New Hampshire for continued use as the Town Forest. The property was acquired from the United States of America via Quitclaim Deed dated October 15, 2003.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 15, 1999.

DATES: Comments must be received on or before April 3, 2006.

ADDRESSES: Documents are available for review by appointment by contacting Ms. Lynn Hinchee, General Counsel, Pease Development Authority at 603-766-9286 or by contacting Ms. Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781-238-7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781-238-7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts on February 23, 2006.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 06-2008 Filed 3-2-06; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee Working Group—Meeting Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Risk Management Working Group meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), and 5 U.S.C. 552b (c), notice is hereby given of a meeting of the Risk Management Working Group of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting agenda will include a briefing by a representative from The Aerospace Corporation on the issue of indemnification for commercial launch activities, and will take place on Monday, March 20, 2006, from 10 a.m. until 5 p.m. at FAA Headquarters, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST-100), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267-3674; e-mail brenda.parker@faa.gov.

Issued in Washington, DC, February 27, 2006.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 06-2001 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held March 14, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- March 14:
 - Opening Session (Welcome and Introductory Remarks, Review/

Approve Summary of Previous Meeting).

- Publication Consideration/Approval:
- Final Draft, Assessment of TCAS II Aural And Display Issues, RTCA Paper No. 027-06/PMC-440, prepared by SC-147.
- Final Draft, Revised DO-294, Guidance on Allowing Transmitting Portable Electronic Devices (T-PEDs) on Aircraft, RTCA Paper No. 028-06/PMC-441, prepared by SC-202.
- Discussion:
- EUROCAE WG68—Altimetry.
- Review EUROCAE Initiative.
- Possible New Special committee.
- EUROCAE WG72—Aeronautical Systems Security.
- Review EUROCAE Initiative.
- Possible New Special Committee.
- Special Committee Chairman's Reports.
- RTCA Annual Awards—Review Nominations.
- Action Item Review:
- Synthetic Vision Systems (SVS)—Discussion—Possible New Committee Request.
- SC-147—Traffic Alert & Collision Avoidance Systems-Discussion-Possible New Committee Request.
- SC-203—Unmanned Aircraft Systems (UAS)—Discussion-Schedule.
- Report on Committee Recommendations to Expedite Progress.
- Report on Possible Joint RTCA/EUROCAE UAS activity.
- Cabin Management Systems—Report—PMC CMS Subgroup.
- Request to revise DO-239—MOPS for Traffic Information Service Data Link Communications—Discussion.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued: in Washington, DC, on February 17, 2006.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. 06-2006 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****RTCA Special Committee 159: Global Positioning System (GPS)**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held March 20–24, 2006, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. *Note: Specific working group sessions will be held March 20–24.* The plenary agenda will include:

- March 24:
 - Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting).
 - Review Working Group Progress and Identify Issues for Resolution.
 - Global Positioning System (GPS)/3rd Civil Frequency (WG–1).
 - GPS/Wide Area Augmentation System (WAAS) (WG–2).
 - GPS/GLONASS (WG–2A).
 - GPS/Inertial (WG–2C).
 - GPS/Precision Landing Guidance (WG–4).
 - GPS/Airport Surface Surveillance (WG–5).
 - GPS/Interference (WG–6).
 - GPS/Antennas (WG–7).
 - GPS/GRAS (WG–8).
 - Review of EUROCAE activities.
 - Schedule/Status of Revised DO–229C and Overview of Proposed 229D Versus DO–229C.
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 27, 2005.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. 06–2009 Filed 3–2–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Fourth Meeting: RTCA Special Committee 206: Aeronautical Information Services Data Link**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held April 3–April 7, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at ICAO Headquarters, 999 University Street, Montréal, Québec, Canada, H3C 5H7. Onsite Contact: Mr. Aleks Pavlovic, apavlovic@icao.int, Tel. (514) 298–3302.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting. The agenda will include:

- April 3:
 - Opening Session (Chairman's Address, Welcome, Introductory and Administrative Remarks, Review Agenda, Approve Minutes, Flight Safety Foundation Opportunity, Action Item Review).
 - Session on Joint Activities.
 - Presentations and Discussions.
- April 4:
 - Breakout in Subgroup 1 and Subgroup 2.
- April 5:
 - Subgroup 1 and Subgroup 2 Meetings.
 - Status Report of both Subgroup Sessions.
- April 6:
 - Subgroup 1 and Subgroup 2

Meetings.

- April 7:
 - Subgroup 1 and Subgroup 2 Meetings.
 - Closing Session (Other Business, Chairman Wrap Up and Conclusions, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 17, 2006.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. 06–2010 Filed 3–2–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Fifth Meeting, RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters.

DATES: The meeting will be held on March 15–16, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- March 15–16, 2006:
 - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Terms of Reference/Status).

- Approval of Summary for the Fourth meeting held on 7-8 February 2006, RTCA Paper No. 035-06/SC204-013.
- EUROCAE ELT Status.
- Committee Presentations, Discussion, Recommendations.
- Revisions/Updates to DO-204—Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT).
- Revisions/Updates to DO-183—Minimum Operational Performance Standards for Emergency Locator Transmitters—Automatic Fixed-ELT (AF), Automatic Portable-ELT (AP), Automatic Deployable-ELT (AD), Survival-ELT (S) Operating on 121.5 and 243.0 Megahertz.
- Closing Session (Other Business, Assignment/Review of Future Work, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, On February 21, 2006.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. 06-2011 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lafourche, St. Charles, and Jefferson Parishes, LA

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for a proposed road project (State Project No. 700-92-0011 and Federal Aid Project No. NH-9201(501)) in Lafourche, St. Charles, and Jefferson Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Farr, Programs Operations

Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757-7615; Facsimile: (225) 757-7601 or Mr. Vincent Russo, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, Louisiana 70804, Telephone: (225) 242-4502; Facsimile: (225) 242-4500.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an EIS on a proposal to upgrade a portion of U.S. Highway 90 (US 90) to full "Control of Access" highway meeting interstate standards. US 90 would become an extension of Interstate 49 (I-49). The project consists of the proposed I-49 extension from Raceland to the completed portion of the Westbank Expressway. The approximate distance of the project is 43 miles.

Previously, on April 7, 2003, separate Notices of Intent were published for the I-49 South Raceland to David Pond section of I-49 and the section from LA 306 to the Westbank Expressway. These separate environmental documents are in preparation but yet unfinished. Public comments to date raised common concerns with the scope of the cumulative impact inquiry if each section of I-49 is treated as separate based upon logical termini and independent utility. Thus, the two sections of the proposed I-49 are to be considered together to measure cumulative impacts under 40 CFR 1508.7.

The LDOTD, in coordination with the FHWA, will continue to conduct preliminary environmental (both social and natural environment) and engineering constraints studies, the development of concept line and grade alternatives, initial impact evaluation, more detailed study of line and grade alternatives and environmental impact and cumulative impacts. FHWA and LDOTD will develop a DEIS, hold a public hearing, select a preferred alternative, prepare a Final EIS with complete detailed environmental and line and grade studies, and a Record of Decision for I-49 from Raceland to the completed portion of the Westbank Expressway.

Previously, there have been a total of twelve public information meetings among the three parishes to receive public comment throughout the NEPA process, and a public hearing has been conducted in Lafourche and St. Charles Parishes for SIU 1 from Raceland to the Davis Pond. Additionally, town hall,

small group informational, and public officials' meetings have been held and will continue to be held. There will be an additional public hearing.

Interested individuals, organizations, and public agencies are invited to attend the public meetings and participate in identifying any important environmental issues related to the proposed alternatives and suggesting alternatives which are more economical or which have less environmental effects while achieving similar transportation objectives.

To ensure that the full range of issues related to this proposed action is addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The public will receive notices on location and time of future opportunities for participation at meetings and public hearings through newspaper advertisements and other means. If you wish to be placed on the mailing list to receive further information as the project develops, please contact Mr. William Farr with FHWA or Mr. Vincent Russo with LDOTD at the address above.

In accordance with the regulations and guidance by the Council on Environmental Quality (CEQ), as well as 23 CFR part 450 and 23 policies; the EIS will include an evaluation of the social, economic, and environmental impacts of the alternatives. The EIS will comply with the requirements of the Clean Air Act Amendments of 1990 and with Executive Order 12898 on Environmental Justice. The EIS will meet the requirements of the U.S. Environmental Protection Agency's transportation conformity regulations (40 CFR part 93 and 23 CFR 450.322(b)(8)). After publication, the Draft EIS will be available for public agency review and comment.

The Final EIS will consider the public and agency comments received during the public and agency circulation of the Draft EIS and will determine the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of the project development.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: Issued on February 27, 2006.

Joe A. Bloise,

Acting Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc. 06-1981 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FMWA and other Federal agencies.

SUMMARY: This notice announces a final approval action taken by the FHWA within the meaning of 23 U.S.C. 139(l)(1). The action concerns a proposed project, First Street Viaduct and Street Widening Project on First Street between Hewitt Street and Clarence Street in Los Angeles County, California.

DATES: By this notice, the FHWA is advising the public of final agency action subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 30, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall #4-100, Sacramento, CA 95814, weekdays between the hours of 7 a.m. and 4 p.m., telephone 916-498-5849, Steve.Healow@fhwa.dot.gov. Gary Iverson, California Department of Transportation, Division of Environmental Planning, 100 South Main Street, Ste #100, Los Angeles, CA 90012-3712, 213-897-3818, Gary.Iverson@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has signed a Record of Decision for the First Street Viaduct and Street Widening Project [#BHL5-5006(636)] in Los Angeles, California. The project will widen the First Street Viaduct by approximately twenty-six feet, providing two eastbound and two westbound traffic lanes on the viaduct between Vignes Street and Mission Road separated by dual light rail tracks within a raised

median. The project would also widen First Street east of the viaduct between Mission Road and Clarence Street to align the street with the widened viaduct. Further improvements to the viaduct will replace the north railing, provide roadway shoulders and reconstruct the Santa Fe Avenue and Myers Street undercrossings to meet current design standards. Total length of the project is approximately 0.7 miles. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on November 30, 2005, in the FHWA Record of Decision (ROD) issued on February 22, 2006, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the National Environmental Policy Act, the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303), the Endangered Species Act, the Clean Air Act, and the Uniform Relocation Assessment and Real Property Acquisition Policies Act of 1970, as amended [No private right of action under SAFETEA-LU].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: February 24, 2006.

Gene K. Fong,

Division Administrator, Sacramento, CA.

[FR Doc. 06-1988 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notification of Petitions for Approval; Processor-Based Signal and Train Control Systems

In accordance with 49 Code of Federal Regulations (CFR) 236.913(e)(1), notice is hereby given that the Federal Railroad Administration (FRA) has received a petition for approval of a Product Safety Plan (PSP) submitted pursuant to 49 CFR part 236, subpart H. Although not

required, FRA is providing notice that it has also received petitions for approval of three Railroad Safety Program Plans (RSPP) submitted pursuant to 49 CFR part 236, subpart H. The individual petitions are described below, including the party seeking approval, the requisite docket numbers, and a brief summary of the petition where required. FRA will only accept comments on the petition for approval for the Product Safety Plan, as required by 49 CFR 236.913(e)(2).

PSP

BNSF Railway Company (BNSF)

Docket Number FRA 2006-23687 (Other Docket Numbers that may contain relevant information: FRA 2006-23686 and FRA 2003-15432).

BNSF submitted a petition for approval of a PSP for its Electronic Train Management System (ETMS). BNSF asserts that the PSP demonstrates that ETMS has been designed in a safe manner and that it supports BNSF's assessment that railroad operations with ETMS are as safe, or safer, than railroad operations without ETMS. The PSP provides descriptions of: the ETMS itself; ETMS safety process and analyses; validation and verification processes used during development of ETMS; and operational and support requirements and procedures.

Interested parties are invited to participate in this safety review by providing written information or comments pertinent to FRA's consideration of the above petition for approval of a Product Safety Plan. All communications concerning this safety review should identify the appropriate docket number (e.g., Petition for Approval Docket Number FRA-2006-23687) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC 20590-0001. Communication received within 90 days of the date of this notice will be considered by FRA to the extent practicable. All written communications concerning this safety review are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all the comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment 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). The Statement may also be found at <http://dms.dot.gov>.

RSPPs

BNSF

Docket Number FRA-2006-23686 (Other Docket Numbers that may contain relevant information: FRA 2006-23687 and FRA 2006-FRA 2003-15432).

BNSF submitted a petition for approval of an RSPP. The petition, the RSPP, and any related documents have been placed in the requisite docket and are available for public inspection.

CSX Transportation, Inc. (CSX)

Docket Number FRA 2006-23685 (Other Docket Numbers that may contain relevant information: FRA).

CSX submitted a petition for approval of an RSPP. The petition, the RSPP, and any related documents have been placed in the requisite docket and are available for public inspection.

Union Pacific Railroad (UP)

Docket Number FRA 2006-24002 (Other Docket Numbers that may contain relevant information: FRA).

UP submitted a petition for approval of an RSPP. The petition, the RSPP, and any related documents have been placed in the requisite docket and are available for public inspection.

Issued in Washington, DC on February 23, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6-3071 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal**

Register Notice with a 60-day comment period was published on July 11, 2005 (70 FR 39851-39852).

DATES: Comments must be submitted on or before April 3, 2006.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI-131), 202-366-6401, 400 Seventh Street, SW., Room 5119, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 2006 Motor Vehicle Occupant Safety Survey.

OMB Number: 2121-New.

Type of Request: New information collection request.

Abstract: The Motor Vehicle Occupant Safety Survey (MVOSS) is conducted on a periodic basis for the National Highway Traffic Safety Administration to obtain a status report on attitudes, knowledge, and behavior related to motor vehicle occupant protection. It is a national telephone survey composed of two questionnaires, each administered to a randomly selected sample of approximately 6,000 persons age 16 and older. One questionnaire focuses on seat belt issues while the other focuses on child restraint use. Additional topics addressed by the survey include air bags, emergency medical services, wireless phone use in motor vehicles, and crash injury experience. The proposed survey is the sixth in the MVOSS series. The 2006 MVOSS will collect data on topics included in the preceding surveys in order to monitor change over time in the use of occupant protection devices and in attitudes and knowledge related to motor vehicle occupant safety. The survey will also include new questions that address emergent issues in occupant protection.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 4,016 hours (9 cognitive interviews averaging 40 minutes each, 30 pre-test interviews averaging 20 minutes each, and 12,000 final interviews averaging 20 minutes each).

Comments are invited on: Whether the proposed collection of information is necessary for the performance of the

functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 06-1986 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 657 (Sub-No. 1)]

Major Issues in Rail Rate Cases

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed guidelines.

SUMMARY: The Surface Transportation Board has instituted a proceeding to seek public comments on proposed changes to its stand-alone cost methodology, on whether to continue to permit movement-specific adjustments to its Uniform Railroad Costing System in rail rate reasonableness cases, and on the proper standards for reopening and vacating a prior rate decision that is based upon a stand-alone cost analysis. These changes are intended to resolve major issues common to all rail rate complaints seeking relief under the agency's stand-alone cost test.

DATES: Notices of intent to participate are due on March 20, 2006. Comments are due on May 1, 2006. Replies are due on May 31, 2006. Rebuttals are due on June 30, 2006.

ADDRESSES: All notices of intent to participate and comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using the e-filing should comply with the instructions found on the Board's Web site, <http://www.stb.dot.gov>, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 20 paper copies of the filing (referring to STB Ex Parte No. 657 (Sub-No. 1) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Joseph Dettmar, 1-202-565-1609.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is instituting a proceeding in STB Ex Parte No. 657 (Sub-No. 1) to obtain public comments on proposed changes to its stand-alone cost (SAC) methodology, on whether to continue to permit movement-specific adjustments to its Uniform Railroad Costing System (URCS) in rail rate reasonableness cases, and on the proper standards for reopening and vacating a prior rate decision that is based upon a SAC analysis. First, the Board presents two alternatives to the percent reduction method to determine maximum reasonable rates. Second, the Board proposes a new cost-based method for allocating revenue from cross-over traffic. Third, the Board proposes a method for forecasting future operating expenses of a stand-alone railroad (SARR) that would reflect anticipated future productivity gains. Fourth, the Board proposes to no longer permit movement-specific adjustments to URCS when calculating the 180% revenue-to-variable cost (R/V/C) jurisdictional floor for rail rate relief. Fifth, the Board proposes to shorten the time frame for SAC analyses and corresponding rate prescriptions from 20 years to 10 years. Finally, the Board proposes new standards for reopening and vacating a prior Board decision (including any resulting rate prescription) that is based on a SAC analysis.

In a decision served on February 27, 2006, the Board has discussed each of these issues in detail and set forth proposed solutions to the identified problems. Each of these issues is being revisited to ensure that both the SAC test and the jurisdictional floor for rate relief are applied fairly and in conformity with the Board's statutory charge. Because these issues go to the heart of the SAC test and have industry-wide significance for rail carriers and their captive shippers, all interested parties are invited to comment on these proposed changes.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at <http://www.stb.dot.gov>. A service list will be available at the Board's Web site by March 31, 2006. Comments, replies and rebuttals should be served on all

persons designated on the list as a party of record.

This action should not have a 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.*). To the extent that small entities may be affected, the impact should be beneficial, because these proposals will resolve several contentious issues in SAC proceeding, and simplify the jurisdictional inquiry. The Board, however, invites comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 27, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,
Secretary.

[FR Doc. E6-3049 Filed 3-2-06; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 34554 (Sub-No. 4)]

**Union Pacific Railroad Company—
Temporary Trackage Rights
Exemption—BNSF Railway Company**

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP¹ over BNSF's line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.²

¹ UP submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights*, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 5). *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2006. That petition will be addressed by the Board in a separate decision.

² The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights*

The transaction was scheduled to be consummated on February 20, 2006.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 2) to further extend the expiration date to on or before December 31, 2006. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 4), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: February 22, 2006.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 06-1861 Filed 3-2-06; 8:45 am]

BILLING CODE 4915-01-P

Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1) and on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on Feb. 11, 2005, to expire. At the time of that extension, it was anticipated by the parties that the rights would expire on or about December 31, 2005. However, this authority has not yet been exercised.

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Docket No. AB-33 (Sub-No. 237X)]

Union Pacific Railroad Company and Salt Lake City Corporation—Abandonment Exemption—In Salt Lake City, UT

On February 13, 2006, Union Pacific Railroad Company (UP) and Salt Lake City Corporation jointly filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for UP to abandon its freight operating rights and rail freight service over 2.22 miles of a line of railroad between milepost 780.1 and milepost 782.32 in Salt Lake City, UT.¹ The line traverses U.S. Postal Service Zip Codes 84101 and 84104, and it includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 2, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,200 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 23, 2006. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-33 (Sub-No. 237X), and must be sent to: (1) Surface Transportation Board, 1925 K

Street, NW., Washington, DC 20423-0001; (2) Robert T. Opal, General Commerce Counsel, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179; and (3) Christopher E. Bramhall, Senior City Attorney, Salt Lake City Corporation, 451 South State Street, Room 505, Salt Lake City, UT 84111. Replies to the petition are due on or before March 23, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: February 27, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6-3070 Filed 3-2-06; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****FEDERAL RESERVE SYSTEM****FEDERAL DEPOSIT INSURANCE CORPORATION****Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request**

AGENCIES: Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve

System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On December 13, 2005, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the *Federal Register* (70 FR 73745) requesting public comment on the extension, without revision, of the currently approved information collections, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a). The comment period for this notice expired on February 13, 2006. No comments were received. The agencies are now submitting requests to OMB for approval of the extension, without revision, of the FFIEC 009 and FFIEC 009a reports.

DATES: Comments must be submitted on or before April 3, 2006.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0100, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to 202-874-4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202-874-5043.

Board: You may submit comments, identified by FFIEC 009, by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

¹ UP has requested that this abandonment exemption be conditioned upon the substantial completion of certain terms in an agreement between it and Salt Lake City Corporation relating to the Board's decision in *Salt Lake City Corporation—Adverse Abandonment—in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (STB served March 8, 2002). This condition will be addressed in the final decision in this proceeding.

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

• E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

• Fax: 202-452-3819 or 202-452-3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit written comments, which should refer to "Country Exposure Reports, 3064-0017," by any of the following methods:

• Agency Web site: <http://www.fdic.gov/regulations/laws/federal/notices.html>. Follow the instructions for submitting comments on the FDIC Web site.

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

• E-mail: Comments@FDIC.gov.

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/notices/html> including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E-1002, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters should send a copy of their comments to the Desk Officer for the Agencies by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by fax to 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Additional information or a copy of the collection may be requested from:

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, 202-874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Long, Federal Reserve Board Clearance Officer, 202-452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202-263-4869, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Leneta G. Gregorie, Counsel, 202-898-3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to request approval from OMB of the extension for three years, without revision, of the following reports:

Report Title: Country Exposure Report and Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.
Affected Public: Business or other for profit.

OCC

OMB Number: 1557-0100.
Estimated Number of Respondents: 21 (FFIEC 009), 21 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 5,880 burden hours (FFIEC 009), 441 burden hours (FFIEC 009a).

Board

OMB Number: 7100-0035.
Estimated Number of Respondents: 29 (FFIEC 009), 16 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 8,120 burden hours (FFIEC 009), 336 burden hours (FFIEC 009a).

FDIC

OMB Number: 3064-0017.
Estimated Number of Respondents: 21 (FFIEC 009), 21 (FFIEC 009a).

Estimated Average Time per Response: 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 5,880 burden hours (FFIEC 009), 441 burden hours (FFIEC 009a).

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817

(national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Request for Comment

- Comments are invited on:
- Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
 - The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
 - Ways to enhance the quality, utility, and clarity of the information to be collected;
 - Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
 - Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy

of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: February 17, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 21, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 24th day of February, 2006.

Federal Deposit Insurance Corporation.

Carol L. Middlebrook,

Special Assistant to the Executive Secretary.

[FR Doc. 06-1980 Filed 3-2-06; 8:45 am]

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006-05, Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

Notice Number: 1545-1996.

Abstract: This Notice provides information to payees who receive payment of interest on qualified education loans who are unable to comply with the information reporting requirements under section 6050S of the Internal Revenue Code.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations, Federal Government.

Estimated Total Annual Recordkeeping and Reporting Burden: 500.

Estimated Annual Recordkeeping and Reporting Burden per Respondent: 10 hours.

Estimated Number of Respondents: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3052 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG-157302-02 (Final), TD 9142

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG-157302-02 (final), TD 9142; Deemed IRAs in Qualified Retirement Plans.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Deemed IRAs in Qualified Retirement Plans.

OMB Number: 1545-1841.

Form Number: REG-157302-02; TD 9142.

Abstract: Section 408(q), added to the Internal Revenue Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001, provides that separate accounts and annuities may be added to qualified employer plans and deemed to be individual retirement accounts and individual retirement annuities if certain requirements are met. Section 1.408(q)-1(f)(2) provides that these deemed IRAs must be held in a trust or annuity

contract separate from the trust or annuity contract of the qualified employer plan. This collection of information is required to ensure that the separate requirements of qualified employer plans and IRAs are met.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, Not-for-profit Institutions, and State, local or Tribal government.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 40,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3053 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO-30-92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO-30-92 (TD 8560), Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c), (§§ 1.1502-31, 1.1502-32, 1.1502-33, 1.1502-76).

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, 202-622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c).

OMB Number: 1545-1344.

Regulation Project Number: CO-30-92.

Abstract: These regulations amend the consolidated return investment adjustment system, including the rules for earnings and profits and excess loss accounts. In addition, the regulations provide special rules for allocating consolidated income tax liability among members and modify the method for

allocating income when a corporation enters or leaves a consolidated group.

Current Actions: There is no change to the total burden of these final regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52,049.

Estimated Time per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 18,600.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3054 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****[PS-5-91]****Proposed Collection; Comment Request for Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-5-91 (TD 8437), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (§ 1.613A-3(e)).

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala (202)-622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545-1251.

Regulation Project Number: PS-5-91.

Abstract: This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A-3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 49,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2006.

Glenn P. Kirkland,
IRS Reports Clearance Officer.

[FR Doc. E6-3055 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8886****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8886, Reportable Transaction Disclosure Statement.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, 202-622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Reportable Transaction Disclosure Statement.

OMB Number: 1545-1800.

Form Number: 8886.

Abstract: Regulation section 1.6011-4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 15 hours, 27 minutes.

Estimated Total Annual Burden Hours: 6,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3057 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8811

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, 202-622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Number: 1545-1099.

Form Number: 8811.

Abstract: Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

Current Actions: There are no changes being made to Form 8811 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 4 hr., 23 min.

Estimated Total Annual Burden Hours: 4,380.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3058 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-107644-97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-107644-97 (TD 8769), Permitted Elimination of Preretirement Optional Forms of Benefit (§ 1.411(d)-4).

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Permitted Elimination of Preretirement Optional Forms of Benefit.

OMB Number: 1545-1545.

Regulation Project Number: REG-107644-97.

Abstract: This regulation permits an amendment of a qualified plan or other employee pension benefit plan that eliminates plan provisions for benefit distributions before retirement age but after age 70½. The regulation affects

employers that maintain qualified plans and other employee pension benefit plans, plan administrators of these plans and participants in these plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 135,000.

Estimated Average Time Per Respondent: 22 min.

Estimated Total Annual Burden Hours: 48,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3059 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545-0865.

Form Numbers: 8264.

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 34 hours, 58 minutes.

Estimated Total Annual Burden Hours: 34,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3060 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202)-622-3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

OMB Number: 1545-0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 2,834,328.

Estimated Time per Respondent: 6 hr., 32 min.

Estimated Total Annual Burden Hours: 18,508,162.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(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; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3061 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4876-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4876-A, Election To Be Treated as an Interest Charge DISC.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as an Interest Charge DISC.

OMB Number: 1545-0190.

Form Number: 4876-A.

Abstract: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC-DISC). Form 4876-A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC-DISC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 6 hrs., 22 minutes.

Estimated Total Annual Burden Hours: 6,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3064 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 712

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 712, Life Insurance Statement.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at (202) 622-3179, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Life Insurance Statement.

OMB Number: 1545-0022.

Form Number: 712.

Abstract: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Current Actions: There are no changes being made to Form 712 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 60,000.

Estimated Time Per Response: 18 hrs. 40 minutes.

Estimated Total Annual Burden Hours: 1,120,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-3065 Filed 3-2-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8300

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

DATES: Written comments should be received on or before May 2, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over \$10,000 Received in a Trade or Business.

OMB Number: 1545-0892.

Form Number: Form 8300.

Abstract: Internal Revenue Code section 60501 requires any person in a trade or business who, in the course of the trade or business, receives more than \$10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 is used for this purpose.

Section 365 of the USA Patriot Act of 2001 (Pub. Law 107-56), adding new section 5331 to title 31 of the United States Code, authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 does not violate the provisions of section 6103. FinCEN makes the Forms 8300 available to law enforcement through its Bank Secrecy Act information sharing agreements.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 46,800.

Estimated Time Per Respondent: 1 hour 22 minutes.

Estimated Total Annual Burden Hours: 63,539.¹

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

¹ The burden for the information collection in 31 CFR 103.30 (also approved under control number 1506-0018) relating to the Form 8300, is reflected in the burden of the form.

Approved: February 27, 2006.

Glenn P. Kirkland,
IRS Reports Clearance Officer
[FR Doc. E6-3066 Filed 3-2-06; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: Notice for Recruitment of IRS Taxpayer Advocacy Panel (TAP) members and alternates.

DATES: March 21 through April 28, 2006.

FOR FURTHER INFORMATION CONTACT: Bernard Coston at 404-338-8408.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members and alternates of the TAP. The mission of the TAP is to provide citizen input into enhancing IRS customer satisfaction and service by identifying problems and making recommendations for improvement of IRS systems and procedures and elevating the identified problems to the appropriate IRS official. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue and the National Taxpayer Advocate. TAP members will participate in subcommittees comprised of 10 to 17 members who channel their feedback to the IRS.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 300 to 500 hours a year, and a desire to help improve IRS

customer service. To the extent possible, the IRS would like to ensure a balanced TAP membership representing a cross-section of the taxpaying public throughout the United States. Potential candidates must be U.S. citizens, compliant with Federal, state and local taxes, and able to pass a background investigation.

For the TAP to be most effective, members should have experience and knowledge in some of the following areas: Experience helping people resolve problems with a government organization; experience formulating and presenting proposals; knowledge of taxpayer concerns; experience representing the interests of your community, state or region; experience working with people from diverse backgrounds; and experience in helping people resolve disputes.

Interested applicants should visit the TAP Web site at <http://www.improveirs.org> to complete the on-line application or call the toll free number 1-866-912-1227 to complete the initial phone screen and request that an application be mailed. The opening date for submitting applications is March 21, 2006 and the deadline for submitting applications is April 28, 2006. The most qualified candidates will complete a panel interview. Finalists will be ranked by experience and suitability. The Secretary of Treasury will review the recommended candidates and make final selections.

Questions regarding the selection of TAP members may be directed to Bernard Coston, Director, Taxpayer Advocacy Panel, Internal Revenue Service at 1111 Constitution Avenue, NW., Room 7704, Washington, DC 20224 or 404-338-8408.

Dated: February 24, 2006.

John Fay,
Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E6-3068 Filed 3-2-06; 8:45 am]
BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 71, No. 42

Friday, March 3, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS-1306-CN]

RIN 0938-AN82

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2006 (RY 2007); Correction and Extension of Comment Period

Correction

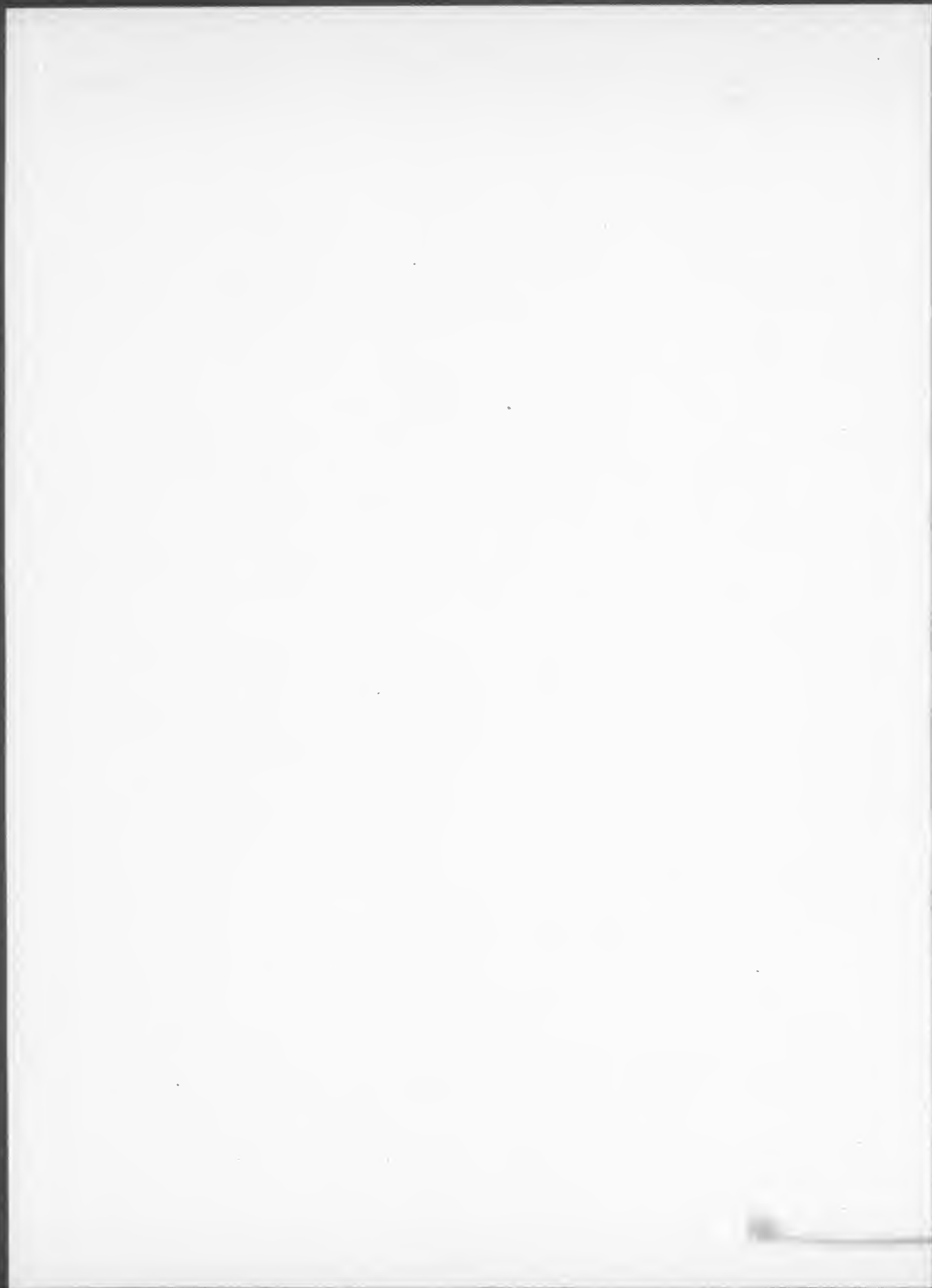
In proposed rule document E6-2607 beginning on page 9505 in the issue of

Friday, February 24, 2006, make the following correction:

On page 9505, in the third column, under the **DATES** heading, in the third line, "April 25, 2006" should read "April 7, 2006".

[FR Doc. Z6-2607 Filed 3-2-06; 8:45 am]

BILLING CODE 1505-01-D





Federal Register

Friday,
March 3, 2006

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To
Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5045-N-09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm. 6109, Washington, DC 20593-0001; (202) 267-6142; *COE:* Ms. Shirley Middleswarth, Army Corps of

Engineers, Civil Division, 441 G Street, NW., Washington, DC 20314-1000; (202) 761-1295; *Energy:* Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME-90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-0072; *GSA:* Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; *VA:* Ms. Amelia E. McLellan, Director, Real Property Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Rm. 419, Washington, DC 20420; (202) 565-5398. (These are not toll-free numbers).

Dated: February 23, 2006.

Mark R. Johnston,
Acting Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for March 3, 2006

Suitable/Available Properties

Buildings (by State)

California

Indian Creek Tullis Property

Hwy 299

Douglas City Co: Trinity CA 96024-0162

Landholding Agency: GSA

Property Number: 54200540017

Status: Surplus

Comment: 919 sq. ft., residential bldg. and two garage/storage bldgs., off-site use only
GSA Number: 9-I-CA-1652

Social Security Building

505 North Court Street

Visalia Co: Tulare CA 93291-

Landholding Agency: GSA

Property Number: 54200610010

Status: Surplus

Comment: 11,727 sq. ft., possible lead paint, most recent use—office
GSA Number: 9-G-CA-1643

Colorado

Bldg. 2

VAMC

2121 North Avenue

Grand Junction Co: Mesa CO 81501-

Landholding Agency: VA

Property Number: 97200430001

Status: Unutilized

Comment: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint

Bldg. 3

VAMC

2121 North Avenue

Grand Junction Co: Mesa CO 81501-

Landholding Agency: VA

Property Number: 97200430002

Status: Unutilized

Comment: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint

Georgia

Bldg. W0-3

West Point Lake

West Point Co: GA 31833-

Landholding Agency: COE
Property Number: 31200520001
Status: Unutilized
Comment: 7 x 7 gatehouse, off-site use only
Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq ft. cinder block,
presence of asbestos/lead paint, major
rehab, off-site use only

Illinois
SSA Federal Building
1530 4th Street
Peru Co: IL 61354-
Landholding Agency: GSA
Property Number: 54200540012
Status: Excess
Comment: 6007 sq. ft., most recent use—
office/storage
GSA Number: 1-G-IL-732

Indiana
Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure,
no sanitary or heating facilities, Natl
Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg.,
most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953-
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos,
most recent use—psychiatric ward,
National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953-
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos,
most recent use—psychiatric ward,
National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953-
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos,
most recent use—psychiatric ward,
National Register of Historic Places

Bldg. 18

VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953-
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos,
most recent use—psychiatric ward,
National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953-
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos,
most recent use—psychiatric ward,
National Register of Historic Places

Bldg. 1
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310001
Status: Unutilized
Comment: 20,287 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—patient ward

Bldg. 3
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310002
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—patient ward

Bldg. 4
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310003
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—patient ward

Bldg. 13
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310004
Status: Unutilized
Comment: 8971 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—office

Bldg. 19
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310005
Status: Unutilized
Comment: 12,237 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—office

Bldg. 20
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310006
Status: Unutilized
Comment: 14,039 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—office/storage

Bldg. 42
N. Indiana Health Care System

Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310007
Status: Unutilized
Comment: 5025 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—office

Bldg. 60
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310008
Status: Unutilized
Comment: 18,126 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—office

Bldg. 122
N. Indiana Health Care System
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97200310009
Status: Unutilized
Comment: 37,135 sq. ft., needs extensive
repairs, presence of asbestos, most recent
use—dining hall/kitchen

Kentucky
Green River Lock & Dam #3
Rochester Co: Butler KY 42273-
Location: SR 70 west from Morgantown, KY.,
approximately 7 miles to site.
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame;
two story residence; potential utilities;
needs major rehab.

Massachusetts
8 Bldgs.
Otis Air Force Base
Sandwich Co: Barnstable MA 02563-
Location: 5452, 5453, 5455, 5457, 5459, 5461,
5463, 5465
Landholding Agency: GSA
Property Number: 54200610007
Status: Excess
Comment: wood/concrete housing, presence
of asbestos/lead paint, off-site use only
GSA Number: 00000

Minnesota
Lakes Project Office
307 Main Street East
Remer Co: Cass MN
Landholding Agency: GSA
Property Number: 54200410015
Status: Surplus
Comment: Office bldg/oil shed/maintenance
garage, minor water damage
GSA Number: 5-D-MN-548-A

Montana
Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701-
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos,
most recent use—cold storage, off-site use
only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701-
Landholding Agency: COE
Property Number: 31200040011

- Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only
Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701—
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only
Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701—
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only
Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701—
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only
- New Mexico
Federal Building 517 Gold Avenue, SW
Albuquerque Co: Bernalillo NM 87102—
Landholding Agency: GSA
Property Number: 54200540005
Status: Excess
Comment: 273,027 sq. ft., 8 floors +
basement, top two floors structurally
unsafe to occupy, 3 additional floors do not
meet local code requirements for
occupancy, presence of asbestos/lead paint
GSA Number: 7-G-NM-0588
- New York
Bldg. 3
VA Medical Center
Batavia Co: Genesee NY 14020—
Landholding Agency: VA
Property Number: 97200520001
Status: Unutilized
Comment: 5840 sq. ft., needs rehab, presence
of asbestos, most recent use—offices,
eligible for Natl Register of Historic Places
- Ohio
Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768-9801
Location: Located at lock site, downstream of
lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with 1/2 acre of
land, 2 story brick frame, needs rehab, on
Natl Register of Historic Places, no utilities,
off-site use only
Structure
Deer Creek Lake
Mt. Sterling Co: Pickaway OH 43143—
Landholding Agency: COE
Property Number: 31200530001
Status: Unutilized
Comment: 1321 sq. ft., brick, off-site use only
Residence
5037 Deer Road
Bowerston Co: Carroll OH 44695—
Landholding Agency: COE
Property Number: 31200540007
Status: Unutilized
Comment: 2412 sq. ft., brick, needs repair,
presence of asbestos, off-site use only
Residence
28700 Milarcik Road
Tippecanoe Co: Harrison OH 44699—
Landholding Agency: COE
Property Number: 31200540008
Status: Unutilized
Comment: 2412 sq. ft., brick/masonry, off-site
use only
Structure
21897 Deer Creek Road
Mt. Sterling Co: Pickaway OH 43143—
Landholding Agency: COE
Property Number: 31200540009
Status: Unutilized
Comment: 1321 sq. ft., brick, off-site use only
Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428—
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Comment: 4 floors, potential utilities, needs
major rehab, presence of asbestos/lead
paint, historic property
- Pennsylvania
Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242—
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick
residence, off-site use only
Dwelling
Lock & Dam 6, Allegheny River, 1260 River
Rd.
Freeport Co: Armstrong PA 16229-2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in
close proximity to Lock and Dam, available
for interim use for nonresidential purposes
Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424-9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/
basement, most recent use—residential
Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065-2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick
residence, needs repair, off-site use only
Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226-8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—
residential, good condition, off-site use
only
Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226-8815
- Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—
residential, good condition, off-site use
only
Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870-9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most
recent use—residence, off-site use only
Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681-9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—
residential, good condition, off-site use
only
Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681-9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—
residential, good condition, off-site use
only
Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433-0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—
residential, good condition, off-site use
only
Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229-2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—
residential, good condition, off-site use
only
Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424-9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement,
most recent use—residential
Residence A
2045 Pohopoco Drive
Lehigh Co: Carbon PA 18235—
Landholding Agency: COE
Property Number: 31200410007
Status: Unutilized
Comment: 1200 sq. ft., presence of asbestos,
off-site use only
Virginia
Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess

Comment: 800 sq. ft., most recent use—
storage, off-site use only

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660—
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame,
possible asbestos, potential utilities,
structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083—
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical
Center, potential utilities, undeveloped.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Springs AR 71923-9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Springs AR 71923-9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Springs AR 71923-9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Springs AR 71923-9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958-9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121—
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area.

Idaho
2.3 acre parcel
25822 Middleton Road
Middleton Co: Canyon ID 83644—
Landholding Agency: GSA
Property Number: 54200540006
Status: Excess
Comment: 2.3 acres
GSA Number: 9-I-ID-558

Indiana
Tanner's Creek
Access Site off Rt. 50
Lawrenceburg Co: IN
Landholding Agency: GSA
Property Number: 54200430022
Status: Excess
Comment: 8.45 acres, boat launch, flowage
easement

GSA Number: 1-D-IN-571-C
Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138—
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement
requirements

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—
recreation

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211—
Location: Adjoining the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010025
Status: Excess

Comment: 2.57 acres; rolling and wooded

Tract 2709-10 and 2710-2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211—
Location: 2½ miles in a southerly direction
from the village of Rockcastle

Landholding Agency: COE
Property Number: 31199010026
Status: Excess

Comment: 2.00 acres; steep and wooded

Tract 2708-1 and 2709-1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211—
Location: 2½ miles in a southerly direction
from the village of Rockcastle

Landholding Agency: COE
Property Number: 31199010027
Status: Excess

Comment: 3.59 acres; rolling and wooded; no
utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211—
Location: 4½ miles in a southeasterly
direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010028
Status: Excess

Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211—
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 31199010029
Status: Excess

Comment: 5.76 acres; steep and wooded; no
utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211—
Location: 1 mile in a southerly direction from
the village of Rockcastle
Landholding Agency: COE

- Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities
Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: Trigg Co. adjoining the city of
Canton, KY on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded
Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 3 1/2 miles in a southerly direction
from Canton, KY
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded
Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no
utilities
Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no
utilities
Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 6 1/2 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded
Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: On the north side of the Illinois
Central Railroad
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded
Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 miles east of
Eddyville, KY
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and
partially wooded; no utilities
Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038-
Location: On the waters of Pilfen Creek, 4
miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and
wooded; no utilities
Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 1/2 miles east of
Eddyville, KY
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres, steep and wooded; no
utilities
Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 1/2 miles east of
Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no
utilities
Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 5 1/2 miles east of
Eddyville, KY
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no
utilities
Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 7 1/2 miles
southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep; rolling and
wooded; no utilities
Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 7 miles southeasterly of Eddyville,
KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no
utilities
Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 9 miles southeasterly of Eddyville,
KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no
utilities
Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: South of the Illinois Central
Railroad, 1 mile east of the Cumberland
River
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities
Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities
Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: Old Henson Ferry Road, 6 miles
west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no
utilities
Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 2.5 miles southwest of Kuttawa, KY
on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no
utilities
Tracts 2305, 2306, and 2400-1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 6 1/2 miles southeasterly of
Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and
wooded; no utilities
Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212-
Location: Village of Linton, KY state highway
1254
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially
wooded; no utilities
Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212-
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no
utilities
Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded;
subject to utility easements
Tract 4619-B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded;
subject to utility easements
Tract 2403-B

- Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038—
Location: 7 miles southeasterly from
Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to
utility easements
- Tract 241-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045—
Location: South of Old Henson Ferry Road,
6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded;
subject to utility easements
- Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045—
Location: Old Henson Ferry Road, 6 miles
west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded;
subject to utility easements
- Tract 215-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045—
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to
utility easements
- Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045—
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to
utility easements
- Tract N-819
Dale Hollow Lake & Dam Project
Hilwill Creek, Hwy 90
Hobart Co: Clinton KY 42601—
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use—
hunting, subject to existing easements
- Portion of Lock & Dam No. 1
Kentucky River
Carrollton Co: Carroll KY 41008-0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access
monitored
- Tract No. F-610
Buckhorn Lake Project
Buckhorn KY 41721—
Landholding Agency: COE
Property Number: 31200240001
Status: Unutilized
Comment: 0.64 acres, encroachments, most
recent use—flood control purposes
- Louisiana
Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103—
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no
utilities
- Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037-9707
Location: 35 miles Northeast of Shreveport,
LA
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no
utilities
- Maryland
Railroad
Indian Head
White Plains Co: Charles MD
Landholding Agency: GSA
Property Number: 54200610006
Status: Excess
Comment: 160.01 acres containing railroad
track 13.39 miles long and 100 feet wide
with 6 railroad cars, easements present,
adjacent to wetlands
GSA Number: 4-N-MD-0617
- Michigan
Lots 2-6
Lawndale Park Addition
Ludington Co: Mason MI 49431—
Landholding Agency: GSA
Property Number: 54200540007
Status: Excess
Comment: 0.81 acre—undeveloped
GSA Number: 1-G-MI-537-2
- Mississippi
Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities;
intermittently used under lease—expires
1994
- Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities;
intermittently used under lease—expires
1994
- Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities;
intermittently used under lease—expires
1994
- Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901-0903
Landholding Agency: COE
Property Number: 31199011022
- Status: Underutilized
Comment: 490 acres; no utilities;
intermittently used under lease—expires
1994
- Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901-0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent
use—wildlife and forestry management
- Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent
use—wildlife and forestry management;
(135 acres/agriculture lease)
- Parcel 4
Grenada Lake
Section 2 and 3 T23N, R5E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent
use—wildlife and forestry management
- Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent
use—wildlife and forestry management;
(14 acres/agriculture lease)
- Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903-0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent
use—wildlife and forestry management
- Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901-0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent
use—wildlife and forestry management
- Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390-10903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent
use—wildlife and forestry management
- Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903-0903
Landholding Agency: COE

Property Number: 31199011030
 Status: Underutilized
 Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
 Grenada Lake
 Section 3, T23N, R6E
 Grenada Co: Yalobusha MS 38901-0903
 Landholding Agency: COE
 Property Number: 31199011031
 Status: Underutilized
 Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
 Grenada Lake
 Section 4, T24N, R6E
 Grenada Co: Yalobusha MS 38901-0903
 Landholding Agency: COE
 Property Number: 31199011032
 Status: Underutilized
 Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
 Grenada Lake
 Section 9, T23N, R6E
 Grenada Co: Yalobusha MS 38901-0903
 Landholding Agency: COE
 Property Number: 31199011033
 Status: Underutilized
 Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
 Grenada Lake
 Section 17, T23N, R7E
 Grenada Co: Grenada MS 28901-0903
 Landholding Agency: COE
 Property Number: 31199011034
 Status: Underutilized
 Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
 Grenada Lake
 Section 22, T23N, R7E
 Grenada Co: Grenada MS 28902-0903
 Landholding Agency: COE
 Property Number: 31199011035
 Status: Underutilized
 Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
 Grenada Lake
 Section 9, T22N, R7E
 Grenada Co: Grenada MS 38901-0903
 Landholding Agency: COE
 Property Number: 31199011036
 Status: Underutilized
 Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri
 Harry S Truman Dam & Reservoir
 Warsaw Co: Benton MO 65355-
 Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150
 Landholding Agency: COE
 Property Number: 31199030014
 Status: Underutilized
 Comment: 17 acres; potential utilities

Ohio
 Plats 9-72, 9-73
 Davis Street
 Niles Co: OH 44446-
 Landholding Agency: GSA

Property Number: 54200530007
 Status: Excess
 Comment: 12,082 sq ft, narrow right of way, no utilities
 GSA Number: 1-1-OH-826

Oklahoma
 Pine Creek Lake
 Section 27
 (See County) Co: McCurtain OK
 Landholding Agency: COE
 Property Number: 31199010923
 Status: Unutilized
 Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Pennsylvania
 Mahoning Creek Lake
 New Bethlehem Co: Armstrong PA 16242-9603
 Location: Route 28 north to Belknap, Road #4
 Landholding Agency: COE
 Property Number: 31199010018
 Status: Excess
 Comment: 258 acres; steep and densely wooded

Tracts 610, 611, 612
 Shenango River Lake
 Sharpsville Co: Mercer PA 16150-
 Location: I-79 North, I-80 West, Exit Sharon, R18 North 4 miles, left on R518, right on Mercer Avenue
 Landholding Agency: COE
 Property Number: 31199011001
 Status: Excess
 Comment: 2409 acres; subject to flowage easement

Tracts L24, L26
 Crooked Creek Lake
 Co: Armstrong PA 03051-
 Location: Left bank—55 miles downstream of dam
 Landholding Agency: COE
 Property Number: 31199011011
 Status: Unutilized
 Comment: 759 acres; potential for utilities
 Portion of Tract L-21A
 Crooked Creek Lake, LR 03051
 Ford City Co: Armstrong PA 16226-
 Landholding Agency: COE
 Property Number: 31199430012
 Status: Unutilized
 Comment: Approximately 172 acres of undeveloped land, subject to gas rights

Parcel B
 Valley Forge Army Hospital
 Schuylkill Township
 Phoenixville Co: Cheste PA 19460-
 Landholding Agency: GSA
 Property Number: 54200610009
 Status: Surplus
 Comment: 1.172 acres, parking area
 GSA Number: 4CRPA0666B

Tennessee
 Tract 6827
 Barkley Lake
 Dover Co: Stewart TN 37058-
 Location: 2½ miles west of Dover, TN.
 Landholding Agency: COE
 Property Number: 31199010927
 Status: Excess
 Comment: .57 acres; subject to existing easements

Tracts 6002-2 and 6010

Barkley Lake
 Dover Co: Stewart TN 37058-
 Location: 3½ miles south of village of Tabaccoport.
 Landholding Agency: COE
 Property Number: 31199010928
 Status: Excess
 Comment: 100.86 acres; subject to existing easements
 Tract 11516
 Barkley Lake
 Ashland City Co: Dickson TN 37015
 Location: ½ mile downstream from Cheatham Dam
 Landholding Agency: COE
 Property Number: 31199010929
 Status: Excess
 Comment: 26.25 acres; subject to existing easements

Tract 2319
 J. Percy Priest Dam and Reservoir
 Murfreesboro Co: Rutherford TN 37130-
 Location: West of Buckeye Bottom Road
 Landholding Agency: COE
 Property Number: 31199010930
 Status: Excess
 Comment: 14.48 acres; subject to existing easements

Tract 2227
 J. Percy Priest Dam and Reservoir
 Murfreesboro Co: Rutherford TN 37130
 Location: Old Jefferson Pike
 Landholding Agency: COE
 Property Number: 31199010931
 Status: Excess
 Comment: 2.27 acres; subject to existing easements

Tract 2107
 J. Percy Priest Dam and Reservoir
 Murfreesboro Co: Rutherford TN 37130
 Location: Across Fall Creek near Fall Creek camping area
 Landholding Agency: COE
 Property Number: 31199010932
 Status: Excess
 Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
 Cordell Hull Lake and Dam Project Doe Row Creek
 Gainesboro Co: Jackson TN 38562-
 Location: TN Highway 56
 Landholding Agency: COE
 Property Number: 31199010933
 Status: Unutilized
 Comment: 11 acres; subject to existing easements

Tract 1911
 J. Percy Priest Dam and Reservoir
 Murfreesboro Co: Rutherford TN 37130
 Location: East of Lamar Road
 Landholding Agency: COE
 Property Number: 31199010934
 Status: Excess
 Comment: 6.92 acres; subject to existing easements

Tract 7206
 Barkley Lake
 Dover Co: Stewart TN 37058-
 Location: 2½ miles SE of Dover, TN
 Landholding Agency: COE
 Property Number: 31199010936
 Status: Excess
 Comment: 10.15 acres; subject to existing easements

- Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050-
Location: 1 1/2 miles East of Cumberland City.
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Comment: 96 acres; subject to existing easements
- Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050-
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements
- Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015-
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements
- Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015-
Location: 2 1/2 miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easements
- Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028
Location: 4 1/2 miles SW. of Bumpus Mills
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easements
- Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142-
Location: 3 miles NE of Palmyer, TN Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easements
- Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 1 1/2 miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easements
- Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 3 miles south of Village of Tobaccoport
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
- Comment: 5 acres; subject to existing easements
- Tracts K-1191, K-1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074-
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation
- Tract A-102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements
- Tract A-120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements
- Tract D-185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570-
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements
- Texas
Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities
- Wisconsin
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities
- Suitable/Unavailable Properties**
Buildings (by State)
- Idaho
Bldg. CFA-613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only
- Illinois
Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence
- Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence
- Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence
- Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence
- Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame
- Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence
- Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence
- Maryland
Tower Site D
Fort Detrick
Damascus Co: Howard MD 20872-

- Landholding Agency: GSA
Property Number: 54200540020
Status: Excess
Comment: 2.71 acre parcel with 3143 sq. ft. communications bldg., storage, steel tower, presence of asbestos/lead paint
GSA Number: 4-D-MD-0620
- Montana
VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301-
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production
- New York
Social Sec. Admin. Bldg.
517 N. Barry St.
Olean NY 10278-0004
Landholding Agency: GSA
Property Number: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1-C-NY-0895
- Ohio
Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401-9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access
- Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428-
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Comment: 3 floors, potential utilities, needs major rehab, presence of asbestos/lead paint, historic property
- Pennsylvania
Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338-
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site
- Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338-
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site
- Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338-
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
- Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed
- Wisconsin
Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295-
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage
- Land (by State)*
- Illinois
Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565-9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions
- Iowa
38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138-
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: Golf course
- Michigan
IOM Site
Chesterfield Road
Chesterfield Co: Macomb MI-
Landholding Agency: GSA
Property Number: 54200340008
Status: Excess
Comment: Approx. 17.4 acres w/concrete block bldg. in poor condition, most recent use—radio antenna field, narrow right-of-way
GSA Number: 1-D-MI-0603F
- VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016-
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities
- New York
VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424-
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased
- Pennsylvania
East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway
- Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground
- Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046-0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field
- VA Medical Center
New Castle Road
Butler Co: Butler PA 16001-
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities
- Land No. 645
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls
- Land—34.16 acres
VA Medical Center 1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer
- Suitable/To Be Exceeded**
- Land (by State)*
- Georgia
Lake Sidney Lanier
Co: Forsyth GA 30130
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species
- Lake Sidney Lanier—3 parcels
Gainesville Co: Hall GA 30503
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species
- Kansas
Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized

Comment: 126.69 acres; most recent use—recreation and leased cottage sites

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540-0155
Location: Portion of tracts B-200, B-248, B-251, B-204, B-247, B-200 and B-256

Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres

Tennessee

Tract D-456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015
Location: Right downstream bank of Sycamore Creek

Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi

Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land

Unsuitable Properties

Buildings (by State)

Alabama

Comfort Station
Clailborne Lake
Camden Co: AL 36726
Landholding Agency: COE
Property Number: 31200540001
Status: Unutilized
Reason: Extensive deterioration

Pumphouse
Dannelly Reservoir
Camden Co: AL 36726
Landholding Agency: COE
Property Number: 31200540002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083
Landholding Agency: VA
Property Number: 97199730002

Status: Underutilized
Reason: Secured Area

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reason: Extensive deterioration

California

Soil & Materials Testing Lab
Sausalito CA 00000
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: contamination

Bldgs. M03, M014, M017
Sandia National Lab
Livermore Co: Alameda CA 94550
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess

Reason: Extensive deterioration
Bldgs. 9163, 962, 9621
Sandia National Lab
Livermore Co: Alameda CA 94551
Landholding Agency: Energy
Property Number: 41200420001
Status: Unutilized

Reason: Secured Area
Bldgs. C920, C921, C922
Sandia Natl Laboratories
Livermore Co: Alameda CA 94551
Landholding Agency: Energy
Property Number: 41200540001
Status: Unutilized

Reasons: Secured Area; Extensive deterioration
Federal Building
401 San Joaquin Street
Stockton Co: CA 95201
Landholding Agency: GSA
Property Number: 54200540010
Status: Surplus

Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9-G-CA-1599
Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT
06255-9801

Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway; Extensive deterioration
Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095

Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reason: Secured Area
9 Bldgs.

Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095

Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reason: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. SF-15
Sub-Office Operations
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200430003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. SF-16
Sub-Office Operations
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200430004
Status: Unutilized
Reason: Secured Area

Bldg. SF-17
Sub-Office Operations
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200430005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Georgia

Bldg. #WRSH18
West Point Lake
West Point Co: GA 31833
Landholding Agency: COE
Property Number: 31200430006
Status: Unutilized
Reason: Secured Area
Bldg. W03
West Point Lake
West Point Co: GA 31833
Landholding Agency: COE
Property Number: 31200430007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Gatehouse #W03
West Point Lake
West Point Co: GA 31833-9517
Landholding Agency: COE
Property Number: 31200510001
Status: Unutilized
Reason: Extensive deterioration

WRSH14, WRSH15, WRSH18
West Point Lake
West Point Co: GA 31833-9517
Landholding Agency: COE
Property Number: 31200510002
Status: Unutilized
Reason: Extensive deterioration

Pumphouse
Carters Lake
Oakman Co: GA 30732
Landholding Agency: COE
Property Number: 31200520002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. ASBC01, ASBC02
Asbury Park
Hartwell Co: GA 30643
Landholding Agency: COE
Property Number: 31200520003
Status: Unutilized
Reason: Extensive deterioration
Vault Toilet
Lake Sidney Lanier
Buford Co: GA 30518
Landholding Agency: COE
Property Number: 31200540003
Status: Unutilized
Reason: Extensive deterioration
Idaho
Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration
Bldg. CPP-691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area
Bldg. TAN-636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area
Bldg. TAN-670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area
Bldg. TRA-669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area
Bldg. TAN-637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area
Bldg. TAN-651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area
Bldg. TRA-673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area
Bldg. PBF-620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area
Bldg. PBF-619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area
Bldg. PBF-625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area
Bldg. PBF-629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area
Bldg. PBF-604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area
Bldg. TRA-641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area
Bldg. CF-606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area
8 Bldgs.
Idaho Natl Engineering & Environmental Lab
Test Reactor North
Scoville Co: Butte ID 83415
Location: TRA 643, 644, 655, 660, 704-706,
755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area
Bldg. CPDTB1
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410009
Status: Excess
Reason: Secured Area
Bldg. CPP620A
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410012
Status: Excess
Reason: Secured Area
Bldg. CPP637/620
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410013
Status: Excess
Reason: Secured Area
Bldgs. CPP638, CPP642
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410014
Status: Excess
Reason: Secured Area
Bldg. CPP743
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410020
Status: Excess
Reason: Secured Area
Bldgs. CPP1647, 1653
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410022
Status: Excess
Reason: Secured Area
Bldg. CPP1677
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410023
Status: Excess
Reason: Secured Area
Bldgs. TAN 640, TAN 641
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410024
Status: Excess
Reason: Secured Area
Bldgs. TAN 645, TAN 646
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410026
Status: Excess
Reason: Secured Area
Bldg. TAN 731
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410028
Status: Excess
Reason: Secured Area
Bldg. TAN 624
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410031
Status: Excess
Reason: Secured Area
Bldgs. TAN 630, TAN 633
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410032
Status: Excess
Reason: Secured Area
Bldgs. TAN 649, TAN 650
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410033
Status: Excess
Reason: Secured Area

Bldg. 694
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200410034
Status: Excess
Reason: Secured Area

Bldg. TAN 719
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200410035
Status: Excess
Reason: Secured Area

Bldgs. TAN 725, TAN 726
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200410036
Status: Excess
Reason: Secured Area

Bldg. TRA 647
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200420006
Status: Excess
Reason: Secured Area

Bldgs. TRA 651, TRA 656
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200420007
Status: Excess
Reason: Secured Area

Bldg. TRA 663
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200420008
Status: Excess
Reason: Secured Area

Bldg. TRA 779
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200420009
Status: Excess
Reason: Secured Area

Bldg. PBF 731
Idaho Natl Eng & Env Laboratory
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200420023
Status: Excess
Reason: Secured Area

Bldgs. CPP1604-CPP1608
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reason: Secured Area

Bldgs. CPP1617-CPP1619
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430072
Status: Excess
Reason: Secured Area

6 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1631, CPP1634, CPP1635,
CPP1636, CPP1637, CPP1638

Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Reason: Secured Area
5 Bldgs.

Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1642, CPP1643, CPP1644,
CPP1646, CPP1649
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1650, CPP1651, CPP1656
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1662, CPP1663, CPP1671,
CPP1673, CPP1674
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1678, CPP1682, CPP1683,
CPP1684, CPP1686
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1713, CPP1749, CPP1750,
CPP1767, CPP1769
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1770, CPP1771, CPP1772,
CPP1774, CPP1776
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1778, CPP1779, CPP1780,
CPP1784
Landholding Agency: Energy
Property Number: 41200430080
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP1789, CPP1790, CPP1792,
CPP1794
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess

Reason: Secured Area
Bldgs. CPP2701, CPP2706
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reason: Secured Area
3 Bldgs.

Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: TRA603, TRA604, TRA610
Landholding Agency: Energy
Property Number: 41200430089
Status: Excess
Reason: Secured Area
Bldg. TAN611
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430090
Status: Excess
Reason: Secured Area
5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: TRA626, TRA635, TRA642,
TRA648, TRA654
Landholding Agency: Energy
Property Number: 41200430091
Status: Excess
Reason: Secured Area
Bldg. TAN655
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430092
Status: Excess
Reason: Secured Area
3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: TRA657, TRA661, TRA668
Landholding Agency: Energy
Property Number: 41200430093
Status: Excess
Reason: Secured Area
Bldg. TAN711
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200430094
Status: Excess
Reason: Secured Area
6 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP602-CPP606, CPP609
Landholding Agency: Energy
Property Number: 41200430095
Status: Excess
Reason: Secured Area
5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP611-CPP614, CPP616
Landholding Agency: Energy
Property Number: 41200430096
Status: Excess
Reason: Secured Area
4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP621, CPP626, CPP630, CPP639

Landholding Agency: Energy
Property Number: 41200430097
Status: Excess

Reason: Secured Area
4 Bldgs.

Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415-
Location: CPP641, CPP644, CPP645, CPP649

Landholding Agency: Energy
Property Number: 41200430098
Status: Excess

Reason: Secured Area

Bldgs. CPP651-CPP655

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200430099

Status: Excess

Reason: Secured Area

Bldgs. CPP659-CPP663

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440001

Status: Excess

Reason: Secured Area

Bldgs. CPP666, CPP668

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440002

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP674, CPP675, CPP679

Landholding Agency: Energy

Property Number: 41200440003

Status: Excess

Reason: Secured Area

1 Bldg.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP684

Landholding Agency: Energy

Property Number: 41200440004

Status: Excess

Reason: Secured Area

5 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP692, CPP694, CPP697-CPP699

Landholding Agency: Energy

Property Number: 41200440005

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP701, CPP701A, CPP708

Landholding Agency: Energy

Property Number: 41200440006

Status: Excess

Reason: Secured Area

Bldgs. 711, 719A

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440007

Status: Excess

Reason: Secured Area

4 Bldgs.

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Location: CPP724-CPP726, CPP728

Landholding Agency: Energy

Property Number: 41200440008

Status: Excess

Reason: Secured Area

Bldg. CPP729/741

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440012

Status: Excess

Reason: Secured Area

Bldgs. CPP733, CPP736

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440013

Status: Excess

Reason: Secured Area

Bldgs. CPP740, CPP742

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440014

Status: Excess

Reason: Secured Area

Bldgs. CPP746, CPP748

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440015

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

CPP750, CPP751, CPP752

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440016

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

CPP753, CPP753A, CPP754

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440017

Status: Excess

Reason: Secured Area

Bldgs. CPP760, CPP763

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440018

Status: Excess

Reason: Secured Area

Bldgs. CPP764, CPP765

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440019

Status: Excess

Reason: Secured Area

Bldgs. CPP767, CPP768

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440020

Status: Excess

Reason: Secured Area

Bldgs. CPP791, CPP795

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440021

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

CPP796, CPP797, CPP799

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440022

Status: Excess

Reason: Secured Area

Bldgs. CPP701B, CPP719

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440023

Status: Excess

Reason: Secured Area

Bldgs. CPP720A, CPP720B

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440024

Status: Excess

Reason: Secured Area

Bldg. CPP1781

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440025

Status: Excess

Reason: Secured Area

2 Bldgs.

Idaho National Eng & Env Lab

CPP0000VES-UTI-111, VES-UTI-112

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440026

Status: Excess

Reason: Secured Area

3 Bldgs.

Idaho National Eng & Env Lab

TAN607, TAN666, TAN668

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440027

Status: Excess

Reason: Secured Area

Bldgs. TAN704, TAN733

Idaho National Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440029

Status: Excess

Reason: Secured Area

Bldgs. CF604, CF680

Idaho Natl Eng & Env Lab

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200440034

Status: Excess

Reason: Secured Area

Bldg. TRA 618

Idaho National Laboratory

Scoville Co: Butte ID 83415-

Landholding Agency: Energy

Property Number: 41200510005
Status: Excess
Reason: Extensive deterioration

Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess

Reason: Extensive deterioration
Bldg. B16 607

Idaho National Laboratory
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200530001
Status: Excess

Reason: Secured Area

Bldg. CF660
Idaho National Laboratory
Scoville Co: Butte ID 83415-
Landholding Agency: Energy
Property Number: 41200530002
Status: Excess

Reason: Secured Area

Indiana

Comfort Station
Salamonie Lake
Lagro Co: IN 46941-
Landholding Agency: COE
Property Number: 31200540004
Status: Unutilized

Reason: Extensive deterioration
Sewage Treatment Plant
Mississinewa Lake

Peru Co: IN 46970-
Landholding Agency: COE
Property Number: 31200540005
Status: Unutilized

Reason: Extensive deterioration
Bldg. 21, VA Medical Center
East 38th Street

Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97199230001
Status: Excess

Reason: Extensive deterioration
Bldg. 22, VA Medical Center
East 38th Street

Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97199230002
Status: Excess

Reason: Extensive deterioration
Bldg. 62, VA Medical Center
East 38th Street

Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 97199230003
Status: Excess

Reason: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574-
Landholding Agency: COE
Property Number: 31200220002
Status: Excess

Reason: Extensive deterioration
Storage Bldg.
Rathbun Project

Moravia Co: Appanoose IA 52571-
Landholding Agency: COE
Property Number: 31200330001

Status: Excess
Reason: Extensive deterioration

Bldg.
Island View Park
Rathbun Project
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE

Property Number: 31200330002
Status: Excess
Reason: Extensive deterioration.

Tract 137
Camp Dodge
Johnston Co: Polk IA 50131-1902
Landholding Agency: COE

Property Number: 31200410001
Status: Excess
Reason: Extensive deterioration

Rathbun 29369, 29368
Island View Park
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 31200510003
Status: Excess

Reason: Extensive deterioration
RTHBUN-79326
Buck Creek Park

Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 31200520004
Status: Excess

Reason: Extensive deterioration
Bldg.
Buck Creek Park

Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 31200610001
Status: Excess

Reason: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized

Reason: Extensive deterioration
No. 01020
Kanopolis Project

Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized

Reason: Extensive deterioration
No. 61001
Kanopolis Project

Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized

Reason: Extensive deterioration
Bldg. #1
Kanopolis Project

Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200220003
Status: Excess

Reason: Extensive deterioration
Bldg. #2
Kanopolis Project

Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200220004
Status: Excess

Reason: Extensive deterioration
Bldg. #4
Kanopolis Project

Marquette Co: Ellsworth KS 67456-
Landholding Agency: COE
Property Number: 31200220005
Status: Excess

Reason: Extensive deterioration
Comfort Station
Clinton Lake Project

Lawrence Co: Douglas KS 66049-
Landholding Agency: COE
Property Number: 31200220006
Status: Excess

Reason: Extensive deterioration
Privie
Perry Lake

Perry Co: Jefferson KS 66074-
Landholding Agency: COE
Property Number: 31200310004
Status: Unutilized

Reason: Extensive deterioration
Shower
Perry Lake

Perry Co: Jefferson KS 66073-
Landholding Agency: COE
Property Number: 31200310005
Status: Unutilized

Reason: Extensive deterioration
Tool Shed
Perry Lake

Perry Co: Jefferson KS 66073-
Landholding Agency: COE
Property Number: 31200310006
Status: Unutilized

Reason: Extensive deterioration
Bldg. M37
Minooka Park

Sylvan Grove Co: Russell KS 67481-
Landholding Agency: COE
Property Number: 31200320002
Status: Excess

Reason: Extensive deterioration
Bldg. M38
Minooka Park

Sylvan Grove Co: Russell KS 67481-
Landholding Agency: COE
Property Number: 31200320003
Status: Excess

Reason: Extensive deterioration
Bldg. L19
Lucas Park

Sylvan Grove Co: Russell KS 67481-
Landholding Agency: COE
Property Number: 31200320004
Status: Unutilized

Reason: Extensive deterioration
2 Bldgs.
Tuttle Creek Lake

Near Shelters #3 & #4
Riley KS 66502-
Landholding Agency: COE
Property Number: 31200330003
Status: Excess

Reason: Extensive deterioration
6 Bldgs.
Cottonwood Point/Hillsboro Cove

Marion Co: Coffey KS 66861-
Landholding Agency: COE
Property Number: 31200340001
Status: Excess

Reason: Extensive deterioration
20 Bldgs.
Riverside

Burlington Co: Coffey KS 66839-8911
 Landholding Agency: COE
 Property Number: 31200340002
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Canning Creek/Richey Cove
 Council Grove Co: Morris KS 66846-9322
 Landholding Agency: COE
 Property Number: 31200340003
 Status: Excess
 Reason: Extensive deterioration
 6 Bldgs.
 Santa Fe Trail/Outlet Channel
 Council Grove Co: Morris KS 66846-
 Landholding Agency: COE
 Property Number: 31200340004
 Status: Excess
 Reason: Extensive deterioration
 Residence
 Melvern Lake Project
 Melvern Co: Osage KS 66510-
 Landholding Agency: COE
 Property Number: 31200340005
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Management Park
 Vassar KS 66543-
 Landholding Agency: COE
 Property Number: 31200340006
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Hickory Campground
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340007
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Rockhaven Park Area
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340008
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Overlook Park Area
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340009
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Walnut Campground
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340010
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Cedar Ridge Campground
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340011
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Woodridge Park Area
 Lawrence KS 66049-
 Landholding Agency: COE
 Property Number: 31200340012
 Status: Excess

Reason: Extensive deterioration
 8 Bldgs.
 Tuttle Cove Park
 Manhattan Co: Riley KS 66502-
 Landholding Agency: COE
 Property Number: 31200410002
 Status: Unutilized
 Reason: Extensive deterioration
 2 Bldgs.
 Old Garrison Campground
 Pottawatomie KS -
 Landholding Agency: COE
 Property Number: 31200410003
 Status: Unutilized
 Reason: Extensive deterioration
 2 Bldgs.
 School Creek ORV Area
 Junction City KS 66441-
 Landholding Agency: COE
 Property Number: 31200410004
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Slough Creek Park
 Perry Co: Jefferson KS 66073-
 Landholding Agency: COE
 Property Number: 31200410005
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Spillway Boat Ramp
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200430008
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Minooka Park Area
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200430009
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Lucas Park Area
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200430010
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Sylvan Park Area
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200430011
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 North Outlet Area
 Junction City Co: KS 66441-
 Landholding Agency: COE
 Property Number: 31200430012
 Status: Excess
 Reason: Extensive deterioration
 3 Vault Toilets
 West Rolling Hills
 Milford Lake
 Junction City Co: KS 66441-
 Landholding Agency: COE
 Property Number: 31200440003
 Status: Excess
 Reason: Extensive deterioration
 Vault Toilet
 East Rolling Hills

Milford Lake
 Junction City Co: KS 66441-
 Landholding Agency: COE
 Property Number: 31200440004
 Status: Excess
 Reason: Extensive deterioration
 Bldgs. 25002, 35012
 Lucas Park
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200510004
 Status: Excess
 Reason: Extensive deterioration
 Bldgs. 25006, 25038
 Lucas Group Camp
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200510005
 Status: Excess
 Reason: Extensive deterioration
 Bldgs. L37, L38
 Lucas Park
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200520005
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Mann's Cove PUA
 Fall River Co: Greenwood KS 67047-
 Landholding Agency: COE
 Property Number: 31200530002
 Status: Excess
 Reason: Extensive deterioration
 16 Bldgs.
 Cottonwood Point
 Marion Co: KS -
 Landholding Agency: COE
 Property Number: 31200530003
 Status: Excess
 Reason: Extensive deterioration
 3 Bldgs.
 Damsite PUA
 Fall River Co: Greenwood KS 67047-
 Landholding Agency: COE
 Property Number: 31200530004
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Damsite PUA
 Fall River Co: Greenwood KS 67047-
 Landholding Agency: COE
 Property Number: 31200530005
 Status: Excess
 Reason: Extensive deterioration
 Bldgs. L05, L06
 Lucas Park Overlook
 Sylvan Grove Co: KS 67481-
 Landholding Agency: COE
 Property Number: 31200530006
 Status: Excess
 Reason: Extensive deterioration
 Bldg. 29442
 Admin. Area
 Perry Co: KS 66073-
 Landholding Agency: COE
 Property Number: 31200610002
 Status: Excess
 Reason: Extensive deterioration
 Bldgs. 29475, 29476
 Thompsonville Park
 Perry Co: KS 66073-
 Landholding Agency: COE
 Property Number: 31200610003

Status: Excess
Reason: Extensive deterioration
Bldg. 39661

Old Town Park
Perry Co: KS 66073-
Landholding Agency: COE
Property Number: 31200610004
Status: Excess

Reason: Extensive deterioration
Bldg. 29455

Rock Creek Park
Perry Co: KS 66073-
Landholding Agency: COE
Property Number: 31200610005
Status: Excess

Reason: Extensive deterioration
Bldg. 29415

Longview Park
Perry Co: KS 66073-
Landholding Agency: COE
Property Number: 31200610006
Status: Excess

Reason: Extensive deterioration
Bldg. 29464

Slough Creek Park
Perry Co: KS 66073-
Landholding Agency: COE
Property Number: 31200610007
Status: Excess
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320

Carrollton Co: Carroll KY 41008-
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off
of Western Ky. Parkway
Landholding Agency: COE

Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off
of Western Ky. Parkway
Landholding Agency: COE

Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off
of Western Ky. Parkway
Landholding Agency: COE

Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized

Reason: Floodway
Tract 1379

Barkley Lake & Dam
Eddyville Co: Lyon KY 42038-
Landholding Agency: COE
Property Number: 31200420001
Status: Unutilized
Reason: Landlocked

Tract 4300
Barkley Lake & Dam
Cadiz Co: Trigg KY 42211-
Landholding Agency: COE
Property Number: 31200420002
Status: Unutilized

Reason: Floodway
Tracts 317, 318, 319
Barkley Lake & Dam
Grand Rivers Co: Lyon KY 42045-
Landholding Agency: COE

Property Number: 31200420003
Status: Unutilized
Reason: Floodway

Comfort Station
Holmes Bend Access
Green River Lake
Adair Co: KY -
Landholding Agency: COE

Property Number: 31200440005
Status: Excess
Reason: Extensive deterioration
Steel Structure

Mcalpine Locks & Dam
Louisville Co: KY 40212-
Landholding Agency: COE
Property Number: 31200440006
Status: Excess

Reasons: Within 2000 ft. of flammable or
explosive material Floodway
Comfort Station

Mcalpine Locks & Dam
Louisville Co: KY 40212-
Landholding Agency: COE
Property Number: 31200440007
Status: Excess

Reasons: Within 2000 ft. of flammable or
explosive material Floodway
Shelter

Mcalpine Locks & Dam
Louisville Co: KY 40212-
Landholding Agency: COE
Property Number: 31200440008
Status: Excess

Reasons: Within 2000 ft. of flammable or
explosive material Floodway
Parking Lot

Mcalpine Locks & Dam
Louisville Co: KY 40212-
Landholding Agency: COE
Property Number: 31200440009
Status: Excess

Reasons: Within 2000 ft. of flammable or
explosive material Floodway
Sewage Treatment Plant

Holmes Bend Recreation
Campbellsville Co: KY 42718-9805
Landholding Agency: COE
Property Number: 31200510006
Status: Unutilized
Reason: Extensive deterioration

Loading Docks
Nolin Lake
Bee Spring Co: KY 42007-
Landholding Agency: COE

Property Number: 31200540006
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Westview Street Wells
Lexington MA 02173-
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Admin. Bldg.
Station Saginaw River
Essexville Co: Bay MI 48732-
Landholding Agency: Coast Guard
Property Number: 88200510001
Status: Unutilized

Reasons: Secured Area Extensive
deterioration
Mississippi

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531-
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized

Reason: Floodway
Bldg. 67

Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531-
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized

Reason: Extensive deterioration
Bldg. 68
Biloxi VA Medical Center

Gulfport Co: Harrison MS 39531-
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776-
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized

Reason: Extensive deterioration
Privy/Nemo Park
Pomme de Terre Lake

Hermitage MO 65668-
Landholding Agency: COE
Property Number: 31200120001
Status: Excess

Reason: Extensive deterioration
Privy No. 1/Bolivar Park
Pomme de Terre Lake

Hermitage MO 65668-
Landholding Agency: COE
Property Number: 31200120002
Status: Excess

Reason: Extensive deterioration
Privy No. 2/Bolivar Park
Pomme de Terre Lake

Hermitage MO 65668-
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton MO 65785-
Landholding Agency: COE
Property Number: 31200220007
Status: Excess

Reason: Extensive deterioration
Bldg.
Old Mill Park Area
Stockton MO 65785-
Landholding Agency: COE
Property Number: 31200310007
Status: Excess
Reason: Extensive deterioration
Stockton Lake Proj. Ofc.
Stockton Co: Cedar MO 65785-
Landholding Agency: COE
Property Number: 31200330004
Status: Unutilized
Reason: Extensive deterioration
House
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420005
Status: Unutilized
Reason: Extensive deterioration
30x36 Barn
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420006
Status: Unutilized
Reason: Extensive deterioration
30x26 Barn
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420007
Status: Unutilized
Reason: Extensive deterioration
30x10 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420008
Status: Unutilized
Reason: Extensive deterioration
30x26 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420009
Status: Unutilized
Reason: Extensive deterioration
9x9 Shed
Tract 1105
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420010
Status: Unutilized
Reason: Extensive deterioration
Tract 1111
Thurnau Mitigation Site
Craig Co: Holt MO 64437-
Landholding Agency: COE
Property Number: 31200420011
Status: Excess
Reason: Extensive deterioration
Shower
Pomme de Terre Lake
Hermitage Co: Polk MO 65668-
Landholding Agency: COE
Property Number: 31200420012

Status: Unutilized
Reason: Extensive deterioration
11 Bldgs.
Warsaw Co: MO 65355-
Location: Fairfield, Tally Bend, Cooper
Creek, Shawnee Bend
Landholding Agency: COE
Property Number: 31200430013
Status: Excess
Reason: Extensive deterioration
2 Storage Bldgs.
District Service Base
St. Louis Co: MO-
Landholding Agency: COE
Property Number: 31200430014
Status: Excess
Reason: Extensive deterioration
Privy
Pomme de Terre Lake
Wheatland Co: Hickory MO-
Landholding Agency: COE
Property Number: 31200440010
Status: Underutilized
Reason: Floodway
Vault Toilet
Ruark Bluff
Stockton Co: MO-
Landholding Agency: COE
Property Number: 31200440011
Status: Excess
Reason: Extensive deterioration
Comfort Station
Overlook Area
Stockton Co: MO-
Landholding Agency: COE
Property Number: 31200440012
Status: Excess
Reason: Extensive deterioration
Maintenance Building
Missouri River Area
Napoleon Co: Lafayette MO 64074-
Landholding Agency: COE
Property Number: 31200510007
Status: Excess
Reason: Floodway
Bldg. 34001
Orleans Trail Park
Stockton Co: MO 65785-
Landholding Agency: COE
Property Number: 31200510008
Status: Excess
Reason: Extensive deterioration
Bldgs. 34016, 34017
Orleans Trail Park
Stockton Co: MO 65785-
Landholding Agency: COE
Property Number: 31200510009
Status: Excess
Reason: Extensive deterioration
Bldg.
Pomme de Terre Lake
Hermitage Co: MO 65668-
Landholding Agency: COE
Property Number: 31200610008
Status: Unutilized
Reason: Extensive deterioration
Bldg. 3
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125-
Landholding Agency: VA
Property Number: 97200340001
Status: Underutilized
Reason: Secured Area

Bldg. 4
VA Medical Center
Jefferson Barracks Division
St. Louis MO-
Landholding Agency: VA
Property Number: 97200340002
Status: Underutilized
Reason: Secured Area
Bldg. 27
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125-
Landholding Agency: VA
Property Number: 97200340003
Status: Underutilized
Reason: Secured Area
Bldg. 28
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125-
Landholding Agency: VA
Property Number: 97200340004
Status: Underutilized
Reason: Secured Area
Bldg. 29
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125-
Landholding Agency: VA
Property Number: 97200340005
Status: Underutilized
Reason: Secured Area
Bldg. 50
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125-
Landholding Agency: VA
Property Number: 97200340006
Status: Underutilized
Reason: Secured Area
Nebraska
Vault Toilets
Harlan County Project
Republican NE 68971-
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reason: Extensive deterioration
Patterson Treatment Plant
Harlan County Project
Republican NE 68971-
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reason: Extensive deterioration
#30004
Harlan County Project
Republican Co: Harlan NE 68971-
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reason: Extensive deterioration
#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971-
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 70001, 70002
South Outlet Park
Republican City Co: NE-
Landholding Agency: COE
Property Number: 31200510010

Status: Excess
Reason: Extensive deterioration
Bldgs. 40002, 40003, 40006
Harlan County Lake
Republican City Co: NE 68971-
Landholding Agency: COE
Property Number: 31200610009
Status: Excess
Reason: Extensive deterioration
Bldg. 40020
Harlan County Lake
Republican City Co: NE 68971-
Landholding Agency: COE
Property Number: 31200610010
Status: Excess
Reason: Extensive deterioration
4 Bldgs.
43004, 43007, 43008, 43009
Republican City Co: NE 68971-
Landholding Agency: COE
Property Number: 31200610011
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Harlan County Lake
Republican City Co: NE 68971-
Location: 50003, 50004, 50005, 50006, 50007,
50008
Landholding Agency: COE
Property Number: 31200610012
Status: Excess
Reason: Extensive deterioration
Nevada
28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023-
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Contamination, Secured Area
31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049-
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reason: Secured Area
42 Bldgs.
Nellis Air Force Base
Tonopah Co: Nye NV 89049-
Location: 49-01, NM104, NM105, 03-35A-H,
03-35J-N, 03-36A-C, 03-36E-H, 03-36J-
N, 03-36R, 03-37, 15036, 03-44A-D, 03-
46, 03-47, 03-49, 03-88, 03-89, 03-90
Landholding Agency: Energy
Property Number: 41200410029
Status: Unutilized
Reason: Secured Area
241 Bldgs.
Tonopah Test Range
Tonopah Co: Nye NV 89049-
Landholding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Within 2000 ft. of flammable or
explosive material, Secured Area
New Mexico
Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185-
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration
Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105-
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material, Secured Area,
Extensive deterioration
Bldg. 26, TA-33
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration
Bldg. 2, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reason: Secured Area
Bldg. 5, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area
Bldg. 21, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area
Bldg. 116, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area
Bldg. 228, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area
Bldg. 286, TA-21
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area
Bldg. 516, TA-16
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area;
Extensive deterioration
Bldg. 517, TA-16
Los Alamos National Laboratory
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area;
Extensive deterioration
Bldg. 21, TA-2
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area
Bldg. 38, TA-14
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration
Bldg. 8, TA-15
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration
Bldg. 9, TA-15
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area
Bldg. 22, TA-15
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area
Bldg. 141, TA-15
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area
Bldg. 44, TA-15
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area
Bldg. 2, TA-18
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration
Bldg. 5, TA-18
Los Alamos National Lab

Status: Unutilized
Reason: Secured Area
Bldg. 339, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area
Bldg. 340, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area
Bldg. 341, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area
Bldg. 342, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area
Bldg. 343, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area
Bldg. 345, TA-16
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area
Bldg. 48, TA-55
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area
Bldg. 125, TA-55
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area
Bldg. 162, TA-55
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area
Bldg. 22, TA-33
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration
Bldg. 23, TA-49

Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area
Bldg. 37, TA-53
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area
Bldg. 121, TA-49
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area
5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185-
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185-
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration
TA-53, Bldg. 61
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration
TA-53, Bldg. 63
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration
TA-53, Bldg. 65
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration
Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117-
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration
Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117-
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration
Bldg. B119

Kirtland Operations
Albuquerque Co: Bernalillo NM 87117-
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration
Bldg. 6721
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185-
Landholding Agency: Energy
Property Number: 41200220042
Status: Unutilized
Reason: Extensive deterioration
6 Bldgs.
Kirtland Air Force Base
#852, 874, 9939A, 6536, 6636, 833A
Albuquerque NM 87185-
Landholding Agency: Energy
Property Number: 41200230001
Status: Excess
Reason: Secured Area
Bldg. 805
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185-
Landholding Agency: Energy
Property Number: 41200240001
Status: Unutilized
Reason: Secured Area
Bldg. 8898
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185-
Landholding Agency: Energy
Property Number: 41200240002
Status: Unutilized
Reason: Secured Area
8 Bldgs., TA-16
Los Alamos National Lab
195, 220-226
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200240003
Status: Unutilized
Reason: Secured Area
Bldg. 2, TA-11
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reason: Secured Area
Bldg. 4, TA-41
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reason: Secured Area
Bldg. 16, TA-41
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200240006
Status: Unutilized
Reason: Secured Area
Bldg. 30, TA-41
Los Alamos National Lab
Los Alamos NM 87545-
Landholding Agency: Energy
Property Number: 41200240007
Status: Unutilized
Reason: Secured Area
Bldg. 53, TA-41
Los Alamos National Lab
Los Alamos NM 87545-

Landholding Agency: Energy
 Property Number: 41200240008
 Status: Unutilized
 Reason: Secured Area
 Bldg. 2, TA-33
 Los Alamos National Lab
 Los Alamos NM 87545-
 Landholding Agency: Energy
 Property Number: 41200310001
 Status: Unutilized
 Reasons: Secured Area; Extensive
 deterioration
 Bldgs. 228, 286, TA-21
 Los Alamos National Lab
 Los Alamos NM 87545-
 Landholding Agency: Energy
 Property Number: 41200310002
 Status: Unutilized
 Reason: Secured Area
 Bldg. 116, TA-21
 Los Alamos National Lab
 Los Alamos NM 87545-
 Landholding Agency: Energy
 Property Number: 41200310003
 Status: Unutilized
 Reason: Secured Area
 Bldgs. 1, 2, 3, 4, 5, TA-28
 Los Alamos National Lab
 Los Alamos NM 87545-
 Landholding Agency: Energy
 Property Number: 41200310004
 Status: Unutilized
 Reason: Secured Area
 Bldgs. 447, 1483
 Los Alamos Natl Laboratory
 Los Alamos NM
 Landholding Agency: Energy
 Property Number: 41200410002
 Status: Excess
 Reasons: Secured Area; Extensive
 deterioration
 Bldgs. 870C & 9830
 Kirtland AFB
 Albuquerque Co: Bernalillo NM 87185-
 Landholding Agency: Energy
 Property Number: 41200410037
 Status: Excess
 Reason: Secured Area
 Bldg. 99650
 Sandia National Laboratory
 Albuquerque Co: Bernalillo NM 87185-
 Landholding Agency: Energy
 Property Number: 41200510004
 Status: Unutilized
 Reason: Secured Area
 New York
 Warehouse
 Whitney Lake Project
 Whitney Point Co: Broome NY 13862-0706
 Landholding Agency: COE
 Property Number: 31199630007
 Status: Unutilized
 Reason: Extensive deterioration
 North Carolina
 RPFN 0S1
 Group Cape Hatteras
 Buxton Co: Dare NC 27902-
 Landholding Agency: Coast Guard
 Property Number: 88200540001
 Status: Unutilized
 Reasons: Secured Area; Extensive
 deterioration
 RPFN 053

Sector NC
 Atlantic Beach Co: Carteret NC 28512-
 Landholding Agency: Coast Guard
 Property Number: 88200540002
 Status: Unutilized
 Reasons: Secured Area; Extensive
 deterioration
 Bldg. 9
 VA Medical Center
 1100 Tunnel Road
 Asheville Co: Buncombe NC 28805-
 Landholding Agency: VA
 Property Number: 97199010008
 Status: Unutilized
 Reason: Extensive deterioration
 Ohio
 Modular Ofc. Bldg.
 RMI
 Ashtabula OH 44004-
 Landholding Agency: Energy
 Property Number: 41200310008
 Status: Excess
 Reason: Contamination
 Modular Lab Bldg.
 RMI
 Ashtabula OH 44004-
 Landholding Agency: Energy
 Property Number: 41200310009
 Status: Excess
 Reason: Contamination
 Soil Storage Bldg.
 RMI
 Ashtabula OH 44004-
 Landholding Agency: Energy
 Property Number: 41200310010
 Status: Excess
 Reason: Contamination
 Bldg. 24C
 Fernald Env. Mgmt. Proj.
 Hamilton Co: Butler OH 45013-
 Landholding Agency: Energy
 Property Number: 41200310013
 Status: Excess
 Reasons: Contamination; Secured Area
 Bldg. 105
 VA Medical Center
 Dayton Co: Montgomery OH 45428-
 Landholding Agency: VA
 Property Number: 97199920005
 Status: Unutilized
 Reason: Extensive deterioration
 Oklahoma
 Comfort Station
 LeFlore Landing PUA
 Sallisaw Co: LeFlore OK 74955-9445
 Landholding Agency: COE
 Property Number: 31200240008
 Status: Excess
 Reason: Extensive deterioration
 Comfort Station
 Braden Bend PUA
 Sallisaw Co: LeFlore OK 74955-9445
 Landholding Agency: COE
 Property Number: 31200240009
 Status: Excess
 Reason: Extensive deterioration
 Water Treatment Plant
 Salt Creek Cove
 Sawyer Co: Choctaw OK 74756-0099
 Landholding Agency: COE
 Property Number: 31200240010
 Status: Excess
 Reason: Extensive deterioration

Water Treatment Plant
 Wilson Point
 Sawyer Co: Choctaw OK 74756-0099
 Landholding Agency: COE
 Property Number: 31200240011
 Status: Excess
 Reason: Extensive deterioration
 2 Comfort Stations
 Landing PUA/Juniper Point PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240012
 Status: Excess
 Reason: Extensive deterioration
 Filter Plant/Pumphouse
 South PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240013
 Status: Excess
 Reason: Extensive deterioration
 Filter Plant/Pumphouse
 North PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240014
 Status: Excess
 Reason: Extensive deterioration
 Filter Plant/Pumphouse
 Juniper Point PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240015
 Status: Excess
 Reason: Extensive deterioration
 Comfort Station
 Juniper Point PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240016
 Status: Excess
 Reason: Extensive deterioration
 Comfort Station
 Brooken Cove PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240017
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Outlet Channel/Walker Creek
 Waurika OK 73573-0029
 Landholding Agency: COE
 Property Number: 31200340013
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Damsite South
 Stigler OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200340014
 Status: Excess
 Reason: Extensive deterioration
 19 Bldgs.
 Kaw Lake
 Ponca City OK 74601-9962
 Landholding Agency: COE
 Property Number: 31200340015
 Status: Excess
 Reason: Extensive deterioration
 30 Bldgs.
 Keystone Lake
 Sand Springs OK 74063-9338
 Landholding Agency: COE

Property Number: 31200340016
 Status: Excess
 Reason: Extensive deterioration
 13 Bldgs.
 Oologah Lake
 Oologah OK 74053-0700
 Landholding Agency: COE
 Property Number: 31200340017
 Status: Excess
 Reason: Extensive deterioration
 14 Bldgs.
 Pine Creek Lake
 Valliant OK 74764-9801
 Landholding Agency: COE
 Property Number: 31200340018
 Status: Excess
 Reason: Extensive deterioration
 6 Bldgs.
 Sardis Lake
 Clayton OK 74536-9729
 Landholding Agency: COE
 Property Number: 31200340019
 Status: Excess
 Reason: Extensive deterioration
 24 Bldgs.
 Skiatook Lake
 Skiatook OK 74070-9803
 Landholding Agency: COE
 Property Number: 31200340020
 Status: Excess
 Reason: Extensive deterioration
 40 Bldgs.
 Eufaula Lake
 Stigler OK 74462-5135
 Landholding Agency: COE
 Property Number: 31200340021
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Holiday Cove
 Stigler OK 74462-5135
 Landholding Agency: COE
 Property Number: 31200340022
 Status: Excess
 Reason: Extensive deterioration
 18 Bldgs.
 Fort Gibson
 Ft. Gibson Co: Wagoner OK 74434-0370
 Landholding Agency: COE
 Property Number: 31200340023
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Fort Supply
 Ft. Supply Co: Woodward OK 73841-0248
 Landholding Agency: COE
 Property Number: 31200340024
 Status: Excess
 Reason: Extensive deterioration
 Game Bird House
 Fort Supply Lake
 Ft. Supply Co: Woodward OK 73841-0248
 Landholding Agency: COE
 Property Number: 31200340025
 Status: Excess
 Reason: Extensive deterioration
 11 Bldgs.
 Hugo Lake
 Sawyer OK 74756-0099
 Landholding Agency: COE
 Property Number: 31200340026
 Status: Excess
 Reason: Extensive deterioration
 5 Bldgs.
 Birch Cove/Twin Cove
 Skiatook OK 74070-9803
 Landholding Agency: COE
 Property Number: 31200340027
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Fairview Group Camp
 Canton OK 73724-0069
 Landholding Agency: COE
 Property Number: 31200340028
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Chouteau & D Bluff
 Core Co: Wagoner OK 74935-9404
 Landholding Agency: COE
 Property Number: 31200340029
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Newt Graham L&D
 Core OK 74935-9404
 Landholding Agency: COE
 Property Number: 31200340030
 Status: Excess
 Reason: Extensive deterioration
 6 Bldgs.
 Damsite/Fisherman's Landing
 Sallisaw OK 74955-9445
 Landholding Agency: COE
 Property Number: 31200340031
 Status: Excess
 Reason: Extensive deterioration
 10 Bldgs.
 Webbers Falls Lake
 Core OK 74435-5541
 Landholding Agency: COE
 Property Number: 31200340032
 Status: Excess
 Reason: Extensive deterioration
 14 Bldgs.
 Copan Lake
 Copan OK 74022-9762
 Landholding Agency: COE
 Property Number: 31200340033
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Lower Storage Yard
 Skiatook Co: Osage OK 74070-
 Landholding Agency: COE
 Property Number: 31200530007
 Status: Excess
 Reason: Extensive deterioration
 3 Bldgs.
 Birch Cove PUA
 Skiatook Co: Osage OK 74070-
 Landholding Agency: COE
 Property Number: 31200530008
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Canadian Public Use Area
 Canton Co: Blaine OK 73724-
 Landholding Agency: COE
 Property Number: 31200530009
 Status: Excess
 Reason: Extensive deterioration
 3 Bldgs.
 Porum Landing PUA
 Stigler Co: McIntosh OK 74462-
 Landholding Agency: COE
 Property Number: 31200530010
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Taylor Ferry
 Ft. Gibson Co: Wagoner OK 74434-
 Landholding Agency: COE
 Property Number: 31200530011
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Bluff/Afton Landing
 Ft. Gibson Co: Wagoner OK 74434-
 Landholding Agency: COE
 Property Number: 31200530012
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Lake Office
 Ft. Supply Co: Woodward OK 73841-
 Landholding Agency: COE
 Property Number: 31200530013
 Status: Excess
 Reason: Extensive deterioration
 4 Bldgs.
 Overlook PUA
 Ft. Supply Co: Texas OK 73841-
 Landholding Agency: COE
 Property Number: 31200530014
 Status: Excess
 Reason: Extensive deterioration
 Bldg.
 Hugo Lake
 Sawyer Co: Chocktaw OK 74756-
 Landholding Agency: COE
 Property Number: 31200530015
 Status: Excess
 Reason: Extensive deterioration
 2 Bldgs.
 Sarge Creek PUA
 Ponca City Co: Kay OK 74601-
 Landholding Agency: COE
 Property Number: 31200530016
 Status: Excess
 Reason: Extensive deterioration
 5 Bldgs.
 Hawthorne Bluff
 Oologah Co: Rogers OK 74053-
 Landholding Agency: COE
 Property Number: 31200530017
 Status: Excess
 Reason: Extensive deterioration
 12 Bldgs.
 Trout Stream PUAs
 Gore Co: Sequoyah OK 74435-
 Landholding Agency: COE
 Property Number: 31200530018
 Status: Excess
 Reason: Extensive deterioration
 14 Bldgs.
 Chicken Creek PUAs
 Gore Co: Cherokee OK 74435-
 Landholding Agency: COE
 Property Number: 31200530019
 Status: Excess
 Reason: Extensive deterioration
 4 Bldgs.
 Snake Creek Area
 Gore Co: Sequoyah OK 74435-
 Landholding Agency: COE
 Property Number: 31200530020
 Status: Excess
 Reason: Extensive deterioration
 3 Bldgs.
 Brewer's Bend

Gore Co: Muskogee OK 74435-
Landholding Agency: COE
Property Number: 31200530021
Status: Excess
Reason: Extensive deterioration

Oregon
2 Floating Docks
Rogue River
Gold Beach Co: Curry OR 97444-
Landholding Agency: COE
Property Number: 31200430015
Status: Excess
Reason: Floodway

2 Trailers
John Day Project
#1 West Marine Drive
Boardman Co: Morrow OR 97818-
Landholding Agency: COE
Property Number: 31200510012
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania
Z-Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122-0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Parcel A
Valley Forge Army Hospital
Schuylkill Township
Phoenixville Co: Chester PA 19460-
Landholding Agency: GSA
Property Number: 54200610008
Status: Surplus
Reason: Extensive deterioration
GSA Number: 4GRPA0666A

South Carolina
Bldg. 5
J. Strom Thurmond Project
Clarks Hill Co: McCormick SC 29821-
Landholding Agency: COE
Property Number: 31200520007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 701-6G
Jackson Barricade
Jackson SC
Landholding Agency: Energy
Property Number: 41200420010
Status: Unutilized
Reason: Secured Area

Bldg. 211-000F
Nuclear Materials Processing Facility
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420011
Status: Excess
Reason: Secured Area

Bldg. 211-002F
Nuclear Materials Processing Facility
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420013
Status: Excess
Reason: Secured Area

Bldg. 221-001F
Nuclear Materials Processing Facility
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420015
Status: Excess
Reason: Secured Area

Bldgs. 186-K, 186-1K
Savannah River Operations
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420027
Status: Unutilized
Reason: Secured Area

Bldgs. 186-P, 186-1P
Savannah River Operations
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420028
Status: Unutilized
Reason: Secured Area

Bldg. 190-K
Savannah River Operations
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420030
Status: Unutilized
Reason: Secured Area

Bldg. 190-P
Savannah River Operations
Aiken SC 29802-
Landholding Agency: Energy
Property Number: 41200420031
Status: Unutilized
Reason: Secured Area

Bldg. 704-002N
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430001
Status: Excess
Reason: Secured Area

Bldg. 710-015N
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reason: Secured Area

Bldg. 713-000N
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reason: Secured Area

Bldg. 717-000C
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430004
Status: Excess
Reason: Secured Area

Bldg. 717-011N
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430005
Status: Excess
Reason: Secured Area

Bldgs. 80-9G, 10G
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reason: Secured Area

Bldgs. 105-P, 105-R
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430007
Status: Excess
Reason: Secured Area

Bldg. 183-002P
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430008
Status: Excess
Reason: Secured Area

Bldg. 183-003L
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reason: Secured Area

Bldgs. 183-004K, 004L, 004P
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430010
Status: Excess
Reason: Secured Area

6 Bldgs.
Savannah River Operations
Aiken Co: SC 29802-
Location: 185-000K, 607-020K, 110-000L,
107-000P, 607-024P, 109-000R
Landholding Agency: Energy
Property Number: 41200430011
Status: Excess
Reason: Secured Area

Bldg. 191-000L
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430012
Status: Excess
Reason: Secured Area

Bldg. 221-016F
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reason: Secured Area

Bldgs. 221-034F, 035F
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430015
Status: Excess
Reason: Secured Area

Bldgs. 221-053F, 054F
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reason: Secured Area

Bldgs. 252-003F, 005F
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reason: Secured Area

Bldg. 607-022P
Savannah River Operations
Aiken Co: SC 29802-
Landholding Agency: Energy

Property Number: 41200430018
 Status: Excess
 Reason: Secured Area
 Bldg. 647-000G
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430020
 Status: Excess
 Reason: Secured Area
 Bldg. 704-000P
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430022
 Status: Excess
 Reason: Secured Area
 Bldgs. 723-001L, 002L, 003L
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430025
 Status: Excess
 Reason: Secured Area
 Bldg. 221-013F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430028
 Status: Excess
 Reason: Secured Area
 Bldg. 278-002N
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430029
 Status: Excess
 Reason: Secured Area
 Bldg. 315-M
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430030
 Status: Excess
 Reason: Secured Area
 Bldg. 607-009C
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430032
 Status: Excess
 Reason: Secured Area
 Bldg. 607-038N
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430034
 Status: Excess
 Reason: Secured Area
 Bldg. 614-002K
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430036
 Status: Excess
 Reason: Secured Area
 Bldg. 614-002L
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430037
 Status: Excess
 Reason: Secured Area
 Bldg. 701-001F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430038
 Status: Excess
 Reason: Secured Area
 Bldg. 701-002C
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430039
 Status: Excess
 Reason: Secured Area
 Bldg. 716-002A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430040
 Status: Excess
 Reason: Secured Area
 Bldg. 901-001K
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430041
 Status: Excess
 Reason: Secured Area
 Bldgs. 221-21F, 22F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430042
 Status: Excess
 Reason: Secured Area
 Bldg. 221-033F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430043
 Status: Excess
 Reason: Secured Area
 Bldg. 254-007F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430044
 Status: Excess
 Reason: Secured Area
 Bldg. 281-001F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430045
 Status: Excess
 Reason: Secured Area
 Bldg. 281-004F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430046
 Status: Excess
 Reason: Secured Area
 Bldg. 281-006F
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430047
 Status: Excess
 Reason: Secured Area
 Bldg. 305-000A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430048
 Status: Excess
 Reason: Secured Area
 Bldg. 703-045A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430050
 Status: Excess
 Reason: Secured Area
 Bldg. 703-071A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430051
 Status: Excess
 Reason: Secured Area
 Bldg. 716-A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430055
 Status: Excess
 Reason: Secured Area
 Bldg. 719-000A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430056
 Status: Excess
 Reason: Secured Area
 Bldg. 754-008A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430058
 Status: Excess
 Reason: Secured Area
 Bldg. 777-010A
 Savannah River Operations
 Aiken Co: SC 29802-
 Landholding Agency: Energy
 Property Number: 41200430061
 Status: Excess
 Reason: Secured Area
 Bldg. 186-R
 Savannah River Site
 Aiken Co: SC
 Landholding Agency: Energy
 Property Number: 41200430063
 Status: Unutilized
 Reason: Secured Area
 Bldg. 190-R
 Savannah River Site
 Aiken Co: SC
 Landholding Agency: Energy
 Property Number: 41200430064
 Status: Unutilized
 Reason: Secured Area
 Bldg. 230-H
 Savannah River Site
 Aiken Co: SC
 Landholding Agency: Energy
 Property Number: 41200430065
 Status: Unutilized
 Reason: Secured Area
 4 Bldgs.
 Savannah River Site
 #281-2F, 281-5F, 285-F, 285-5F
 Aiken Co: SC
 Landholding Agency: Energy
 Property Number: 41200430066
 Status: Unutilized
 Reason: Secured Area
 Bldgs. 186L, 190L

Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430069
Status: Unutilized
Reason: Secured Area
Bldg. 701-000M
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reason: Secured Area
Bldg. 701-002A
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430085
Status: Unutilized
Reason: Secured Area
Bldg. 701-003A
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200430086
Status: Unutilized
Reason: Secured Area
Bldg. 151-2R
Savannah River Site
Aiken Co: SC 29802
Landholding Agency: Energy
Property Number: 41200440010
Status: Unutilized
Reason: Secured Area
Bldg. 608-000P
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200440031
Status: Excess
Reason: Secured Area
Bldg. 690-000N
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200440032
Status: Underutilized
Reason: Secured Area
Bldg. 763-106N
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200440033
Status: Underutilized
Reason: Secured Area
Facility 701-5G
Savannah River Site
New Ellenton Co: SC
Landholding Agency: Energy
Property Number: 41200530003
Status: Unutilized
Reason: Extensive deterioration

South Dakota
Mobile Home
Tract L-1295
Oahe Dam
Potter SD 00000-
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee
Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Cathage Co: Smith TN 37030-
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway
Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway
Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: water treatment plant
Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: water treatment plant
Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: water treatment plant
Water Treatment Plant
Dale Hollow Lake & Dam Project
Cathage Co: Smith TN 37030-
Landholding Agency: COE
Property Number: 31200430016
Status: Unutilized
Reasons: Floodway; landlocked
Residence #5
5050 Dale Hollow Dam Rd.
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 31200540010
Status: Unutilized
Reason: landlocked
Bldg.
Dale Hollow Lake Dam
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 31200610013
Status: Unutilized
Reason: Extensive deterioration
Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831-
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldgs. 9714-3, 9714-4, 9983-AY
Y-12 Pistol Range
Oak Ridge Co: Anderson TN 37831-
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area
5 Bldgs.
K-724, K-725, K-1031, K-1131, K-1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831-
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration
Bldg. 9418-1
Y-12 Plant
Oak Ridge Co: Anderson TN 37831-
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 9825
Y-12 Plant
Oak Ridge Co: Anderson TN 37831-
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reason: Secured Area
17 Bldgs.
Oak Ridge Tech Park
Oak Ridge Co: Roane TN 37831-
Location: K-801, A-D, H, K-891, K-892,
K1025A-E, K-1064B-E, H, K, L, K1206-E
Landholding Agency: Energy
Property Number: 41200310007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. SC-3
ORISE
Oak Ridge Co: Anderson TN 37831-
Landholding Agency: Energy
Property Number: 41200340001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Texas
Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473-9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reason: Extensive deterioration
58 Bldgs.
Texoma Lake
Denison TX 75020-6425
Landholding Agency: COE
Property Number: 31200340035
Status: Excess
Reason: Extensive deterioration
Bldg.
West Burns Run Park
Denison Co: Grayson TX 75020-
Landholding Agency: COE
Property Number: 31200530022
Status: Excess
Reason: Extensive deterioration
Zone 5, Bldg. FS-18

- Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200220044
Status: Unutilized
Reasons: Within 2000 ft of flammable or
explosive material; Secured Area
Zone 12, Bldg. 12-20
Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft of flammable or
explosive material; Secured Area;
Bldgs. 12-017E, 12-019E
Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft of flammable or
explosive material; Secured Area
5 Bldgs.
Pantex Plant
#10-002, 11-009, 12-013, 12-078, 12-R-078
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200410003
Status: Unutilized
Reasons: Within 2000 ft of flammable or
explosive material; Secured Area
Bldg. 15-016
Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200420017
Status: Unutilized
Reason: Secured Area
Bldg. 4-052P
Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200420018
Status: Unutilized
Reason: Secured Area
4 Bldgs.
NNSA Pantex Plant
Amarillo Co: Carson TX 79120-
Location: 12-009, 12-009A, 12-R-009A, 12-
R-009B
Landholding Agency: Energy
Property Number: 41200540002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area
Bldg. 12-011A
NNSA Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area
Bldg. 12-097
NNSA Pantex Plant
Amarillo Co: Carson TX 79120-
Landholding Agency: Energy
Property Number: 41200540004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area
Virginia
PHL-188855, 16498, 16693
- Mize Point Campground
Bassett Co: VA 24055-
Landholding Agency: COE
Property Number: 31200510014
Status: Unutilized
Reason: Extensive deterioration
Training Bldg.
USCG Integrated Support Ctr
Portsmouth Co: Norfolk VA 43703-
Landholding Agency: Coast Guard
Property Number: 88200530001
Status: Excess
Reason: Secured Area
Washington
Rec. Storage Bldg.
Richland Parks
Richland Co: Benton WA 99352-
Landholding Agency: COE
Property Number: 31200240019
Status: Unutilized
Reason: Extensive deterioration
Railroad Club Bldg.
McNary Lock & Dam Proj
Richland Co: Benton WA 99352-
Landholding Agency: COE
Property Number: 31200410006
Status: Excess
Reason: Within 2000 ft. of flammable or
explosive material
Wisconsin
Station Building
Coast Guard Station
Sheboygan Co: WI
Landholding Agency: Coast Guard
Property Number: 88200610001
Status: Underutilized
Reason: Secured Area
Land (by State)
Arizona
58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313-
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway
20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313-
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway
Florida
Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible
Kentucky
Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211-
Location: 14 miles from U.S. Highway 68
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway
Tract AA-2747
Wolf Creek Dam and Lake Cumberland
US Hwy. 27 to Blue John Road
Burnside Co: Pulaski KY 42519-
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reason: Floodway
Tract AA-2726
Wolf Creek Dam and Lake Cumberland
KY Hwy. 80 to Route 769
Burnside Co: Pulaski KY 42519-
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway
Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038-
Location: US Highway 62 to State highway
93.
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway
Red River Lake Project
Stanton Co: Powell KY 40380-
Location: Exit Mr. Parkway at the Stanton
and Slade Interchange, then take SR Hand
15 north to SR 613
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway
Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270-
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway
Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy. 369, which runs off
of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway
Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288-
Location: Off State Hwy 403, which is off
State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway
Green River Lock & Dam No. 5
Readville Co: Butler KY 42275-
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Reason: Floodway
Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210-
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway
Vacant land west of locksite
Greenup Locks and Dam

- 5121 New Dam Road
Rural Co: Greenup KY 41144-
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway
- Maryland
Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway
- Minnesota
3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303-
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: landlocked
- 7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303-
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area
- Mississippi
Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901-0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone
- Missouri
Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway
- Montana
Sewage Lagoons/40 acres
VA Center
Ft. Harrison MT 59639-
Landholding Agency: VA
Property Number: 97200340007
Status: Excess
Reason: Floodway
- New York
Tract 1
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route
17.
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area
- Tract 2
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route
17.
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area
- Tract 3
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route
17.
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area
- Tract 4
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route
17.
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area
- Ohio
Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410-9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway
- Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410-9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway
- 36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401-9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway
- Pennsylvania
Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway
to project
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway
- Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154-
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway
- Tract No. B-212C
Upstream from Gen. Jadwin Dam & Reservoir
Honesdale Co: Wayne PA 18431-
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway
- Tennessee
Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562-
Location: Tracts 800, 802-806, 835-837, 900-
902, 1000-1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway
- Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015-
Location: Tracts E-513, E-512-1 and E-512-
2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway
- Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130-
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Reason: Landlocked
- Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058-
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway
- Tracts 3102, 3105, and 3106
Brinstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway
- Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551-
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway
- Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway
- Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway
- Tracts 1710, 1716 and 1703
Flynn's Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: Whites Bend Road

Landholding Agency: COE
 Property Number: 31199011484
 Status: Underutilized
 Reason: Floodway
 Tract 1810
 Wartrace Creek Launching Ramp
 Cordell Hull Lake and Dam Project
 Gainesboro Co: Jackson TN 38551-
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 31199011485
 Status: Underutilized
 Reason: Floodway
 Tract 2524
 Jennings Creek
 Cordell Hull Lake and Dam Project
 Gainesboro Co: Jackson TN 38562-
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 31199011486
 Status: Unutilized
 Reason: Floodway
 Tracts 2905 and 2907
 Webster
 Cordell Hull Lake and Dam Project
 Gainesboro Co: Jackson TN 38551-
 Location: Big Bottom Road
 Landholding Agency: COE
 Property Number: 31199011487
 Status: Unutilized
 Reason: Floodway
 Tracts 2200 and 2201
 Gainesboro Airport
 Cordell Hull Lake and Dam Project
 Gainesboro Co: Jackson TN 38562-
 Location: Big Bottom Road
 Landholding Agency: COE
 Property Number: 31199011488
 Status: Underutilized
 Reasons: Within airport runway clear zone;
 Floodway
 Tracts 710C and 712C
 Sullivan Island
 Cordell Hull Lake and Dam Project
 Carthage Co: Smith TN 37030-
 Location: Sullivan Bend Road
 Landholding Agency: COE
 Property Number: 31199011489
 Status: Unutilized
 Reason: Floodway
 Tract 2403, Hensley Creek
 Cordell Hull Lake and Dam Project
 Gainesboro Co: Jackson TN 38562-
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 31199011490
 Status: Unutilized
 Reason: Floodway
 Tracts 2117C, 2118 and 2120
 Cordell Hull Lake and Dam Project
 Trace Creek
 Gainesboro Co: Jackson TN 38562-
 Location: Brooks Ferry Road
 Landholding Agency: COE
 Property Number: 31199011491
 Status: Unutilized
 Reason: Floodway
 Tracts 424, 425 and 426
 Cordell Hull Lake and Dam Project
 Stone Bridge
 Carthage Co: Smith TN 37030-
 Location: Sullivan Bend Road
 Landholding Agency: COE
 Property Number: 31199011492
 Status: Unutilized
 Reason: Floodway
 Tract 517
 J. Percy Priest Dam and Reservoir
 Suggs Creek Embayment
 Nashville Co: Davidson TN 37214-
 Location: Interstate 40 to S. Mount Juliet
 Road
 Landholding Agency: COE
 Property Number: 31199011493
 Status: Underutilized
 Reason: Floodway
 Tract 1811
 West Fork Launching Area
 Smyrna Co: Rutherford TN 37167-
 Location: Florence Road near Enon Springs
 Road
 Landholding Agency: COE
 Property Number: 31199011494
 Status: Underutilized
 Reason: Floodway
 Tract 1504
 J. Perry Priest Dam and Reservoir
 Lamont Hill Recreation Area
 Smyrna Co: Rutherford TN 37167-
 Location: Lamont Road
 Landholding Agency: COE
 Property Number: 31199011495
 Status: Underutilized
 Reason: Floodway
 Tract 1500
 J. Perry Priest Dam and Reservoir
 Pools Knob Recreation
 Smyrna Co: Rutherford TN 37167-
 Location: Jones Mill Road
 Landholding Agency: COE
 Property Number: 31199011496
 Status: Underutilized
 Reason: Floodway
 Tracts 245, 257, and 256
 J. Perry Priest Dam and Reservoir
 Cook Recreation Area
 Nashville Co: Davidson TN 37214-
 Location: 2.2 miles south of Interstate 40 near
 Saunders Ferry Pike
 Landholding Agency: COE
 Property Number: 31199011497
 Status: Underutilized
 Reason: Floodway
 Tracts 107, 109 and 110
 Cordell Hull Lake and Dam Project
 Two Prong
 Carthage Co: Smith TN 37030-
 Location: US Highway 85
 Landholding Agency: COE
 Property Number: 31199011498
 Status: Unutilized
 Reason: Floodway
 Tracts 2919 and 2929
 Cordell Hull Lake and Dam Project
 Sugar Creek
 Gainesboro Co: Jackson TN 38562-
 Location: Sugar Creek Road
 Landholding Agency: COE
 Property Number: 31199011500
 Status: Unutilized
 Reason: Floodway
 Tracts 1218 and 1204
 Cordell Hull Lake and Dam Project
 Granville—Alvin Yourk Road
 Granville Co: Jackson TN 38564-
 Landholding Agency: COE
 Property Number: 31199011501
 Status: Unutilized
 Reason: Floodway
 Tract 2100
 Cordell Hull Lake and Dam Project
 Galbreaths Branch
 Gainesboro Co: Jackson TN 38562-
 Location: TN Highway 53
 Landholding Agency: COE
 Property Number: 31199011502
 Status: Unutilized
 Reason: Floodway
 Tract 104 et al.
 Cordell Hull Lake and Dam Project
 Horseshoe Bend Launching Area
 Carthage Co: Smith TN 37030-
 Location: Highway 70 N
 Landholding Agency: COE
 Property Number: 31199011504
 Status: Underutilized
 Reason: Floodway
 Tracts 510, 511, 513 and 514
 J. Percy Priest Dam and Reservoir Project
 Lebanon Co: Wilson TN 37087-
 Location:
 Vivrett Creek Launching Area, Alvin Sperry
 Road
 Landholding Agency: COE
 Property Number: 31199120007
 Status: Underutilized
 Reason: Floodway
 Tract A-142, Old Hickory Beach
 Old Hickory Blvd.
 Old Hickory Co: Davidson TN 37138-
 Landholding Agency: COE
 Property Number: 31199130008
 Status: Underutilized
 Reason: Floodway
 Tract D, 7 acres
 Cheatham Lock & Dam
 Nashville Co: Davidson TN 37207-
 Landholding Agency: COE
 Property Number: 31200020006
 Status: Underutilized
 Reason: Floodway
 Tract F-608
 Cheatham Lock & Dam
 Ashland Co: Cheatham TN 37015-
 Landholding Agency: COE
 Property Number: 31200420021
 Status: Unutilized
 Reason: Floodway
 Tracts G702-G706
 Cheatham Lock & Dam
 Ashland Co: Cheatham TN 37015-
 Landholding Agency: COE
 Property Number: 31200420022
 Status: Unutilized
 Reason: Floodway
 6 Tracts
 Shutes Branch Campground
 Lakewood Co: Wilson TN -
 Landholding Agency: COE
 Property Number: 31200420023
 Status: Unutilized
 Reason: Floodway
 Texas
 Tracts 104, 105-1, 105-2 & 118
 Joe Pool Lake
 Co: Dallas TX
 Landholding Agency: COE
 Property Number: 31199010397
 Status: Underutilized
 Reason: Floodway
 Part of Tract 201-3
 Joe Pool Lake

Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway
Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway
Tract 702-3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway
Tract 706

Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway
Washington
2.8 acres
Tract P-1003
Kennewick Co: Benton WA 99336-
Landholding Agency: COE
Property Number: 31200240020
Status: Excess
Reason: Within 2000 ft. of flammable or
explosive material
West Virginia
Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505-
Landholding Agency: COE

Property Number: 31199011530
Status: Unutilized
Reason: Floodway
London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126-
Location: 20 miles east of Charleston, W.
Virginia
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres; very narrow strip of land
Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601-
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: inaccessible
[FR Doc. 06-1870 Filed 3-2-06; 8:45 am]
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March 3, 2006

Part III

Department of Commerce

National Oceanic and Atmospheric
Administration

50 CFR Part 648

Fisheries of the Northeastern United
States; Northeast Multispecies Fishery;
Emergency Secretarial Action; Proposed
Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060209031-6031-01; I.D. 020606C]

RIN 0648-AU09

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action

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

ACTION: Proposed rule; emergency action; request for comment.

SUMMARY: NMFS proposes a temporary emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement measures intended to immediately reduce the fishing mortality rate (F) on specific groundfish species to prevent overfishing and maintain the rebuilding program of the Northeast (NE) Multispecies Fishery Management Plan (FMP). This emergency action includes differential days-at-sea (DAS) counting, reduced trip limits for specific species, and recreational possession restrictions, among other provisions. In addition, this action would continue two programs that would otherwise expire by the end of the 2005 fishing year on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on Georges Bank (GB). Due to the impact of these proposed measures on the monkfish fishery, this temporary emergency action would also limit participation of monkfish Category C, D, or F permits in the proposed Regular B DAS Program and revise the method of calculating available monkfish-only DAS for Category C, D, F, G, or H monkfish vessels. This action is intended to prevent overfishing while maintaining specific programs designed to help mitigate the economic and social

impacts of effort reductions under the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

DATES: Comments must be received on or before March 6, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: MultsEmergency@NOAA.gov

NOAA.gov. Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Emergency Action."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Emergency Action."

- Fax: (978) 281-9135.

Copies of this rule, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from the Regional Administrator at the above address. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background**

The New England Fishery Management Council (Council) developed Amendment 13 in order to bring the FMP into conformance with

all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published on April 27, 2004 (69 FR 22906) and became effective May 1, 2004.

Amendment 13 established or clarified rebuilding programs for each stock managed under the FMP. Amendment 13 also established a biennial adjustment process to review the fishery and implement any changes necessary to ensure that the fishery continues to meet the rebuilding objectives, including meeting the F targets for each year of the rebuilding program. As part of the biennial adjustment process, the latest stock assessment, the Groundfish Assessment Review Meeting (GARM II), took place from August 15-19, 2005. This assessment provided updated information to evaluate the performance of the fishery in relation to the rebuilding program established by Amendment 13.

The Council's Groundfish Plan Development Team (PDT) utilized the results of GARM II to calculate estimates of the 2005 calendar year F (F₂₀₀₅) for all groundfish stocks. These estimates indicate that F₂₀₀₅ for particular groundfish stocks, (i.e., GOM cod, Cape Cod (CC)/GOM yellowtail flounder, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, GB winter flounder, white hake, and GB yellowtail flounder) is, in some cases, substantially less than that observed for 2004, but still higher than the 2006 target F specified in the rebuilding program established under Amendment 13. The PDT concluded that, with the exception of GB yellowtail flounder, management measures should be developed to further reduce F on these species for fishing year 2006 in order to maintain progress toward the FMP rebuilding objectives, as illustrated in Table 1:

TABLE 1.—MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 F TARGETS *

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 fishing year 2006 target F	Mortality reduction necessary (percent)
GOM Cod	0.58	0.37	0.23	32
CC/GOM Yellowtail Flounder	0.75	0.48	0.26	46
SNE/MA Yellowtail Flounder	0.99	0.58	0.26	55
SNE/MA Winter Flounder	0.38	0.35	0.32	9
GB Winter Flounder	1.86	NA	** 1.0	46

TABLE 1.—MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 F TARGETS*—Continued

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 fishing year 2006 target F	Mortality reduction necessary (percent)
White Hake	1.18	NA	1.03	13

* F on GB yellowtail flounder also needs to be reduced, but new management measures do not need to be developed. See additional explanation in the paragraph below.

** Amendment 13 did not establish a 2006 F target for GB winter flounder. Rather, Amendment 13 established the value of F_{msy} as 0.32. However, because model estimates of relative F rate are more precise than estimates of actual F rates, GARM II presented the estimate of F rate for 2004 in relative terms. The threshold value for the relative F rate (F₂₀₀₄/F_{msy}) for GB winter flounder is 1.0.

NA: An estimate of F₂₀₀₅ for the stocks of GB winter flounder and white hake could not be developed because the assessments are index based. The necessary F reductions are based upon F₂₀₀₄.

No new management measures are necessary to reduce F on GB yellowtail flounder, since a hard TAC (i.e., fishing on the stock is prohibited when such a TAC is reached) is being proposed for this stock that will reduce F to the appropriate level. The Transboundary Management Guidance Committee (TMGC) concluded that the most appropriate combined U.S./Canada total allowable catch (TAC) for the 2006 fishing year is 3,000 mt (2,070 mt U.S.; 930 mt Canada), which corresponds to an F of 0.25 (F_{msy}). On September 15, 2005, the Council accepted the recommendations of the TMGC for the 2006 GB yellowtail flounder TAC. The proposed hard TAC of 2,070 mt represents a 51-percent reduction from the 2005 TAC, and would constrain fishing effort to the appropriate level to achieve the required F reduction. The 2006 GB yellowtail flounder hard TAC is being proposed through a separate management action currently under development by NMFS.

The rebuilding strategy implemented by Amendment 13 established two so-called default measures that would automatically reduce F on all groundfish species, particularly for American plaice and SNE/MA yellowtail flounder beginning in fishing year 2006. These default measures include a revision of the DAS allocation ratio of Category A:B DAS from 60:40 to 55:45, and differential DAS counting in the SNE/MA Regulated Mesh Area (RMA) at a rate of 1.5:1. Under the final rule implementing Amendment 13, these measures are scheduled to go into effect for the start of the 2006 fishing year on May 1, 2006, unless stocks meet or exceed specific criteria described at 50 CFR 648.82(d)(4) and NMFS implements measures to supersede the default measures. In addition to these criteria, all groundfish stocks must meet the target F rates specified for 2006 for these default measures to be deferred.

Data from GARM II indicate that none of these criteria have been met for SNE/

MA yellowtail flounder and that American plaice is still overfished. Given this, as well as the fact that other groundfish stocks are not meeting the target F rates for 2006 (see Table 1), the Amendment 13 default measures will automatically go into place on May 1, 2006, unless superseded by another action. Although these default measures would likely have positive impacts on all groundfish species (including a reduction in F), these measures are not likely to sufficiently reduce F for particular groundfish stocks to meet the 2006 fishing year F targets established by Amendment 13. Therefore, to ensure that the rebuilding program established under Amendment 13 remains on track to rebuild overfished groundfish stocks within the required time period, additional management measures are needed to reduce F on several groundfish stocks.

Framework Adjustment (FW) 42 to the FMP is currently being developed by the Council and is intended to serve as the first biennial adjustment process adopted under Amendment 13. FW 42 proposes management measures designed to achieve the necessary mortality reductions for all groundfish stocks requiring F reductions for the 2006 fishing year, as required by § 648.90(a)(2). However, at its November 15–17, 2005, meeting, the Council announced that it was not able to complete FW 42 in time for NMFS to implement these measures by the beginning of the fishing year on May 1, 2006. Although at its January 31–February 2, 2006, meeting the Council voted to adopt a suit of management measures under FW 42, it would not be possible to implement these measures by May 1, 2006.

Section 305(c) of the Magnuson-Stevens Act states that, if the Secretary of Commerce (Secretary) finds that an emergency or overfishing exists, or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency measures to

address overfishing and address other management concerns while the Council prepares proposed regulations to stop overfishing and rebuild fish stocks on a more permanent basis. Such measures do not, by themselves, have to stop overfishing, but may be used to contribute to efforts to stop overfishing until the Council, after considering public input, can complete an appropriate framework adjustment or amendment to the FMP.

Emergency management actions authorized by section 305(c) of the Magnuson-Stevens Act may only be prepared under special circumstances. In accordance with NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), emergency actions may be implemented to resolve “unforeseen events or recently discovered circumstances” that present “serious conservation or management problems” that “can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice.” These guidelines indicate that an emergency action might be justified based on one or more of the following reasons: Ecological (i.e., to prevent overfishing as defined in an FMP, or prevent other serious damage to the fishery resource or habitat), economic (i.e., to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be forgone), or social reasons (i.e., to prevent significant community impacts or conflict between user groups).

Applying the above criteria, NMFS has determined that the recent and unforeseen announcement by the Council that the implementation of FW 42 will be delayed beyond May 1, 2006, and the need to reduce F on specific groundfish stocks by the start of the 2006 fishing year, constitutes an emergency, as unforeseen events could cause serious conservation and management problems unless addressed

through immediate regulatory action. Although notice and comment rulemaking is being undertaken for this action, there is insufficient time to implement the proposed measures under the normal FMP amendment or framework process, leaving the sec. 305(c) emergency action process as the only means to implement such measures.

This emergency action is justified for ecological, economic, and social reasons. Despite the restrictive management measures currently in place for all sectors of the fishery, F for several groundfish stocks remains above the Amendment 13 target F levels for 2006. As a result, it is necessary to reduce F by constraining fishing effort by all sectors and in all areas managed by the FMP as quickly as possible. Failure to reduce or prevent overfishing by May 1, 2006, while the Council completes FW 42 would likely allow continued overfishing of several groundfish stocks, resulting in slower rebuilding, which would require even more stringent future management measures, resulting in additional economic and social consequences. In addition, the 2003 year class of GOM and GB cod must be carefully managed, particularly for the months when fishing effort and catch is typically high (i.e., May through July). Therefore, in order to come into full compliance with the requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, this emergency action is necessary until a more comprehensive management action can be completed by the Council and implemented by NMFS (i.e., FW 42).

Two programs approved in Amendment 13 and FW 40A were intended to help mitigate the economic and social impacts of the effort reductions of the FMP (the DAS Leasing Program and the Regular B DAS Pilot Program). The DAS Leasing Program, approved in Amendment 13, expires on April 30, 2006, while the Regular B DAS Pilot Program, approved in FW 40A, expired on October 31, 2005. Continuation of these programs, in part or in whole, would help mitigate the potential economic and social impacts of Amendment 13 effort reductions as well as further effort reductions and other measures proposed in this action. Thus, this emergency action proposes maintaining the DAS Leasing Program, as well as a modified version of the Regular B DAS Program.

Although the management measures proposed under this emergency action do not, by themselves, achieve the necessary Amendment 13 F reductions for all stocks (i.e., GB winter flounder,

CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder), it is anticipated that this action, in combination with measures proposed under FW 42, would achieve this objective, provided measures adopted under FW 42 are implemented as soon as possible. To ensure that the groundfish fishery meets the Amendment 13 rebuilding objectives, additional management measures through Secretarial action may be necessary during fishing year 2006.

Proposed Management Measures

All measures in effect prior to May 1, 2006, and not amended by this proposed emergency rule, would remain in effect after May 1, 2006. The current management measures include an Amendment 13 2006 fishing year default measure for the revision of the allocation ratio of Category A:B DAS from 60:40 to 55:45. This measure, therefore, is not discussed specifically in the description of the proposed measures that follows.

The following measures are proposed to be implemented on May 1, 2006, to reduce overfishing on particular groundfish stocks in need of F reductions.

1. Differential DAS Counting

Under this proposed emergency action, all NE multispecies Category A DAS used by a vessel issued a limited access NE multispecies DAS permit, with the exception noted below, would be charged at a rate of 1.4:1, regardless of area fished. Day gillnet vessels would be charged at a rate of 1.4:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 11 hours. For Day gillnet trips between 3 and 11 hours duration, vessels would be charged a full 15 hours. For example, a trawl vessel fishing in the GOM for 5 hours would be charged for 7 hours (5 hours \times 1.4) of DAS use. A Day gillnet vessel fishing in the GOM for 5 hours would be charged for 15 hours of DAS use; a Day gillnet vessel fishing in the GOM for 12 hours would be charged for 16.8 hours of DAS use (12 hours \times 1.4).

A vessel issued a limited access monkfish Category C, D, F, G, or H permit fishing under a monkfish DAS would have its NE multispecies DAS charged at a rate of 1.4:1, but its monkfish DAS would continue to be charged at a rate of 1:1. Because differential DAS counting could result in a net allocation of NE multispecies Category A DAS that is less than the number of monkfish DAS allocated, some Category C, D, F, G, or H monkfish vessels would not have sufficient

groundfish DAS to ensure that they could fish their full allocation of monkfish DAS. To accommodate this, a Category C, D, F, G, or H monkfish vessel could fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Such vessels would be limited to monkfish-only DAS equal to their net monkfish DAS allocations (including carry-over DAS) minus their net NE multispecies Category A DAS allocation (including carry-over DAS), divided by 1.4. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a net NE multispecies DAS allocation of 20 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25.7 DAS (40 monkfish DAS—14.3 NE multispecies DAS (20 NE multispecies DAS divided by 1.4)).

The proposed differential DAS counting under this emergency action would expand the Amendment 13 default measure (limited to the SNE/MA RMA only) throughout all RMAs managed by the FMP. In conjunction with the Amendment 13 fishing year 2006 default measure that changes the Category A:B DAS ratio from 60:40 to 55:45, differential DAS, as proposed in this action, would help achieve the necessary F reduction for GOM cod and white hake, as well as provide some measure of F reduction for the other stocks in need of further protection. Further, expanding differential DAS counting to include the GOM and GB RMAs would help prevent a redirection of effort into these areas, and would facilitate adaptation to measures being proposed by the Council for implementation in FW 42.

The proposed measure would charge Category A DAS at a rate of 1.4:1, but would not change the way Category B DAS are charged. Category A DAS represent relatively unregulated effort that could be directed anywhere within the NE Region. However, the use of Category B DAS in either approved SAPs or the Regular B DAS Program is highly regulated, with specific provisions (area restrictions, gear requirements, trip limits, etc.) to ensure that such effort does not jeopardize rebuilding programs for specific stocks. Fishing mortality attributed to Category B DAS is strictly controlled and limited by hard incidental catch TACs for stocks of concern that result in area/program closures, once reached. In addition, Category B (Regular) DAS used in the Regular B DAS Program proposed under this action would be charged at a higher rate (24 hours for any calendar day or

part of a calendar day fished) than Category A DAS, further limiting the impact of these DAS. As a result, there is little need to change the manner in which Category B DAS are charged, as F from these DAS is already highly restricted.

The application of differential DAS counting to Day gillnet trips proposed by this action was developed to ensure that the application of this measure would be consistent with the current system of counting DAS between Day gillnet vessels and vessels using other gear types.

2. GOM Cod Trip Limit

For vessels operating under a NE multispecies DAS, the possession limit of GOM cod would be reduced from 800 lb (363 kg) per DAS, up to 4,000 lb (1,814 kg) trip; to 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip. For vessels operating under the limited access NE multispecies Handgear A permit regulations, the GOM cod possession limit would be reduced from 300 lb (136 kg) per trip to 250 lb (113 kg) per trip. The GOM cod trip limit for vessels operating under the open access Handgear B provisions would be maintained at 75 lb (34 kg) per trip.

The 600-lb (272-kg) per DAS trip limit for GOM cod strikes a balance between minimizing incentives to target this species and concerns over excessive discards. Preliminary analysis of recent trips indicates that a such a trip limit would result in decreased F at only a slightly higher discard rate. Further, a majority of trips within the GOM caught less than 600 lb (272 kg) of GOM cod per DAS.

The current regulations state that the GOM cod trip limit for vessels issued a limited access NE multispecies Handgear A or an open access NE multispecies Handgear B permit will be adjusted proportionally to the GOM cod trip limit for NE multispecies vessels fishing under a DAS. The regulations at § 648.82(b)(6) (suspended, with revised text at § 648.82(u)(6) under this proposed action) state that the adjusted GOM cod trip limit for Handgear A vessels would be rounded up to the nearest 50 lb (22.7 kg), while the regulations at § 648.88(a)(1) state that the adjusted GOM cod trip limit for Handgear B vessels would be rounded up to the nearest 25 lb (11.3 kg). Since this action proposes a 25-percent reduction in the GOM cod trip limit, a similar reduction, using the adjustment criteria specified in the regulations, results in the proposed trip limits for handgear vessels.

3. GB Yellowtail Flounder Trip Limit

Under this action, the GB yellowtail flounder trip limit would be reduced from an initial unlimited amount to 10,000 lb (4,536 kg) per trip. Based on the likelihood that the GB yellowtail flounder TACs will continue to remain relatively small over the next several years, there is an elevated risk that the small GB yellowtail flounder TAC for the U.S./Canada Management Area will be harvested before the end of the fishing year for the immediate future. This measure attempts to prolong the availability of the small 2006 GB yellowtail flounder TAC during the 2006 fishing year, minimizing the possibility that the TAC would be caught prior to the end of the 2006 fishing year, thereby increasing the chance of achieving optimum yield from the TACs of GB cod and GB haddock specified for the Eastern U.S./Canada Area.

4. CC/GOM and SNE/MA Yellowtail Flounder Trip Limit

The proposed emergency action would reduce the CC/GOM and SNE/MA yellowtail flounder trip limits as follows: 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip during July, August, September, December, January, February, March, and April; 250 lb (113 kg) per trip during May, June, October, and November.

The current trip limits for these two yellowtail flounder stocks are inconsistent with one another with respect to the time periods during which the 250-lb (113-kg) trip limit is in effect (currently April, May, Oct., Nov. for CC/GOM yellowtail flounder; and March, April, May, June for SNE/MA yellowtail flounder). The current trip limits for the other portion of the year is 750 lb (340 kg) per DAS, up to 3,000 lb (1,361 kg) per trip. The proposed reduction to 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip for the duration of the emergency action would further reduce fishing mortality on these stocks and attempt to minimize regulatory discards, while simplifying industry understanding and enforcement of this trip limit.

5. Modified Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by FW 40A (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a SAP (and outside of closed areas) to target stocks that can withstand additional fishing effort. This program is regulated by a series of measures, including DAS limits, low trip limits, and incidental

catch TACs for stocks of concern (i.e., groundfish stocks that cannot withstand additional fishing effort). Because of uncertainties in the operation of this program, it was implemented only for 1 year, and expired on October 31, 2005. This proposed emergency rule would "reinstate" a Regular B DAS Program with measures similar to those originally implemented by FW 40A, but would modify specific measures to achieve the objectives of this emergency action, as specified below. Due to the limited duration of this proposed Secretarial action, this program would no longer be called a "pilot" program.

The Regular B DAS Pilot Program originally implemented by FW 40A allowed vessels issued a limited access monkfish Category C, or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the monkfish FMP, which requires such vessels to use a NE Multispecies DAS every time a monkfish DAS is used. Recent information indicates that Category C and D monkfish vessels were able to successfully target monkfish under the Regular B DAS Pilot Program during fishing years 2004 and 2005, and will likely increase this effort, as additional restrictions on groundfish are implemented under FW 42. A recent assessment of the monkfish resource in 2005, based upon the results of Stock Assessment Workshop 40 and an evaluation of the past three years of fall trawl surveys, indicates that the pace of monkfish rebuilding has slowed. Therefore, to reduce mortality on monkfish resulting from the use of Regular B DAS, this emergency action would restrict Category C, D, or F monkfish vessels (i.e., those monkfish vessels permitted to fish in the U.S./Canada Management Area) to the monkfish incidental catch limits when fishing under the Regular B DAS Program proposed by this action. Further, Category C, D, or F monkfish vessels may not use a NE multispecies Regular B DAS and a monkfish DAS under the Regular B DAS Program on the same trip. These vessels would still be able to participate in this program, but they would be required to fish under a NE multispecies DAS only and would be subject to the incidental catch limits for monkfish.

The proposed action would allow eligible vessels to fish under the Regular B DAS Program to target healthy groundfish stocks (primarily GB haddock, pollock, and redfish) within the U.S./Canada Management Area only. Vessels that have declared a Regular B DAS Program trip would not be allowed to fish on that trip in an approved SAP. In order to limit the potential biological

impacts of the program, only 500 Regular B DAS may be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). These DAS would not be allocated to individual vessels, but would be used by vessels on a first-come, first-served basis. Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS.

Vessels participating in this program would be required to be equipped with an approved Vessel Monitoring System (VMS). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: Vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program would be required to report their catches of groundfish stocks of concern daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish would not be subject to this reporting requirement.

Vessels fishing in this program would be prohibited from discarding legal-sized regulated groundfish, and would be limited to landing 100 lb (45.4 kg) of each groundfish species of concern per DAS, unless further restricted (see below). Further, vessels would be required to use a haddock separator trawl when participating in this program. Possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species. To further reduce the targeting of monkfish under this program, Category C, D, and F monkfish vessels

participating in this program would be restricted by the monkfish incidental catch limits. In the Northern Fishery Management Area, the limit is 400 lb (181 kg) tail weight per DAS, or 50 percent of the total weight of fish on board, whichever is less. In the Southern Fishery Management Area, the incidental catch limit is 50 lb (23 kg) tail weight per DAS. Discarding of legal-sized monkfish would be prohibited when fishing under this program. If a vessel harvests and brings on board legal-sized groundfish species of concern or monkfish in excess of these landing limits, the vessel operator would be required to retain the excess catch, and immediately notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS at a rate of 1.4:1, and would be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Program limits).

In order to ensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip divided by 1.4. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5 divided by 1.4, or 3.6 days. Therefore if the vessel were fishing under a Regular B DAS for 3.6 days, but was required to flip, the balance of Category A DAS would be sufficient to account for the amount of time fished (3.6 days fished times 1.4 DAS = 5 Category A DAS). However, to ensure that there is an adequate amount of Category A DAS available should the vessel be required to "flip" its DAS, it is advisable that a vessel owner, when planning a Regular B DAS Program trip, fish a lower number of Regular B DAS than the required maximum number. In the above example, if the vessel had a Category A DAS balance of 5, and fished 3.6 days of Regular B DAS prior to flipping, the amount of Category A DAS necessary to account for the time already fished would be available, but no additional Category DAS would be available for use between the time of flipping and the end of the trip. The

proposed requirement would allow a vessel owner the potential to maximize the use of Regular B DAS.

NMFS would administer the quarterly Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS would not serve to reserve a vessel's right to fish under a Regular B DAS. Once the maximum number of Regular B DAS were used in a quarter, the Regular B DAS Program would end for that quarter.

In order to limit the potential impact on F that the use of Category B DAS (Regular or Reserve) may have on groundfish stocks of concern, a quarterly incidental catch TAC would be set for groundfish stocks of concern for each program allowing the use of Category B DAS (Regular or Reserve). This action would add GB winter flounder and GB yellowtail flounder to the list of groundfish stocks of concern, based on the results of the GARM II, and allocate a portion of the incidental TAC to the Regular B DAS Program. The Regular B DAS Program quarterly incidental catch TACs would be divided to correspond to the allocation of Regular B DAS among quarters, such that the 1st quarter (May–July) would receive 13 percent of the incidental TACs, and the remaining quarters (August–October, November–January, and February–April) would each receive 29 percent of the incidental TACs.

If the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the Regular B DAS Program in the U.S./Canada Management Area would be prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter.

The Administrator, Northeast Region, NMFS (Regional Administrator) would have the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program, or if the level of observer coverage were insufficient to make such a projection.

The provisions included in this measure are necessary to prevent additional fishing effort under the Regular B DAS Program from increasing F for stocks that are in need of the greatest F reductions for the 2006 fishing year (i.e., GOM cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder). Restricting this program to the U.S./Canada

Management Area facilitates the monitoring and enforcement of provisions of the Regular B DAS Program, as proposed incidental catch TACs for stocks of concern in the GOM and SNE/MA RMAs may be too small to be monitored effectively. Further, the current regulations of the U.S./Canada Management Area provide sufficient authority to the Regional Administrator to monitor and control fishing activity under this program to ensure that incidental catch TACs are not exceeded during the 2006 fishing year. Moreover, restricting this program to the U.S./Canada Management Area would not affect the majority of vessels participating in this program, as previous fishing practices indicate that very few trips under this program were taken in the GOM or SNE/MA RMA. As a result, this measure provides some assurance that additional F under this program would be controlled and would not be redirected into the GOM or SNE/MA RMAs, but it would also provide economic and social benefits without altering vessel behavior to any great degree.

6. Redefinition of Incidental Catch TACs and Allocation to Special Programs

Incidental catch TACs were first adopted in FW 40A in order to limit the catch of stocks of concern while vessels were using Category B DAS. As a result of groundfish assessments completed under GARM II, FW 42 would modify the number of incidental catch TACs, as well as the size and allocation of such

incidental catch TACs. FW 42 proposes two new stocks of concern (GB yellowtail flounder and GB winter flounder are either overfished and/or overfishing is occurring) and the creation of incidental catch TACs for these two stocks in order to limit the impact of the use of Category B DAS on such stocks. Secondly, FW 42 proposes modification of the size of the incidental catch TACs with respect to the target TACs from which they are calculated (see Table 2).

Because FW 42 has been delayed, the definition of the two new stocks of concern, the creation of two new incidental catch TACs, and the reallocation of incidental catch TACs among special programs are proposed in this action (Table 3). If the incidental TACs were not defined under this emergency, the use of Regular B DAS during the time this action is in place would undermine the achievement of the goals of the FMP (see discussion of Regular B Program in Section 4 of this preamble). If a change in the allocation of catch TACs among special programs were not proposed by this action, the special programs would be inconsistent with the intent of the Council. The programs that would be impacted by these proposed TACs are the Regular B DAS Pilot Program and potentially, the Eastern U.S./Canada Haddock SAP Program, if FW 42 implementation is delayed beyond August 1, 2006. Although this action would not impact many stocks of concern, in order to

simplify the process of TAC specification for the 2006 fishing year, as well as reduce confusion in the industry, this action defines the incidental catch TACs for all stocks of concern, and allocates TAC among programs consistent with FW 42 proposals. Note that this action does not specify values for TACs for the 2006 fishing year. A separate action is being developed by NMFS that will specify all TACs for the FMP for the 2006 fishing year (Incidental Catch TACs, Target TACs, and U.S./Canada Management Area TACs for GB).

TABLE 2.—DEFINITION OF INCIDENTAL CATCH TACs

Stock	Percentage of total
GB cod	2
GOM cod	1
GB yellowtail flounder	2
CC/GOM yellowtail flounder	1
SNE/MA yellowtail flounder	1
American plaice	5
Witch flounder	5
SNE/MA winter flounder	1
GB winter flounder	2
White hake	2

These incidental catch TACs would be distributed to the various programs that utilize Category B DAS and catch these stocks of concern. The incidental catch TACs are proposed to be distributed among the Category B DAS programs as indicated in Table 3:

TABLE 3.—DISTRIBUTION OF INCIDENTAL CATCH TACs FOR CATEGORY B DAS PROGRAMS

Stocks of concern	Regular B DAS program (percent)	Closed area I hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod	50	16	34
GB yellowtail flounder	50	NA	50
GB winter flounder	50	NA	50
Witch flounder	100	NA	NA
American plaice	100	NA	NA
White hake	100	NA	NA

7. DAS Leasing Program

The DAS Leasing Program was originally implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery. The DAS Leasing Program was implemented for a duration of 2 years, and will expire on April 30, 2006. This action proposes to continue the DAS Leasing Program, as originally implemented by Amendment 13. The following briefly summarizes the provisions that form the basis of the

DAS Leasing Program. These provisions would be continued unchanged, as implemented by Amendment 13:

All vessels issued a valid limited access groundfish DAS permit would be eligible to lease groundfish Category A DAS to or from another such vessel. DAS associated with a certification of permit history could not be leased. Vessels issued a Small Vessel or Handgear A permit, i.e., vessels that do not require the use of groundfish DAS, would not be allowed to lease DAS, and vessels participating in an approved

sector under the proposed Sector Allocation Program would not be allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector. An eligible vessel wanting to lease groundfish DAS would be required to submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Upon approval of the application by NMFS, the lessor and lessee would be sent written confirmation of the approved

application. Leased DAS would be effective only during the fishing year for which they were leased. A vessel could lease to as many qualified vessels as desired, provided all DAS leasing requests are consistent with the restrictions and conditions of the DAS Leasing Program. No subleasing of groundfish DAS would be allowed (i.e., any leased DAS could not be leased a second time) and vessels would not be allowed to lease carry-over DAS. Only Category A DAS could be leased.

The maximum number of DAS that could be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee would be able to utilize that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a vessel owner wants to lease additional DAS for a limited access multispecies, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it could lease would be 88. All leased DAS must be used in accordance with the DAS accounting regulations (i.e., differential DAS counting) proposed by this action. A lessor (vessel leasing DAS to another vessel) may not lease DAS to any vessel with a main engine horsepower rating that is 20 percent more than that of the lessor vessel, and may not lease DAS to any vessel that is 10 percent more than that of the lessor vessel's length overall. The vessel specifications used for the DAS Leasing Program are based on the permit baseline as of January 29, 2004, the publication date of the Amendment 13 proposed rule (69 FR 4362).

Because DAS use and landing history may be used to determine fishing rights in a future management action, the DAS Leasing Program includes a presumption for how such history would be accounted. For ease of administration, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS would be presumed to be attributed to the lessee vessel (vessel receiving leased DAS). However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program. For the purposes of DAS-use history, leased DAS would be considered to be the first DAS to be used, followed by the allocated DAS. Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and

costly for NMFS to implement. In the case of multiple lessors, the leased DAS actually used would be attributed to the lessors based on the order in which such leases were approved by NMFS.

Limited access NE multispecies vessels that are also issued a limited access monkfish Category C, D, F, G, or H permit would be required to fish their available monkfish DAS in conjunction with their groundfish DAS, including leased DAS. If a monkfish Category C, D, F, G, or H vessel leases groundfish Category A DAS to another vessel, the lessor vessel would be required to forfeit a monkfish DAS for each groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS - 37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C, D, F, G, or H vessels must fish a groundfish A DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where groundfish A DAS are leased (transferred) would allow monkfish and groundfish A DAS to be fished independently.

Continuing the DAS Leasing Program in this emergency action would help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort. The provisions detailed above for the DAS Leasing Program are proposed for implementation under this emergency action and are identical to those proposed for continuation under FW 42 in order to maintain consistency of the measures in this action with those adopted by the Council for implementation by FW 42 and to simplify the administration of this program.

8. Eastern U.S./Canada Haddock SAP

This proposed emergency action would delay the opening of the Eastern U.S./Canada Haddock SAP from May 1 to August 1. This measure would also allocate a portion of the GB yellowtail flounder and GB winter flounder incidental catch TAC to the Eastern U.S./Canada Haddock SAP (see Table 3). As explained above, the value of these new incidental catch TACs are being specified through a concurrent agency action for implementation by May 1, 2006. An incidental catch TAC

for GB cod for this SAP was previously allocated under FW 40A (November 19, 2004; 69 FR 67780). Once any of these incidental catch TACs are caught, the use of Category B (Regular or Reserve) DAS in this SAP would be prohibited. Finally, possession of flounders (all-species, combined), monkfish (whole weight), and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species.

This proposed measure would delay the opening of the SAP so that lower cod catch rates would allow more of the haddock TAC to be harvested while reducing the catch (and bycatch) of GB cod. This measure is based, in part, on recommendations of the Groundfish Advisory Panel and the Groundfish Committee. The Advisors suggested delaying the start date of this SAP to August 1, due to concerns over lower price for haddock, poor condition of the fish due to recent spawning, and to provide further protection for GB cod and GB yellowtail flounder by eliminating bycatch of these species under this SAP from May through July. The incidental catch TACs for GB yellowtail flounder and GB winter flounder would prevent this SAP from threatening mortality objectives for these stocks.

9. Eastern U.S./Canada Area Flexibility

This emergency action proposes to allow a vessel that begins a fishing trip in the Eastern U.S./Canada Area to choose to fish in other areas on the same trip. If a vessel chooses to fish outside of the Eastern U.S./Canada Area after fishing inside that area, the operator must notify NMFS via VMS prior to leaving the dock or prior to leaving the Eastern U.S./Canada Area on its return to port and must comply with the most restrictive possession limits for the areas fished. A vessel electing to fish inside and outside of the Eastern U.S./Canada Area would be charged Category A DAS for the entire trip and the vessel would not receive any steaming time credit. In addition, all cod and haddock caught on the entire trip would be applied against the Eastern U.S./Canada Area TACs for these species, all yellowtail flounder would be applied to the overall U.S./Canada Management Area TAC for this species. The vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip. A vessel is prohibited from fishing outside of the Eastern U.S./Canada Area on the same trip if it has already exceeded the restrictive possession limits for a

particular species outside of the Eastern U.S./Canada Area. For example, if a vessel fishing in the Eastern U.S./Canada Area in June has already caught 500 lb (226.8 kg) of GB yellowtail flounder, the vessel operator would be prohibited from fishing in the GOM RMA or SNE/MA RMA on the same trip because the vessel has already exceeded the June SNE/MA and GOM yellowtail flounder possession limit of 250 lb per trip (113.4 kg per trip) proposed by this action. However, the vessel could continue to fish within the Western U.S./Canada Area for the remainder of the trip.

This measure addresses a potential safety concern which could arise out of the Amendment 13 restriction that vessels fishing in the Eastern U.S./Canada Area cannot fish in any other area. If worsening weather is forecast, a vessel captain fishing in the Eastern U.S./Canada Area currently has only two choices: End the trip early, or continue to fish in the Eastern U.S./Canada Area. The vessel operator cannot "hedge his bets" by choosing to fish closer to shore after leaving the Eastern U.S./Canada Area. The risk is that fishermen will keep fishing in the area until it is too late to evade a rapidly advancing storm. This measure would provide fishermen another option, which would reduce the chances of an economic loss for the trip, and therefore, reduce the economic incentive for a vessel operator to fish under unsafe weather conditions. In order to prevent misreporting of cod and haddock caught in the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip would be applied to the species TACs for that area. This is a conservative approach that will help ensure the U.S./Canada Area TACs are not exceeded. Prohibiting a vessel from fishing outside of the Eastern U.S./Canada Area on the same trip if it has exceeded a possession limit for a specific stock is necessary to properly enforce the possession limit provisions of the FMP. These proposed measures are consistent with the measures adopted by the Council for implementation in FW 42.

10. Recreational Restrictions

Under this proposed action, private recreational vessels and vessels fishing under the charter/party regulations of the FMP would be prohibited from possessing or retaining any cod from the GOM RMA from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM would be increased from 22 inches (56 cm) to 24 inches (61 cm) for the duration of

this emergency action. Private recreational and charter/party vessels would be allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

These measures are intended to achieve a proportional share of the necessary F reductions for GOM cod from the recreational sector. These measures are designed to achieve the same reduction in F for GOM cod as that achieved by measures intended to reduce F for this species in the commercial fishery, as described above. The gear and cod stowage requirements are necessary to properly enforce these measures. These measures are consistent with the measures adopted by the Council for implementation in FW 42.

Classification

Because this action is a proposed rule, at this time, NMFS has not made a final determination that the emergency measures that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in the Executive Summary and Sections 3.0 and 4.0 of the EA prepared for this action.

As described above, the proposed action would implement measures to immediately reduce fishing mortality on particular groundfish stocks for the start of the 2006 fishing year on May 1, 2006. This action is necessary to maintain efforts to continue the rebuilding programs established under Amendment 13. The DAS Leasing Program and a modified Regular B DAS Program would be continued in this action to help offset some of the economic and social impacts of

continued effort reductions in the groundfish fishery and to provide some means of regulating effort shifts caused by differential DAS counting proposed by this action.

Because this action largely builds on and amends Amendment 13 and subsequent framework actions, measures for which numerous alternatives were considered, NMFS only fully considered two alternatives for analysis: The proposed emergency action and the No Action alternative. Two other alternatives (area closures and a hard TAC alternative) were considered, but were rejected because they did not meet the objectives of this action. The area closure alternative included closing portions of the GOM RMA and was rejected because these alternatives could have forced fishing effort to move into other RMAs, would have prohibited a majority of the fishing industry from operating in the GOM and could have caused unnecessary impacts on healthy groundfish stocks. The hard TAC alternative included hard TACs for species requiring F reductions for 2006, but were rejected because current data collection mechanisms do not allow for the complete, real-time catch monitoring that would be necessary for a hard-TAC alternative and that such an alternative would be inconsistent with measures adopted in FW 42. Analysis of this proposed emergency action examined the impacts on the fishing industry that would result from the continuation of the current management measures (i.e., the set of measures currently in place for the NE multispecies fishery through the October 14, 2005, implementation of measures contained in FW 41 (70 FR 54302; September 14, 2005)), along with the measures proposed by this emergency action and described in the SUMMARY. The No Action alternative is defined as the current management measures, including the two default measures implemented by Amendment 13 (a change in the ratio of Category A to Category B DAS from 60:40 to 55:45, and differential DAS counting at a rate of 1.5:1 in the SNE/MA RMA). The No Action alternative would retain the current trip limits for GOM cod and CC/GOM, GB, and SNE/MA yellowtail flounder. In addition, under the No Action alternative, the DAS Leasing Program and the Regular B DAS Pilot Program would expire prior to May 1, 2006, and the Eastern U.S./Canada Haddock SAP would expire on November 18, 2006.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impact, only vessels that actually participated in an activity during fishing year 2004 that would be affected by the proposed action were considered for analysis. During fishing year 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In fishing year 2004, 705 entities participated in the commercial groundfish fishery and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on fishing year 2004 data, the proposed action would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during fishing year 2004–2005.

The SBA size standard for small commercial fishing entities is \$4 million in gross sales, and the size standard for small party/charter operators is \$6.5 million. Available data for fishing year 2004 gross sales show that the maximum gross for any single commercial fishing vessel was \$1.8 million, and the maximum gross sales for any affected party/charter vessel was \$1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and party/charter fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

Economic Impacts of the Proposed Action

The proposed action would continue the Amendment 13 default measure that would reduce the number of available Category A DAS. In addition, the proposed action would implement differential DAS counting for all Category A DAS used in all RMAs at a rate of 1.4:1, reduce trip limits for several species, continue the DAS Leasing Program and a modified Regular B DAS Program restricted to the U.S./Canada Management Area, delay the start date of the Eastern U.S./Canada Area Haddock SAP, allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, and impose recreational fishing measures designed to reduce fishing mortality on GOM cod. The economic impacts of the proposed differential DAS counting and trip limits were able to be assessed using the Closed Area Model (CAM). Separate analyses were conducted for the impacts of the continuation of the DAS Leasing Program and a modified Regular B DAS Program, the delayed start date for the Eastern U.S./Canada Haddock SAP, and the recreational measures.

The results of the CAM indicate that the proposed action would have the greatest impact on vessels from Maine, New Hampshire, and Massachusetts. The proposed action would have a disproportionate impact on groundfish vessels in excess of 70 ft (21.3 m) length overall and would affect trawl vessels more than gillnet or hook gear vessels. Vessels with the highest yearly gross sales (i.e., more than \$320,000) would be more affected than vessels with lower yearly gross sales. Of the 858 participating commercial fishing vessels, more than 80 percent may be expected to incur at least some reduction in net return in fishing year 2006 compared to fishing year 2004–05 levels. One-half of all participating vessels would be expected to have net returns reduced by at least 12 percent from their 2004 net returns, and 25 percent (215) of all participating vessels may incur losses in net returns that exceed 22 percent. Overall, the proposed action is expected to result in a 28-percent reduction in fishing revenue, for an aggregate impact of \$30.5 million in gross sales. This loss represents less than 4 percent of total region-wide fishing revenues from all species. Total groundfish revenue is expected to be reduced by 32 percent, resulting in an estimate of \$53 million in the landed value of groundfish for fishing year 2006.

Because the proposed action would affect vessels that may participate in the Eastern U.S./Canada Haddock SAP and/or the Regular B DAS Program, and participation in these programs is voluntary, it is difficult to estimate the impact on any given small entity participating in these programs. During fishing year 2004, catch rates of cod in the Eastern U.S./Canada Area Haddock SAP during May and June were sufficient to close the SAP well before the allowable TAC for haddock could be harvested. Delaying the start date for the Eastern U.S./Canada Area Haddock SAP is expected to reduce the amount of cod taken in the SAP, and would allow for more trips to be taken to the SAP, resulting in an increase in the amount of harvested haddock. Therefore, this measure would likely provide greater economic opportunity to small commercial fishing entities than if the regulation were left unchanged.

The proposed action would continue a modified Regular B DAS Program. This program differs from that originally implemented by FW 40A in that the proposed program would restrict this program to the U.S./Canada Management Area, reduce the number of available Regular B DAS in this program between May and July to 500, require participating vessels to use a haddock separator trawl, and implement incidental catch TACs and restrictive possession limits for GB winter flounder and GB yellowtail flounder. Analysis of the impacts of the modified Regular B DAS Program in the U.S./Canada Management Area suggests that the proposed action changes may diminish the extent to which the program will improve economic opportunities for commercial fishing vessels compared to the Regular B DAS Pilot Program implemented under FW 40A. Restricting the program to the U.S./Canada Management Area under this proposed action may put smaller vessels (in terms of physical size) at a disadvantage relative to larger vessels, due to the distance from shore that vessels would have to traverse to access the area. The requirement to use the separator trawl or gear that meets specified standards means that, in order to participate, vessels would be required to bear the added cost of acquiring new gear, or incurring the expense of modifying existing gear. Vessels operating at the brink of break-even may not be able to afford this added expense. However, the implementation of incidental catch TACs for GB winter flounder and GB yellowtail flounder is expected to have the greatest economic impact to participating vessels. First, revenue

from the sale of these two species will be dramatically reduced, as the incidental TAC would be set at levels that would be nearly 10 times lower than observed landings during fishing year 2004. Second, available data indicate that catch rates of GB winter flounder may be sufficient to result in closure of the area to Regular B DAS well before the quarterly allocation of Regular B DAS has been used. Unless the separator trawl also reduces catches of winter and yellowtail flounders in addition to cod, the estimated revenues from the Regular B DAS Program in fishing year 2006 (about \$3 million) may be as much as two-thirds less than what was observed under the Regular B DAS Pilot Program during fishing years 2004 and 2005.

The continuation of the DAS Leasing Program through this proposed action would continue to offer economic benefits that help offset the impacts of the effort reductions of Amendment 13 and those proposed by this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses. Assuming that the DAS Leasing Program would operate in a similar manner as previous years, the benefits of this program would likely accrue primarily to lessee vessels in Maine and Massachusetts.

This emergency action would delay the start date of the Eastern U.S./Canada Haddock SAP to August 1, 2006. Based on catch rates observed between May through July 2005, this delay could result in the loss of \$1.25 million based on revenue generated from the sale of landed catch during this period. However, this loss is expected to be offset by the potential for this delayed start date to prolong availability of the GB cod and GB yellowtail flounder TACs specified for the Eastern U.S./Canada Area and this program. In doing so, vessels may obtain higher prices for these species throughout the year than they would if they were allowed to land larger amounts early in the fishing year, creating a glut in the market.

By allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, the proposed action would allow fishermen more flexibility to adapt to weather conditions and to respond to potential economic advantages in cases where fishing may be poorer than anticipated. In these cases, vessel operators may find it to their advantage to leave the Eastern U.S./Canada Area and fish more profitably elsewhere. In doing so, vessels would be able to maximize the economic returns of trips into the

Eastern U.S./Canada Area. However, it is impossible to predict the behavior of vessels electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip. As a result, quantitative estimates of economic impact of this measure are not possible. It is expected that the economic impacts of this measure would be positive.

This proposed action would implement a seasonal prohibition on retention of cod from November through March and would increase the minimum size from 22 to 24 inches (55.9 to 61 cm) for party/charter and private recreational vessels. A total of 143 different party/charter vessels took at least one trip in the GOM and landed cod. Small party/charter fishing businesses would be affected by these changes through any potential reductions in passenger demand for recreational party/charter fishing trips. The seasonal prohibition on possession of cod would likely affect passenger demand if cod is a preferred target species, even if fishing for alternative groundfish species (primarily haddock) would still be allowed. The economic impact of the seasonal prohibition would have no impact on most party/charter operators since only 25 of the 143 affected vessels actually took any trips during the proposed season. Of these 25 affected vessels, only 2 took passengers for hire exclusively during the duration of the proposed seasonal prohibition, and the reduction in passenger fees on the other 23 vessels was estimated to range from less than 1 percent to a high of 29 percent, with a median loss of 9 percent. However, the number of passengers carried by these vessels during the proposed seasonal prohibition represented only about 2 percent of the market for party/charter passengers that landed cod in the GOM during fishing year 2004 and would have only a small impact on the competitive market for recreational fishing passengers. Since a much larger proportion of private boat trips take place during these months, the adverse impact would be more for private boat anglers as compared to party/charter anglers.

Economic Impacts of Alternatives to the Proposed Action

The other alternative to the proposed action that was analyzed was the No Action alternative. The No Action alternative includes the default Amendment 13 reduction in the number of available Category A DAS. However, the No Action alternative does not include the DAS Leasing Program or the Regular B DAS Pilot Program, as these programs have or would expire before

the start of the 2006 fishing year on May 1, 2006. This alternative would also retain the current GOM cod trip limit of 800 lb (363 kg)/DAS, up to 4,000 lb (1,814 kg)/trip; no trip limit for GB yellowtail flounder; and a seasonal trip limit of 750 lb (340 kg)/DAS, up to 3,000 lb (1,361 kg)/trip and 250 lb (113 kg)/trip for CC/GOM and SNE/MA yellowtail flounder.

The No Action alternative would result in an estimated reduction in total groundfish revenue of 6 percent, resulting in an estimated landed value of groundfish for fishing year 2006 of \$73 million, while total revenue on trips where groundfish are landed would decrease by 7 percent. Compared to the landed value of all species landed in the NE region, the reduction in combined groundfish trip value represents about 0.7 percent of the total. The estimated reduction in groundfish trip revenue is highest in ports bordering the SNE/MA RMA, but the overall impact is expected to be greatest on ports in the GOM. Total net returns to the vessel owner and crew would decrease by an average of 3–4 percent. As with the proposed action, larger trawl vessels would be most affected by the No Action alternative, with the greatest impacts on those vessels with the greatest dependence on groundfish.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Public reporting burden for these collections of information are estimated as follows:

1. GB cod research set-aside TAC request. OMB #0648–0202 (30 min/response);
2. VMS purchase and installation, OMB #0648–0202, (1 hr/response);
3. VMS proof of installation, OMB #0648–0202, (5 min/response);
4. Automated VMS polling of vessel position, OMB #0648–0202, (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB #0648–0202, (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and

associated SAPs, OMB #0648-0202, (2 min/response);

7. Daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas and associated SAPs, respectively, OMB #0648-0212, (15 min/response);

8. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB #0648-0212 (15 min/response);

9. DAS "flip" notification via VMS for the Regular B DAS Program, OMB #0648-0202 (5 min/response);

10. DAS Leasing Program application, OMB #0648-0475 (10 min/response); and

11. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB #0648-0202 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is currently being interpreted as a modification of the DAS "flip" notification. When a vessel "flips" its DAS declaration from Category B DAS to Category A DAS, it is informing NMFS that it is changing the DAS being used for that trip. In a similar manner, a vessel would "flip" its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure overestimated the number of DAS flips that would occur during a particular fishing year, this action proposes to reduce the burden associated with that measure and add a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions would more accurately reflect vessel practices. To document this revision, the information collection previously approved by the OMB under OMB #0648-0202 is being revised by means of a worksheet, as authorized by consultation with the OMB. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to DavidRostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 24, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraphs (a)(1)(i)(A), (B), (E), (G), and (J); (a)(2)(i)(B), (E), (G), and (J); (a)(3)(i)(B), (E), (G), and (J); (a)(4)(i)(B), (E), (G), and (J); (a)(5)(i)(B), (E), (G), and (J); (a)(6)(i)(B), (E), (G), and (J); (a)(7)(i)(B), (E), (G), and (J); (a)(9)(i)(E), (G), and (J); (a)(12)(i)(B)(2), (E), (G), and (J); (a)(13)(i)(B) and (G); and (c)(2)(iii)(A) are suspended and paragraphs (a)(1)(i)(N) through (R); (a)(2)(i)(N), (P), and (Q); (a)(3)(i)(M) through (P); (a)(4)(i)(N) through (Q); (a)(5)(i)(M) through (P); (a)(6)(i)(M) through (P); (a)(7)(i)(M) through (P); (a)(9)(i)(O) through (Q); (a)(12)(i)(N) through (Q); (a)(13)(i)(O) and (P); and (c)(2)(iii)(C) are added to read as follows:

§ 648.4 Vessel permits.

- (a) * * *
- (1) * * *
- (i) * * *

(N) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(N). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(u)(6), if

it meets the criteria described under paragraphs (a)(1)(i)(N)(1), (2), and (3) of this section.

(1) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(3) *Application/renewal restrictions.* The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(R) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(P) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(u)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable; and

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(Q) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(t), and the NE Multispecies DAS Transfer Program, as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(R) *Confirmation of permit history.* Notwithstanding any other provisions of

this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(P) of this section.

* * * * *

- (2) * * *
- (i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (3) * * *
- (i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.
 (P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (4) * * *
- (i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.
 (Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (5) * * *
- (i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.
 (P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (6) * * *
- (i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.
 (P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (7) * * *
- (i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.
 (N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.
 (O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.
 (P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (9) * * *
- (i) * * *

(O) *Replacement vessels.* (1) See paragraph (a)(1)(i)(P) of this section.
 (2) A vessel ≥ 51 GRT that lawfully replaced a vessel < 51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this

section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(2) or (4) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3), or (4) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(4) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of permit history.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

- (12) * * *
- (i) * * *

(N) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) *Replacement vessels.* The provisions of paragraph (a)(1)(i)(P) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

(Q) *Confirmation of permit history.* The provisions of paragraph (a)(1)(i)(R) of this section apply.

* * * * *

- (13) * * *
- (i) * * *

(O) *Fishing years 2003 and beyond.* For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

* * * * *

- (c) * * *

- (2) * * *
- (iii) * * *

(C) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation, as described in § 648.82(s). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

3. In § 648.10, paragraphs (b)(1)(vii); (b)(2)(i), (iii), and (iv); (b)(3)(i)(A) and (C); (b)(3)(ii) and (iii); (c)(1) and (3); and (f)(2) are suspended and paragraphs (b)(1)(x); (b)(2)(v) through (vii); (b)(3)(i)(E) and (F); (b)(3)(iv) and (v); (c)(6) and (7); and (f)(3) are added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

- (b) * * *
- (1) * * *

(x) A vessel electing to fish under the Regular B DAS Program, as specified in § 648.85(b)(10);

* * * * *

- (2) * * *

(v) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(viii) under the provisions of that program.

(vi) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with

the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, pursuant to § 648.85(a), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

(vii) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(ii), (v), and (vi) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

* * * * *

- (3) * * *
- (i) * * *

(E) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(v) of this section; or

(F) Fish under the Regular B DAS Program specified at § 648.85(b)(10);

* * * * *

(iv) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30

days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section.

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section. Those who elect to use the VMS do not need to call in DAS as specified in this paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

- (c) * * *

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(6), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iv) of this section. Vessels issued a limited access

monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(iv), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(7) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(vi) of this section.

(f) * * *
(3) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(s)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

4. In § 648.14, paragraph (a)(172), and paragraphs (c)(54) through (56) and (65) are suspended, and paragraphs (a)(173), through (178), (c)(81) through (98), and (g)(4) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *
(173) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(vi) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

(174) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(175) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(viii)(A)(1).

(176) When fishing inside and outside of the Eastern U.S./Canada Area, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(viii)(A).

(177) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply

outside of the Eastern U.S./Canada Area, fish within the CC/GOM or SNE/MA Yellowtail Flounder Areas on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(178) Discard legal-sized yellowtail flounder prior to declaring the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

* * * * *

(c) * * *

(81) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod, GB winter flounder, or GB yellowtail flounder while fishing under a Category B DAS, as described in § 648.85(b)(8)(vii)(F).

(82) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(viii)(I), if the vessel possesses more than the landing limit for cod, GB winter flounder, or GB yellowtail flounder specified in § 648.85(b)(8)(vii)(F).

(83) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(viii)(J).

(84) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the requirements and restrictions specified in § 648.85(b)(10)(iv)(A) through (F), and (I).

(85) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

(86) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the observer notification requirement specified in § 648.85(b)(10)(iv)(B).

(87) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

(88) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the landing limits specified in § 648.85(b)(10)(iv)(D).

(89) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(10)(iv)(E).

(90) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(10)(iv)(F).

(91) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(10), if the program has been closed as specified in § 648.85(b)(10)(iv)(H) or (b)(10)(vi).

(92) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(10)(iv)(G).

(93) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the reporting requirements specified in § 648.85(b)(10)(iv)(I).

(94) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS outside the U.S./Canada Management Area specified under § 648.85(a)(1), or after the program has closed, as required under § 648.85(10)(iv)(G) or (H).

(95) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as required by § 648.85(b)(10)(iv)(J) and described under § 648.85(a)(3)(iii)(A).

(96) Use a Regular B DAS and a monkfish DAS on the same trip, if issued a limited access Category C, D, or F monkfish permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10).

(97) If issued a limited access monkfish Category C, D, or F permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10), possess more than the incidental catch amounts of monkfish, as specified at § 648.94(b)(7).

(98) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), discard legal-sized monkfish.

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal cod prohibition described in § 648.89(c)(1)(v), or if the vessel has been issued a charter/party permit, or is fishing under charter/party regulations, fail to comply with the seasonal cod prohibition described in § 648.89(c)(2)(vi).

* * * * *

5. In § 648.53, paragraph (e) is suspended, and paragraph (i) is added to read as follows:

§ 648.53 DAS allocations.

* * * * *

(i) *End-of-year carry-over for open are DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that

have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

6. In § 648.80, paragraphs (a)(3)(vi), (a)(4)(i) through (iv), (b)(2)(i) through (iii) and (vi), and (c)(2)(ii) and (iii) are suspended and paragraphs (a)(3)(viii), (a)(4)(vi) through (ix), (b)(2)(vii) through (x), and (c)(2)(vi) and (vii) are added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *
(3) * * *

(viii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(4) * * *

(vi) *Vessels using trawls.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vi), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for

immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the

entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Gillnet vessels.* Except as provided in paragraph (a)(3)(viii) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(b) * * *
(2) * * *

(vii) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (x) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (x) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel

or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(x) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(u)(5) and (u)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(c) * * *

(2) * * *

(vi) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(vii) of this section, the minimum mesh size for any sink gillnet, Scottish seine,

midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

7. In § 648.82, paragraphs (a)(1), (b), (c)(1) and (2), (d) through (k), (l)(1)(iv) and (v), and (m) are suspended and paragraphs (a)(3), (c)(3) and (4), (d)(5) through (7), (l)(2)(viii) and (ix), and (n) through (w) are added to read as follows:

§ 648.82 Effort control program for NE multispecies limited access vessels.

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(Q), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (v)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the

previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, then Regular B DAS, then Reserve B DAS. Category C DAS cannot be carried over.

(c) * * *

(3) *Calculation of used DAS baseline.*

For all valid limited access NE multispecies DAS vessels, vessels issued a valid Small Vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(3)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(3). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (v) of this section.

(i) Except as provided in paragraphs (c)(3)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (u)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant

to the provisions of the Large Mesh DAS category.

(iv) Used DAS will be counted as described under paragraph (n) of this section.

(4) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(3) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (v) of this section.

* * * * *

- (1) * * *
(2) * * *

(viii) NE multispecies Category A and Category B DAS, as defined under paragraphs (v)(1) and (2) of this section, shall be reduced by 20 percent upon transfer.

(ix) Category C DAS, as defined under paragraph (v)(3) of this section, will be reduced by 90 percent upon transfer.

* * * * *

(n) *Accrual of DAS.*

(1) *Actual time.* Unless otherwise specified under this paragraph (n) and paragraph (s)(1)(iii) of this section, DAS shall accrue to the nearest minute and will be counted as actual time called, or logged into the DAS program.

(2) *Differential Category A DAS counting.* For all NE multispecies vessels fishing under a Category A DAS, unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1.4 to 1.0. For example, if a vessel fishes for 24 hours (1 DAS), 33.6 hours (1.4 DAS) will be deducted from that vessel's DAS allocation.

(3) *Regular B DAS Program 24-hr clock.* For vessels electing to fish in the Regular B DAS Program, as specified at

§ 648.85(b)(10), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation will determine the amount of fish the vessel could legally land.

(o) *Good Samaritan credit.* See § 648.53(f).

(p) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (u)(5) or (6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(q) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (s)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(r) [Reserved]

(s) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (s)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.*—(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (p) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(3).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of paragraph (n)(3) of this section, Day gillnet vessels fishing with gillnet gear under a NE multispecies Category A DAS, or under a NE multispecies Category B DAS in an approved SAP specified at § 648.85(b), will accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 11 hours. For trips less than or equal to 3 hours, or more than 11 hours, the ratio of Category A DAS used to time called into the DAS program will be 1.4 to 1.0.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(7). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(t) *NE Multispecies DAS Leasing Program*—(1) *Program description.* Eligible vessels, as specified in paragraph (t)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.*—(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (u)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications

may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (t)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS. Any leased DAS used are subject to differential DAS accounting as described under paragraphs (n) and (t) of this section.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (t)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (v)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only

lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (t)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (t)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement. Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine

eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(P) and (F), or any other provision, respectively.

(u) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (u)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (v) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when

fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (u)(2)(iii), and (c)(4)(ii) of § 648.80.

(5) *Small Vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by

measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(i) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(N), may retain, per trip, up to 250 lb (113.4 kg) of cod, one Atlantic halibut, and the daily limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(i). For example if the GOM cod trip limit specified at § 648.86(i) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(v) *DAS categories and allocations.*

For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS

Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (v)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (u)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (v)(2)(i) and (ii) of this section.

(i) *Regular B DAS—(A) Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(10). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(10)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (*i.e.*, when fishing in an approved SAP as described in § 648.85(b)).

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(ii) *Reserve B DAS—(A) Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Reserve B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) *Category C DAS—(i) Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(3) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (n)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding

will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(w) *DAS credit for standing by entangled whales.* Limited access vessels fishing under the DAS program that report and stand by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(1) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(4) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional

Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG, and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

8. In § 648.85, paragraphs (a)(3)(ii); (a)(3)(iv)(C)(1), (2) and (4); (a)(3)(v); (b)(5) and (6); (b)(7)(iv)(A); (b)(7)(v)(A); (b)(7)(vi)(A); and (b)(8)(i), (iv), and (v) are suspended; the introductory text of paragraph (a)(3)(iii) is revised; and paragraphs (a)(3)(iv)(C)(5) through (7), (a)(3)(viii) and (ix), (b)(7)(iv)(J), (b)(7)(v)(F), (b)(7)(vi)(G), (b)(8)(vi), (vii) and (viii), and (b)(9) and (10) are added to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(iii) NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Other types of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area, provided they are stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(iv) * * *

(C) * * *

(5) *Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit for the U.S./Canada Area is 10,000 lb (4,536 kg) per trip. A separate yellowtail flounder trip limit for the Closed Area II Yellowtail Flounder SAP is specified under paragraph (b)(3)(viii) of this section. The trip limits specified under this

paragraph, or paragraph (b)(3)(viii) of this section, may be adjusted by the Regional Administrator pursuant to paragraphs (a)(3)(iv)(C)(3) and (6) of this section.

(6) *Authority to further restrict yellowtail flounder landing limits.* Unless further restricted by the initial yellowtail flounder landing limit as specified by paragraph (a)(3)(iv)(C)(5) of this section, when the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western and Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(7) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(viii)(B) of this section, must comply with the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

* * * * *

(viii) *Declaration.* To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or which specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area the vessel will fish in, and comply with the restrictions and conditions in paragraphs (a)(3)(viii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip and the restrictions of paragraphs (a)(3)(viii)(A)(1) and (2) of this section and does not discard legal-sized yellowtail flounder. If a vessel is fishing inside the Eastern U.S./Canada Area, and possesses yellowtail flounder in excess of what is allowed in either

the CC/GOM Yellowtail Flounder Area or the SNE/MA Yellowtail Flounder Area, as defined § 648.86(g), it may not fish outside of the Eastern U.S./Canada Area on the same trip. On trips when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS that it is electing to fish outside the Eastern U.S./Canada Area either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. Category A DAS will accrue in accordance with paragraph § 648.10(b)(2)(v), regardless whether the vessel began its trip under a Category A or Category B DAS.

(2) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(ix) for the duration of the trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in § 648.85(a)(3)(ix).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(viii).

(ix) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(ix)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(viii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(b) * * *

(7) * * *

(iv) * * *

(J) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(10) of this section.

(v) * * *

(F) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(v).

(vi) * * *

(G) *DAS use restrictions.* Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(v)(2)(i)(C) and (v)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(H) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(9)(ii) of this section.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When

the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(H) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) * * *

(vi) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(vii)(E) of this section, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (vii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(viii)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(vii) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program only from August 1 through December 31.

(viii) *Program restrictions—(A) DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(v)(2)(i)(A) and the restrictions of this paragraph (b)(8)(viii)(A).

(1) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(viii)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(viii)(J) of this section.

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8)(vi) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A

DAS and abides by the VMS restrictions of paragraph (b)(8)(viii)(D) of this section.

(4) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(viii)(A), must fish under the most restrictive trip provisions of any of the areas fished for the entire trip.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(vi) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(vi) of this section, as required under paragraph (b)(8)(viii)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(viii)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. Other types of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, provided the other gear is stowed in accordance with § 648.23(b).

(F) *Landing limits.* Unless otherwise restricted, NE multispecies vessels fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock

requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program, and fishing under a Category B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder or GB winter flounder, and no more than 500 lb (227 kg) of all flounder species, combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) each and possession of lobsters is prohibited.

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(ix) of this section.

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, and GB winter flounder (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(viii)(A) is the amount specified in paragraph (b)(9)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod, yellowtail flounder, or winter flounder. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod, yellowtail flounder, winter flounder, or monkfish than the landing limits specified under paragraph (b)(8)(viii)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS, according to the regulations at § 648.82(n)(2). Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod, yellowtail flounder, and winter flounder no longer applies.

(J) *Minimum Category A DAS.* To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of

available Category A DAS that the vessel has at the start of the trip divided by 1.4.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(viii)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

(9) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(9), incidental TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(9) of this section, for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder and GB winter flounder, the incidental TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(9), shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34

percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* The incidental TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(10) *Regular B DAS Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Program in the area specified in paragraph (b)(10)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(10), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(10)(iv)(G) or (H), or paragraph (b)(10)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(10)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(10)(iv)(F) of this section. Vessels may fish under the Regular B DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip. Category C, D, or F monkfish vessels may only participate in this program if fishing under a NE multispecies DAS only (i.e., Category C, D, or F monkfish vessels may not use a Regular B DAS and a monkfish DAS on the same trip under the Regular B DAS Program).

(ii) *Scope of the program.* Fishing under this program may occur only in the geographic area defined for the U.S./Canada Management Areas, described under paragraph (a)(1), of this section.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs, as follows: The first quarter shall receive 13 percent of the incidental TACs and the remaining quarters shall receive 29 percent of the quarterly TACs each. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements—(A) VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(10)(i) of this section must have

installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Program as required under paragraph (b)(10)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder, yellowtail flounder and windowpane flounder, with a maximum limit of 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder and yellowtail flounder), combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) per trip each and possession of lobsters is prohibited, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish or monkfish is prohibited. If such a vessel harvests and brings on board more legal-sized regulated groundfish or monkfish than the applicable maximum landing limit per trip specified under paragraph (b)(10)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be

switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared it DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish and monkfish no longer applies. A vessel that has declared a DAS flip will be subject to the most restrictive landing restrictions specified under paragraph (a)(3)(iv) of this section and paragraph § 648.86. Category C, D, or F monkfish vessels that have declared a DAS flip will be subject to the monkfish possession limits at § 648.94(b)(3).

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS divided by 1.4 that the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(n)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* When the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of the quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section is projected to have been harvested, Regular B DAS may not be used in the Regular B DAS Program for the duration of the calendar quarter. The closure of a the Regular B DAS Program will occur even if the quarterly incidental TACs for other stocks have not been completely harvested.

(H) *Closure of Regular B DAS program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an incidental TAC as described in paragraph (b)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(v) of this section, when the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 500 Regular B DAS have been used during the May–July quarter, or when 1,000 Regular B DAS have been used during any other calendar quarter of the fishing year, in accordance with § 648.82(n)(3),

Regular B DAS may not be used for the duration of the calendar quarter.

(l) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(10)(iv)(c) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(j) *Trawl Gear Requirement.* Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section.

(v) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program.

* * * * *

9. In § 648.86, paragraphs (b) and (g)(1) and (2) are suspended, and paragraphs (g)(4) and (5), and (i) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(g) * * *

(4) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish

Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(4)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(4)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT13	(¹)	70°00'
SYT12	41°20'	70°00'
SYT11	41°20'	69°50'
SYT10	41°10'	69°50'
SYT9	41°10'	69°30'
SYT8	41°00'	69°30'
SYT7	41°00'	68°50'
USCA1	42°20'	68°50'
USCA12	42°20'	67°40'
NYT1	43°50'	67°40'
NYT2	43°50'	66°50'
NYT3	44°20'	66°50'
NYT4	44°20'	67°00'
NYT5	(²)	67°00'

¹ South facing shoreline of Cape Cod, MA.

² East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area,

provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

(5) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, or unless otherwise restricted as specified in § 648.82(u)(3) and (u)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(5)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(5)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1	38°00'	(¹)
SY2	38°00'	72°00'
SY3	39°00'	72°00'
SY4	39°00'	71°40'
SY5	39°50'	71°40'
USCA2	39°50'	68°50'
SYT7	41°00'	68°50'
SYT8	41°00'	69°30'
SYT9	41°10'	69°30'
SYT10	41°10'	69°50'
SYT11	41°20'	69°50'
SYT12	41°20'	70°00'
SYT13	(²)	70°00'

¹ East facing shoreline of Virginia.

² South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain

this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels are fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

* * * * *

(i) *Cod*—(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (i)(1)(ii) and (i)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 600 lb (272.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 600 lb (272.2 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24-hr, a vessel may land up to an additional 600 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than 1,200 lb (544.4 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional

600 lb (272.2 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (i)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 600 lb (272.2 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(7) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (i)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,200 lb (544.4 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hours have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (i)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (i)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod provided the vessel complies with paragraph (i)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block,

may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(7) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (i)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (i)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (i)(1)(ii)(A) and (i)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (i)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°0' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear

is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

10. In § 648.89, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are suspended and paragraphs (b)(3) and (4), (c)(1)(v) and (vi), and (c)(2)(v) and (vi) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(3) *Minimum fish sizes.* Unless further restricted under paragraph (b)(4) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22 (58.4 cm).
Haddock	19 (48.3 cm).
Pollock	19 (48.3 cm).
Witch flounder (gray sole)	14 (35.6 cm).
Yellowtail flounder	13 (33.0 cm).
Atlantic halibut	36 (91.4 cm).
American plaice (dab)	14 (35.6 cm).
Winter flounder (blackback) ..	12 (30.5 cm).
Redfish	9 (22.9 cm).

(4) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(3) of this section, may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(c) * * *

(1) * * *

(v) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(vi) of this section, each person on a private recreational vessel may possess up to 10 cod per day, in, or harvested from the EEZ.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board private recreational fishing vessels may not fish for or possess any cod in or from the GOM Regulated Mesh Area from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

(2) * * *

(v) Unless further restricted under paragraph (c)(2)(vi) of this section, each person on the vessel may possess up to 10 cod per day.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board charter/party fishing vessels may not fish for or possess any cod in the GOM Regulated Mesh Area from November 1 through March 31. Charter/party vessels in or from possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

* * * * *

11. In § 648.91, paragraphs (c)(1)(i), (ii), and (iv) are suspended, and paragraphs (c)(1)(v) through (vii) are added to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(v) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(i) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE Multispecies DAS.* Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(i) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(vi). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(v) of this section.

(vii) *Authorized gear while on a monkfish and scallop DAS.* Vessels

issued a Category C, D, F, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(v) of this section.

* * * * *

12. In § 648.92, paragraphs (a)(1), (b)(2)(i) through (iii) are suspended, and paragraphs (a)(3), (b)(2)(iv) and (v) are added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

* * * * *

(b) * * *

(2) * * *

(iv) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has a net allocation of NE Category A multispecies DAS, after accounting for differential DAS counting as specified at § 648.82(n)(2), that is less than the number of monkfish DAS allocated for a fishing year. Under this circumstance, a Category C, D, F, G, or H monkfish vessel could fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Such vessels would be limited to monkfish-only DAS equal to their net monkfish DAS allocations (including carry-over DAS) minus their net NE multispecies Category A DAS allocation (including carry-over DAS) divided by 1.4. For example, if a Category C monkfish vessel had a net NE multispecies DAS allocation of 20 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25.7 DAS (40 monkfish DAS—(20 NE multispecies DAS allocated + 1.4)).

(v) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(iv) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(t), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(t), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated NE multispecies DAS, lease 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

13. In § 648.94, paragraphs (b)(3) and (c)(3)(i) are suspended, and paragraphs (b)(7) and (c)(3)(iii) are added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *
 (7) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program—(i) NFMA—(A) Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that

is fishing under a NE multispecies DAS exclusively in the NFMA, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA—(A) Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may

transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

* * * * *

(c) * * *
 (3) * * *

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(vi), and (b)(2)(vii), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

14. In § 648.95, paragraph (e)(3) is suspended, and paragraph (e)(5) is added to read as follows:

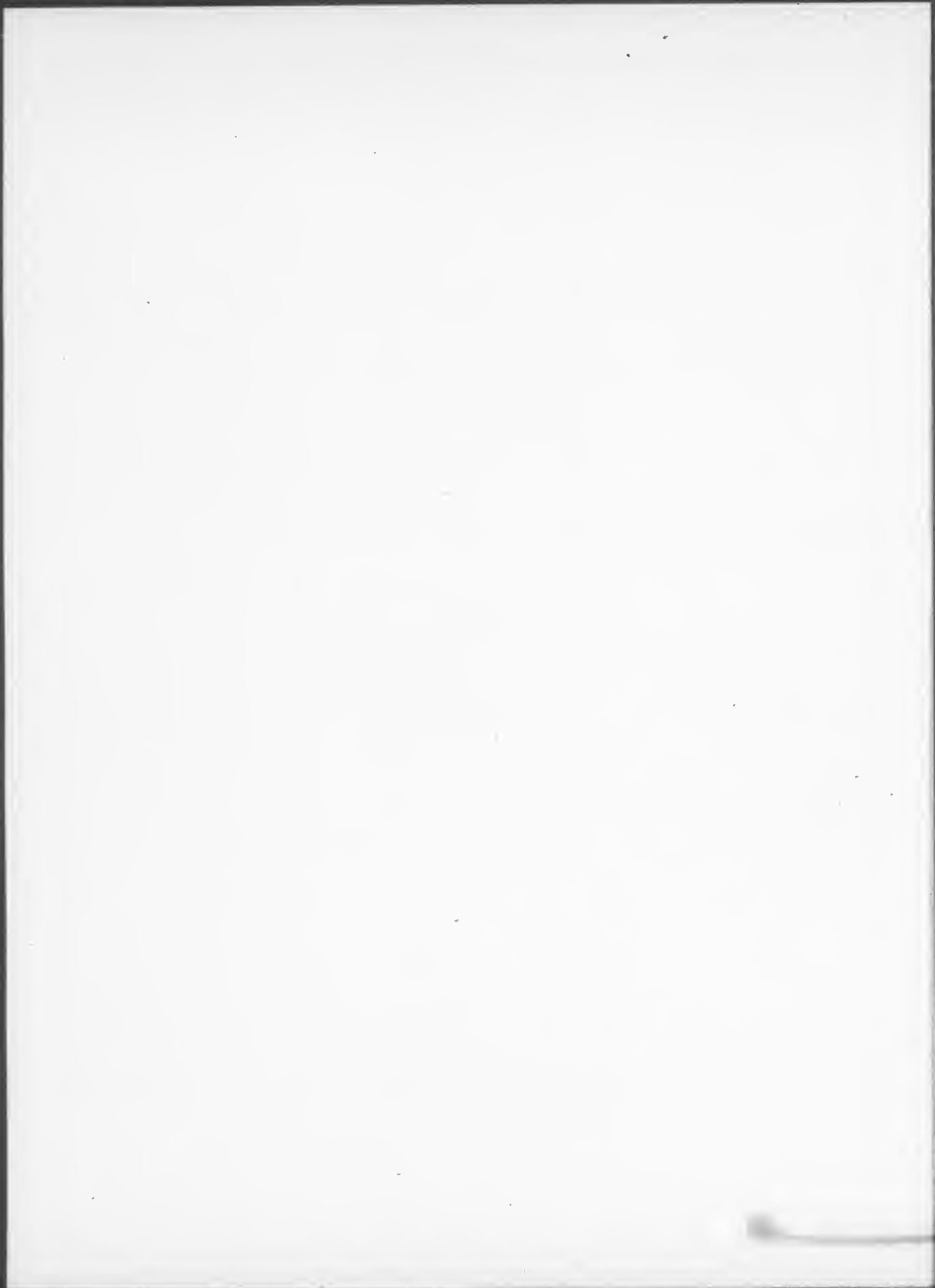
§ 648.95 Offshore Fishery Program in the SFMA.

* * * * *

(e) * * *

(5) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(v) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

* * * * *





Federal Register

Friday,
March 3, 2006

Part IV

Securities and Exchange Commission

Advisory Committee on Smaller Public
Companies; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8666; 34-53385; File No. 265-23]

Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Exposure Draft of Advisory Committee Final Report, Request for Public Comment.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is publishing an exposure draft of its Final Report and requesting public comment on it.

DATES: Comments should be received on or before April 3, 2006.

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

Electronic Statements

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acspc.shtml>); or
- Send an e-mail message to rule-comments@sec.gov. Please include File Number 265-23 on the subject line; or

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. You may also fax your submission to 202-772-9324, Attn: Federal Advisory Committee Management Officer.

All submissions should refer to File No. 265-23. 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 its Web site (<http://www.sec.gov/info/smallbus/acspc.shtml>).

Comments also will be 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 available publicly.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to William A. Hines, Special Counsel, at (202) 551-3320, or Kevin M. O'Neill, Special Counsel, at (202) 551-

3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: The SEC Advisory Committee on Smaller Public Companies is publishing an exposure draft of its Final Report to solicit public comment on the draft. The draft contains proposed recommendations of the Committee on improving the current securities regulatory system for smaller companies. All interested parties are invited to submit their comments in the manner described above. The Advisory Committee is especially interested in receiving comments from investors in microcap and smallcap companies, as well as from their managements. The draft has been approved as an exposure draft by the Advisory Committee. It does not necessarily reflect any position or regulatory agenda of the Commission or its staff.

The text of the exposure draft follows:

Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission

[April 23], 2006

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Transmittal Letter—SEC Advisory Committee on Smaller Public Companies
Washington, DC 20549-3628.

[April 23], 2006

The Honorable Christopher Cox, *Chairman, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1070.*

Dear Chairman Cox: On behalf of the Commission's Advisory Committee on Smaller Public Companies, we are pleased to submit our Final Report.

[Contents of letter to be included in Final Report.]

Respectfully submitted on behalf of the Committee.

Herbert S. Wander,
Committee Co-Chair.

James C. Thyen,
Committee Co-Chair.

Enclosure

cc: Commissioner Cynthia A. Glassman
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth; Ms. Nancy M. Morris

Members, Official Observers and Staff of Advisory Committee

Members

Herbert S. Wander, Co-Chair, Partner,¹
Katten Muchin Zavis Rosenman (*Ex Officio* Member of All Subcommittees and Size Task Force)

James C. Thyen, Co-Chair, President and CEO, Kimball International, Inc. (*Ex Officio* Member of All Subcommittees, Chairperson of Size Task Force)

Patrick C. Barry, Chief Financial Officer and Chief Operating Officer, Bluefly, Inc. (Accounting Standards Subcommittee, Size Task Force)

Steven E. Bochner, Partner, Wilson Sonsini Goodrich & Rosati, Professional Corporation (Chairperson, Corporate Governance and Disclosure Subcommittee)

Richard D. Brounstein, Executive Vice President and Chief Financial Officer, Calypte Biomedical Corp. (Internal Control Over Financial Reporting Subcommittee)

C.R. "Rusty" Cloutier, President and Chief Executive Officer, MidSouth Bancorp, Inc. (Corporate Governance and Disclosure Subcommittee)

James A. "Drew" Connolly III, President, IBA Capital Funding (Capital Formation Subcommittee)

E. David Coolidge III, Vice Chairman, William Blair & Company (Chairperson, Capital Formation Subcommittee)

Alex Davern, Chief Financial Officer and Senior Vice President of

Manufacturing and Information Technology Operations, National Instruments Corp. (Internal Control Over Financial Reporting Subcommittee, Size Task Force)

Joseph "Leroy" Dennis, Executive Partner, McGladrey & Pullen (Chairperson, Accounting Standards Subcommittee)

Janet Dolan, Former Chief Executive Officer, Tennant Company (Chairperson, Internal Control Over Financial Reporting Subcommittee)

Richard M. Jaffee, Chairman of the Board, Oil-Dri Corporation of America (Corporate Governance and Disclosure Subcommittee, Size Task Force)

Mark Jensen, National Director, Venture Capital Services, Deloitte & Touche (Internal Control Over Financial Reporting Subcommittee)

Deborah D. Lambert, Co-Founder, Johnson Lambert & Co. (Internal Control Over Financial Reporting Subcommittee)

Richard M. Leisner, Partner, Trenam Kemker (Capital Formation Subcommittee, Size Task Force)

Robert E. Robotti, President and Managing Director, Robotti & Company, LLC (Corporate Governance and Disclosure Subcommittee)

Scott R. Royster, Executive Vice President & Chief Financial Officer, Radio One, Inc. (Capital Formation Subcommittee)

Pastora San Juan Cafferty, Professor, School of Social Service Administration, University of Chicago (Corporate Governance and Disclosure Subcommittee)

Kurt Schacht, Executive Director, CFA Centre for Financial Market Integrity (Internal Control Over Financial Reporting Subcommittee)

Ted Schlein, Managing Partner, Kleiner Perkins Caufield & Byers (Capital Formation Subcommittee)

John B. Veihmeyer, Deputy Chairman, KPMG LLP (Accounting Standards Subcommittee)

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Executive Summary¹

Background

The U.S. Securities and Exchange Commission (the "Commission" or "SEC") chartered the Advisory Committee on Smaller Public Companies on March 23, 2005. The Charter provided that our objective was to assess the current regulatory system for smaller companies under the

¹ This report has been approved by the Committee and reflects the views of a majority of its members. It does not necessarily reflect any position or regulatory agenda of the Commission or its staff.

Note on Terminology: To aid understanding and improve readability, we have tried to avoid using defined terms with initial capital letters in this report. We generally use the terms "public company" and "reporting company" interchangeably to refer to any company that is required to file annual and quarterly reports with the SEC in accordance with either Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m or 78o(d). When we refer to "microcap companies," we are referring to public companies with equity capitalizations of approximately \$128 million or less. When we discuss "smallcap companies," we are talking about public companies with equity capitalizations of approximately \$128 million to \$787 million. We believe these labels generally are consistent with securities industry custom and usage. When we refer to "smaller public companies," we are referring to public companies with equity capitalizations of approximately \$787 million and less, which includes both microcap and smallcap companies. We recognize that formal legal definitions of these terms may be necessary to implement some of our recommendations that use them, and we discuss our recommendations as to how some of them should be defined in Part II.

securities laws of the United States, and make recommendations for changes. The Charter also directed that we specifically consider the following areas of inquiry, including the impact in each area of the Sarbanes-Oxley Act of 2002:²

- Frameworks for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing such internal control;
- Corporate disclosure and reporting requirements and federally imposed corporate governance requirements for smaller public companies, including differing regulatory requirements based on market capitalization, other measurements of size or market characteristics;
- Accounting standards and financial reporting requirements applicable to smaller public companies; and
- The process, requirements and exemptions relating to offerings of securities by smaller companies, particularly public offerings.

The Charter further directed us to conduct our work with a view to furthering the Commission's investor protection mandate, and to consider whether the costs imposed by the current regulatory system for smaller companies are proportionate to the benefits, identify methods of minimizing costs and maximizing benefits and facilitate capital formation by smaller companies. The language of our Charter specified that we should consider providing recommendations as to where and how the Commission should draw lines to scale regulatory treatment for companies based on size.

Our chartering documents³ purposely did not define the phrase "smaller public company." Rather, it was intended that we recommend how the term should be defined. In addition, we were advised that we were charged with assessing the securities regulatory system for all smaller companies, both public and private, and were not limited to considering regulations applicable to public companies. The Commissioners and the SEC staff did advise us, however, that they hoped we would focus primarily on public companies, because of the apparent need for prompt attention to that area of concern, especially in view of problems in implementing the Sarbanes-Oxley Act of 2002.

² Pub. L. No. 107-204, 116 Stat. 745 (July 30, 2002).

³ The official notice of establishment of the Committee and its Charter, included in this report as Appendices A and B, respectively, constitute our chartering documents.

Our 21 members voted unanimously on April 20, 2006 to adopt this Final Report and transmit it to the Commission. The recommendations set forth in this report were for the most part adopted unanimously. Where one or more members dissented or, while present, abstained from voting with respect to a specific recommendation, that fact has been noted in the text. Additionally, Parts VII, VIII and IX of this report contains separate statements submitted by Mark Jensen, Kurt Schacht and John B. Veihmeyer that describe briefly their reasons for disagreeing with specific recommendations of the majority of our voting members.

Recommendations

Our final recommendations are discussed in the remainder of this report. Before summarizing our highest priority recommendations below, we would like to explain why we have presented them in the order that we have. As detailed under the caption "Part I—Committee History—Committee Activities," we conducted most of our preliminary deliberations in four subcommittees, and a "size task force" comprised of a representative of each subcommittee and Committee Co-Chair James C. Thyen, who chaired the size task force. The subcommittees and the size task force generated preliminary recommendations that were discussed and approved by the full Committee. We agreed at our meeting on April 20, 2006 to submit to the Commission the 32

final recommendations contained in this report.⁴

We recognize that it is unlikely that the Commission and its staff will be able to consider, much less act upon, all 32 of these recommendations at once. Furthermore, submitting such a large number of recommendations, without any indication of the importance or priority we ascribe to them, might make the Commission less likely to act upon recommendations in areas where we believe the need for action is most urgent. Accordingly, we have adopted a two-tiered approach towards the prioritization of our recommendations.

The first tier—the recommendations to which we assign the highest priority—we refer to as our "primary recommendations." Our primary recommendations are set forth under the specific topic to which they relate: Our recommendation concerning establishment of a scaled securities regulation system is discussed under the caption "Part II. Scaling Securities Regulation for Smaller Companies"; recommendations related to internal control over financial reporting are discussed under the caption "Part III. Internal Control Over Financial Reporting"; capital formation, corporate governance and disclosure recommendations are discussed under the caption "Part IV. Capital Formation, Corporate Governance and Disclosure"; and accounting standards recommendations are discussed under the caption "Part V. Accounting Standards."

Before addressing our recommendations, the Committee wishes to emphasize that each of our members fully embraces the concepts of good governance and transparency. We believe our recommendations are designed to further these goals while establishing cost effective methods of achieving them.

Our first primary recommendation concerns establishment of a new system of scaled or proportional securities regulation for smaller public companies based on a stratification of smaller public companies into two groups, microcap companies and smallcap companies. Under this recommendation, microcap companies would consist of companies whose outstanding common stock (or equivalent) in the aggregate comprises the lowest 1% of total U.S. equity market capitalization, and smallcap companies would consist of companies whose outstanding common stock (or equivalent) in the aggregate comprises the next lowest 5% of total U.S. equity market capitalization. Smaller public companies, consisting of microcap and smallcap companies, would thus in the aggregate comprise the lowest 6% of total U.S. equity market capitalization. While they account for only a small percentage of total U.S. equity market capitalization, these companies represent a substantial percentage of all U.S. public companies, as shown in the table below:

	Market capitalization cutoff (million)	Percentage of total U.S. equity market capitalization	Percentage of all U.S. public companies
Microcap Companies	\$128.2	1	52.6
Smallcap Companies	128.2–787.1	5	25.9
Smaller Public Companies	<787.1	6	78.5
Larger Public Companies	>787.1	94	21.5

Source: SEC Office of Economic Analysis, Background Statistics: Market Capitalization and Revenue of Public Companies, Table 2 (Aug. 2, 2005) (included as Appendix I). Table includes only the 9,428 U.S. companies listed on the New York and American Stock Exchanges, the NASDAQ Stock Market and the OTC Bulletin Board, with a total market capitalization of \$16,891 million as of June 10, 2005. Table does not include the approximately 4,586 securities of 4,504 U.S. public companies whose stock trades only on the Pink Sheets, a number of which are not required to file annual and quarterly reports with the SEC in accordance with either Section 13 or 15(d) of the Securities Exchange Act of 1934 and accordingly do not fall within the definition of "public company" as used in this report. The omission of data concerning Pink Sheets companies understates the percentage of U.S. public companies represented by microcap companies. See Appendix J.

We believe that the Commission should establish this scaled system before or in connection with proceeding to examine individual securities regulations to determine whether they are candidates for integration of scaling

treatment under the new system. Because of its significance, we felt that this recommendation merited discussion under a separate caption. Accordingly, we discuss this recommendation and our thoughts

about implementing in this approach "Part II. Scaling Securities Regulation for Smaller Companies."

Below is a list of our remaining primary recommendations, and the

⁴ This does not include two recommendations, which the Committee adopted on August 10, 2005 and submitted to the Commission in a separate report dated August 18, 2005 (included as Appendix L of this report and discussed therein).

The Commission acted favorably upon these two recommendations in September 2005. See Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports, SEC Release No. 33-8617 (Sept. 22, 2005); Management's Report

on Internal Over Financial Reporting and Certification of Disclosure in Exchange Act Reports of Companies that are Not Accelerated Filers, SEC Release No. 33-8618 (Sept. 22, 2005).

location in this report where they are described in greater detail:⁵

- Establish a new system of scaled or proportional securities regulation for smaller public companies using the following six determinants to define a "smaller public company":

- The total market capitalization of the company;
- A measurement metric that facilitates scaling of regulation;
- A measurement metric that is self-calibrating;
- A standardized measurement and methodology for computing market capitalization;
- A date for determining total market capitalization; and
- Clear and firm transition rules, *i.e.*, small to large and large to small (Recommendation II.P.1).

Develop specific scaled or proportional regulation for companies under the system if they qualify as "microcap companies" because their equity market capitalization places them in the lowest 1% of total U.S. equity market capitalization or as "smallcap companies" because their equity market capitalization places them in the next lowest 1% to 5% of total U.S. equity market capitalization, with the result that all companies comprising the lowest 6% would be considered for scaled or proportional regulation.

- Unless and until a framework for assessing internal control over financial reporting for microcap companies is developed that recognizes the characteristics and needs of those companies, provide exemptive relief from the requirements of Section 404 of the Sarbanes-Oxley Act⁶ to microcap companies with less than \$125 million in annual revenue and to smallcap companies with less than \$10 million in annual product revenue that have or expand their corporate governance controls to include:

- Adherence to standards relating to audit committees in conformity with Rule 10A-3 under the Securities Exchange Act of 1934;⁷ and

- Adoption of a code of ethics within the meaning of Item 406 of Regulation S-K⁸ applicable to all directors, officers and employees and compliance with the further obligations under Item 406(c)

⁵ We have labeled our recommendations by section in which their full description appears, status (either primary (P) or secondary (S)), and rank within a given section. Hence the first primary recommendation in Part III is Recommendation III.P.1; the third secondary recommendation in Part IV is Recommendation IV.S.3, etc.

⁶ 15 U.S.C. 7262.

⁷ 15 U.S.C. 78a *et seq.*

⁸ 17 CFR 229.

relating to the disclosure of the code of ethics.

In addition, as part of this recommendation, we recommend that the Commission confirm, and if necessary clarify, the application to all microcap companies, and indeed to all smallcap companies also, the existing general legal requirements regarding internal controls, including the requirement that companies maintain a system of effective internal control over financial reporting, disclose modifications to internal control over financial reporting and their material consequences, and apply CEO and CFO certifications to such disclosures. Moreover, management should be required to report on any known material weaknesses. In this regard, the Proposed Statement on Auditing Standards of the AICPA, "Communications of Internal Control Related Matters Noted in an Audit," if adopted by the AICPA and the Public Company Accounting Oversight Board (PCAOB), would strengthen this disclosure requirement and provide some external auditor involvement in the internal control over financial reporting process. (Recommendation III.P.1).

- Unless and until a framework for assessing internal control over financial reporting for smallcap companies is developed that recognizes the characteristics and needs of those companies, provide exemptive relief from external auditor involvement in the Section 404 process to smallcap companies with less than \$250 million but greater than \$10 million in annual product revenues, subject to their compliance with the same corporate governance standards detailed in the recommendation above (Recommendation III.P.2).

- While we believe that the costs of the requirement for an external audit of the effectiveness of internal control over financial reporting are disproportionate to the benefits, and have therefore adopted the second Section 404 recommendation above, we also believe that if the Commission reaches a public policy conclusion that an audit requirement is required, we recommend that changes be made to the requirements for implementing Section 404's external auditor requirement to a cost-effective standard, which we call "ASX," providing for an external audit of the design and implementation of internal controls (Recommendation III.P.3).

- Incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K, make them

available to all microcap companies, and cease prescribing separate specialized disclosure forms for smaller companies (Recommendation IV.P.1).

- Incorporate the primary scaled financial statement accommodations currently available to small business issuers under Regulation S-B into Regulation S-K or Regulation S-X and make them available to all microcap and smallcap companies (Recommendation IV.P.2).

- Allow all reporting companies listed on a national securities exchange, NASDAQ or the OTC Bulletin Board to be eligible to use Form S-3, if they have been reporting under the Exchange Act for at least one year and are current in their reporting at the time of filing (Recommendation IV.P.3).

- Adopt policies that encourage and promote the dissemination of research on smaller public companies (Recommendation IV.P.4).

- Adopt a new private offering exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act")⁹ that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Act's registration requirements. Additionally, relax prohibitions against general solicitation and advertising found in Rule 502(c) under the Securities Act to parallel the "test the waters" model of Rule 254 under that Act (Recommendation IV.P.5).

- Spearhead a multi-agency effort to create a streamlined NASD registration process for finders, M&A advisors and institutional private placement practitioners (Recommendation IV.P.6).

- Develop a "safe-harbor" protocol for accounting for transactions that would protect well-intentioned preparers from regulatory or legal action when the process is appropriately followed (Recommendation V.P.1).

- In implementing new accounting standards, the FASB should permit microcap companies to apply the same extended effective dates that it provides for private companies (Recommendation V.P.2).

- Consider additional guidance for all public companies with respect to materiality related to previously issued financial statements (Recommendation V.P.3).

- Implement a *de minimis* provision in the application of the SEC's auditor independence rules (Recommendation V.P.4).

Our second tier consists of all of the remaining recommendations, which we

⁹ 15 U.S.C. 77a *et seq.*

refer to in this report as "secondary recommendations." Although we have assigned these a lower priority than the recommendations set forth above, we do not in any way intend to diminish their importance. In this regard, we note that importance is at times not only a function of the perceived need for change but also the perceived ease with which the Commission could enact such change; as noted throughout the report, many problems simply defy easy solution. Moreover, several of these recommendations are aspirational in nature, and do not involve specific Commission action. As with the primary recommendations, these secondary recommendations are set forth under the specific topics to which they relate, and within each such section, recommendations are presented in descending order of importance (*i.e.*, the secondary recommendation that we would most like to see adopted is listed first, etc.).

Part I. Committee History

On December 16, 2004, then SEC Chairman William H. Donaldson announced the Commission's intent to establish the SEC Advisory Committee on Smaller Public Companies.¹⁰ At the same time, Chairman Donaldson announced his intention to name Herbert S. Wander and James C. Thyen as Co-Chairs of the Committee. The official notice of our establishment was published in the *Federal Register* five days later.¹¹ The Committee's membership was completed on March 7, 2005, with members drawn from a wide range of professions, backgrounds and experiences.¹² The Committee's Charter was filed with the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services on March 23, 2005, initiating our 13-month existence.¹³

Committee Activities

We held our organizational meeting on April 12, 2005 in Washington, DC, where Chairman Donaldson swore in and addressed our members. Also at that meeting, we adopted our by-laws,

proposed a Committee Agenda to be published for public comment¹⁴ and reviewed a subcommittee structure and Master Schedule prepared by our Co-Chairs. This and all of our subsequent meetings were open to the public and conducted in accordance with the requirements of the Federal Advisory Committee Act.¹⁵ All meetings of the full Committee also were Web cast over the Internet.

Shortly following our formation, we adopted several overarching principles to guide our efforts:

- Further Commission's investor protection mandate.
- Seek cost choice/benefit inputs.
- Keep it simple.
- Maintain culture of entrepreneurship.
- Capital formation should be encouraged.
- Recommendations should be prioritized.

We held subsequent meetings in 2005 on June 16 and 17 in New York City, August 9 and 10 in Chicago, September 19 and 20 in San Francisco, and October 14 again in New York City. A total of 42 witnesses testified at these meetings.¹⁶ We adopted our Committee Agenda at the June 16 meeting in New York.¹⁷ We adopted two recommendations to the Commission at our Chicago meeting, where we also adopted an internal working definition of the term "smaller public company."¹⁸ We held additional meetings in Washington on October 24 and 25 and December 14, 2005 and February 21, 2006 to consider and vote on recommendations and the draft of our final report to the Commission. SEC Chairman Christopher Cox, who had succeeded Chairman Donaldson on

August 3, 2005, addressed us at the October 24 meeting in Washington. No witnesses testified at the additional meetings in Washington.

The Committee, through the Commission, published three releases in the *Federal Register* formally seeking public comment on issues it was considering. On April 29, 2005, we published a release seeking comments on our proposed Committee Agenda,¹⁹ in response to which we received ___ written submissions. On August 2, 2005, we published 29 questions on which we sought public input, to which we received 266 responses.²⁰ Finally, on _____, 2006, we published an exposure draft of our final report,²¹ which generated ___ written submissions. In addition, each meeting of the Committee was announced by formal notice in a *Federal Register* release, and each such notice included an invitation to submit written statements to be considered in connection with the meeting. In total, we received ___ written statements in response to *Federal Register* releases.²²

In addition to work carried out by the full Committee, fact finding and deliberations also took place within four subcommittees appointed by our Co-Chairs. The subcommittees were organized according to their principal areas of focus: Accounting Standards, Capital Formation, Corporate Governance and Disclosure, and Internal Control Over Financial Reporting. Each of the subcommittees prepared recommendations for consideration by the full Committee. We approved preliminary versions of most recommendations at our December 14, 2005 meeting. A fifth subgroup, sometimes referred to as the "size task force" in our deliberations, consisted of one volunteer from each subcommittee and our Co-Chair James C. Thyen. The size task force met to consider common issues faced by the subcommittees relating to establishment of parameters for eventual recommendations on

¹⁴ The Record of Proceedings of this and subsequent meetings of the Committee are available on our Web site at <http://www.sec.gov/info/smallbus/aspc.shtml>. See *Record of Proceedings, Meeting of the Securities and Exchange Commission Advisory Committee on Smaller Public Companies* (Apr. 12, June 16, June 17, Aug. 9, Aug. 10, Sept. 19, Sept. 20, Oct. 24, Oct. 25 & Dec. 14, 2005 & Feb. 21, Apr. 11 & Apr. 20, 2006) (on file in SEC Public Reference Room File No. 265-23), available at <http://www.sec.gov/info/smallbus/aspc.shtml> (hereinafter *Record of Proceedings* (with appropriate date)).

¹⁵ 5 U.S.C.—App. 1 *et seq.*

¹⁶ Appendix K contains a list of witnesses who testified before the Committee.

¹⁷ The Committee Agenda is included as Appendix C.

¹⁸ The Chicago recommendations were submitted to the Commission by letter dated August 18, 2005 to SEC Chairman Christopher Cox, who had succeeded Chairman Donaldson. The text of the letter is included as Appendix L. The letter included copies of documents entitled "Six Determinants of a Smaller Public Company" and "Definition of Smaller Public Company," which had been made available to the Committee before it adopted its definition of the term "smaller public company."

¹⁹ Summary of Proposed Committee Agenda of Advisory Committee on Smaller Public Companies, SEC Release No. 33-8571, (Apr. 29, 2005) [70 FR 22378].

²⁰ See Request for Public Input by Advisory Committee on Smaller Public Companies, SEC Release No. 33-8599 (Aug. 5, 2005) [70 FR 45446] (included as Appendix H).

²¹ _____, SEC Release No. 33-_____ (2006).

²² All of the written submissions made to the Committee are available in the SEC's Public Reference Room in File No. 265-23 and on the Committee's Web page at <http://www.sec.gov/rules/other/265-23.shtml>. To avoid duplicative material in footnotes, citations to the written submissions made to the Committee in this Final Report do not reference the Public Reference Room or repeat the Public Reference Room file number.

¹⁰ SEC Establishes Advisory Committee to Examine Impact of Sarbanes-Oxley Act on Smaller Public Companies, SEC Press Release No. 2004-174 (Dec. 16, 2004) (included as Appendix D).

¹¹ Advisory Committee on Smaller Public Companies, SEC Release No. 33-8514 (Dec. 21, 2004) [69 FR 76498] (included as Appendix B).

¹² SEC Chairman Donaldson Announces Members of Advisory Committee on Smaller Public Companies, SEC Press Release No. 2005-30 (Mar. 7, 2005) (included as Appendix E). This press release describes the diverse backgrounds of the Committee members.

¹³ See Committee Charter (included as Appendix B).

scalability of regulations based on company size. The task force developed internal working guidelines for the subcommittees to use for this purpose and reported them to the full Committee at our August 10, 2005 meeting.²³ We voted to approve the guidelines, which are discussed in the next part of this report.

Part II. Scaling Securities Regulation for Smaller Companies

We developed a number of recommendations concerning the Commission's overall policies relating to the scaling of securities regulation for smaller public companies. As discussed below, we believe that these recommendations are fully consistent with the original intent and purpose of our Nation's securities laws.²⁴ We believe that, over the years, some of the original principles underlying our securities laws, including proportionality, have been underemphasized, and that the Commission should seek to restore balance in these areas where appropriate.

Our primary recommendation concerning scaling, and one that underlies several other recommendations that follow in this report, is as follows:

Recommendation II.P.1

Establish a new system of scaled or proportional securities regulation for smaller public companies using the following six determinants to define a "smaller public company":

The total market capitalization of the company;

- A measurement metric that facilitates scaling of regulation;
- A measurement metric that is self-calibrating;

- A standardized measurement and methodology for computing market capitalization;

- A date for determining total market capitalization; and

- Clear and firm transition rules, *i.e.*, small to large and large to small.

Develop specific scaled or proportional regulation for companies under the system if they qualify as "microcap companies" because their equity market capitalization places them in the lowest 1% of total U.S. equity market capitalization or as "smallcap companies" because their equity market capitalization places them in the next

lowest 1% to 5% of total U.S. equity market capitalization, with the result that all companies comprising the lowest 6% would be considered for scaled or proportional regulation.²⁵

This new system would replace the SEC's current scaling system for "small business issuers" eligible to use Regulation S-B²⁶ as well as the current scaling system based on "non-accelerated filer" status,²⁷ but would provide eligibility for scaled regulation for companies based on their size relative to larger companies.²⁸

Under our recommended system, companies would be eligible for special scaled or proportional regulation if they fall into one of two categories of smaller public companies based on size. We call one category "microcap companies" and the other "smallcap companies." Both categories of companies would be included in the category of "smaller public companies" that qualify for the new scaled regulatory system. Companies whose common stock (or equivalent) in the aggregate comprises the lowest 1% of total U.S. equity market capitalization (companies with equity capitalizations below approximately \$128 million²⁹) would qualify as microcap companies. Companies whose common stock (or equivalent) in the aggregate comprises the next lowest 5% of total U.S. equity market capitalization (companies with equity capitalizations between approximately \$128 million and \$787 million) generally would qualify as smallcap companies.³⁰ Smallcap

²⁵ Mr. Schacht abstained from voting on this recommendation. All other members present voted in favor of this recommendation.

²⁶ Regulation S-B can be found at 17 CFR 228.

²⁷ "Non-accelerated filers" are public companies that do not qualify as "accelerated filers" under the SEC's definition of the latter term in 17 CFR 240.12b-2, generally because they have a public float of less than \$75 million. Companies that do not qualify as accelerated filers have more time to file their annual and quarterly reports with the SEC and have not yet been required to comply with the internal control over financial reporting requirements of Sarbanes-Oxley Act Section 404.

²⁸ We believe our recommended system complements the SEC's recently promulgated securities offering reforms, which are principally available to a category of public companies with over \$700 million in public float known as "well-known seasoned issuers." We recognize, however, that the Commission will need to assure that our recommendations, if adopted, are integrated well with the categories of companies established in the securities offering reform initiatives.

²⁹ SEC Office of Economic Analysis, *Background Statistics: Market Capitalization and Revenue of Public Companies* (Aug. 2, 2005) (included as Appendix I). Data was derived from Center for Research in Security Prices (CRSP) for 9,428 New York and American Stock Exchange companies as of March 31, 2005 and from NASDAQ for NASDAQ Stock Market and OTC Bulletin Board firms as of June 10, 2005.

³⁰ *Id.*

companies would be entitled to the regulatory scaling provided by SEC regulations for companies of that size after study of their characteristics and special needs.

Under the system we are recommending, microcap companies generally would be entitled to the accommodations afforded to small business issuers and non-accelerated filers under the SEC's current rules. Smallcap companies would be entitled to whatever accommodations the SEC decides to provide them in the future. As discussed below, we are recommending that the SEC provide certain relief under Sarbanes-Oxley Act Section 404 to certain smaller public companies.³¹ We also are recommending that the SEC permit smaller public companies to follow the financial statement rules now followed by small business issuers under Item 310 of Regulation S-B rather than the financial statement rules in Regulation S-X currently followed by all companies that are not small business issuers.³²

Our primary reason for recommending special scaled regulation for companies falling in the aggregate in the lowest 6% of total U.S. equity market capitalization is that this cutoff assures the full benefits and protection of federal securities regulation for companies and investors in 94% of the total public U.S. equity capital markets.³³ This limits risk and exposure to investors and protects investors from serious losses (*e.g.*, 100 bankruptcies companies with \$10 million total market capitalization would be required to equal the potential loss of the bankruptcy of a company with \$1 billion of market capitalization). Our recommended standard acknowledges the relative risk to investors and the capital markets as it is currently used by professional investors.

In addition, we considered the SEC's recent adoption of rules reforming the

³¹ See the discussion in Part III below.

³² See the discussion in Part IV below.

³³ We recognize that, if the Commission determines to implement our recommendation, it may want to examine the distinguishing characteristics of the group of "smaller public companies" to which it intends to provide specific regulatory relief. We have done this in developing our recommendations set out in "Part III. Internal Control Over Financial Reporting." A comment letter recently sent to the Commission also went through this exercise in making recommendations with respect to application of Section 404 of the Sarbanes-Oxley Act to smaller public companies. See Letter from BDO Seidman, LLP, at 2-3 (Oct. 31, 2005) (on file in SEC Public Reference Room File No. S7-06-03), available at <http://www.sec.gov/rules/proposed/s70603/bdoseidman103105.pdf>.

²³ See *Record of Proceedings* 62-103 (Aug. 10, 2005).

²⁴ For background on the history of scaling federal securities regulation for smaller companies, see the discussion under the caption "—Commission Has a Long History of Scaling Regulation" below.

securities offering process.³⁴ Reporting companies with a public float of \$700 million or more, called "well-known seasoned issuers," generally will be permitted to benefit to the greatest degree from securities offering reform. We are hopeful that the Commission will see fit to adopt a disclosure system applicable to "smaller public companies" that integrates well with the disclosure and other rules applicable to "well-known seasoned issuers." We believe that companies that qualify as "smaller public companies" on the basis of equity market capitalization should not also qualify as "well-known seasoned issuers."

We recommend that the SEC implement this recommendation by promulgating regulations under which all U.S. companies with equity securities registered under the Exchange Act would be ranked from largest to smallest equity market capitalization at each recalculation date.³⁵ The ranges of market capitalizations entitling public companies to qualify as a "microcap company" and "smallcap company" would be published soon after the recalculation. These ranges would remain valid until the next recalculation date. Companies would be able to determine whether they qualify for microcap and smallcap company treatment by comparing their market capitalization on their determination date, presumably the last day of their previous fiscal year, with the ranges published by the SEC for the most recent recalculation date.³⁶ The determination so would then be used to by companies to determine their status for the next fiscal year. This is what we mean when we say that the measurement metric for determining smaller public company status should be "self-calibrating."

In promulgating these rules, the SEC will need to establish clear transition rules providing how companies would graduate from the microcap category to the smallcap category to the realm where they would not be entitled to smaller public company scaling. The transition rules would also need to

specify how companies would move from one category to another in the reverse order, from no scaling entitlement to smallcap company treatment to microcap entitlement. The SEC has experience and precedents to follow in its transition rules governing movement to and from Regulation S-B and Regulation S-K, non-accelerated filer status and accelerated filer status, and well-known seasoned issuer eligibility and non-eligibility.

We believe that our plan for providing scaled regulatory treatment for smaller public companies contains features that recommend it over some other SEC regulatory formats. For example, it provides for a flexible measurement that can move up and down, depending on stock price and other market levels. It avoids the problem of setting a dollar amount standard that needs to be revisited and rewritten from time to time, and consequently provides a long-term solution to the problem of re-scaling securities regulation for smaller public companies every few years. Finally, assuming the plan is implemented as we intend, the system would provide full transparency and allow each company and its investors to determine the company's status in advance or at any time based on publicly available information. This would allow companies to plan for transitions suitably in advance of compliance with new regulations.

We recommend that the SEC use equity market capitalization, rather than public float, to determine eligibility for smaller public company treatment for several reasons.³⁷ We are aware that the SEC historically has used public float as a measurement in analogous regulatory contexts.³⁸ However, we recommend that the SEC use equity capitalization, rather than public float, to determine eligibility for smaller public companies for several reasons. First, we believe that equity market capitalization better measures total risk to investors (including affiliates, some of whom may not have adequate access to information) and the U.S. capital markets than public float, and consequently that it is the most relevant measure in determining which companies initially should qualify for scaled securities regulatory treatment based on size. We also believe that using market capitalization has the additional advantage of simplicity, as it avoids what can be the difficult problem of

deciding for legal purposes which holdings are public float and which are not.³⁹ This can be a subjective determination; not all companies reach the same conclusions on this issue based on similar facts, which can lead to problems of comparability.

In formulating our scaling recommendation, we considered a number of alternatives to market capitalization as the primary metric for determining eligibility for scaling, including revenues. Ultimately, however, we felt that any benefits to be derived from adding additional metrics to the primary formula were outweighed by the additional complexity that introduction of those additional size parameters would entail. We wish to make it clear, however, that we believe that additional determinants based on other metrics of size may be appropriate in the context of individual securities regulations. For example, our own recommendations on internal control over financial reporting contain metrics conditioning the availability of scaling treatment on company annual revenues.

Commission Has a Long History of Scaling Regulation

Since federal securities regulation began in the 1930's, it has been recognized that some companies and transactions are of insufficient magnitude to warrant full federal regulation, or any federal regulation at all. Smaller public companies primarily have been subject to two securities statutes, the Securities Act and the Exchange Act. The Securities Act, originally enacted to cover distributions of securities, has from the beginning contained a "small issue" exemption in Section 3(b)⁴⁰ that gives the SEC rulemaking authority to exempt any securities issue up to a specified maximum amount. This amount has grown in stages, from \$100,000 in 1933 to \$5 million since late 1980.⁴¹ The Exchange Act originally was enacted to regulate post-distribution trading in securities. It did so by requiring registration by companies of classes of

³⁴ See Securities Offering Reform, SEC Release No. 33-8591 (July 19, 2005) [70 FR 44722].

³⁵ We leave to the Commission's discretion the frequency with which this recalculation should occur, but note that frequent recalculation, even on an annual basis, could introduce an undesirable level of uncertainty into the process for companies trying to determine where they fall within the three categories.

³⁶ In formulating this recommendation, we looked for guidance at the method used to calculate the Russell U.S. Equity Indexes. For more information on Russell's method, see *Russell U.S. Equity Indexes, Construction and Methodology* (July 2005)), available at www.russell.com.

³⁷ The Commission would, of course, need to prescribe a standardized methodology for computing market capitalization.

³⁸ For example, a public float test is used to determine a company's eligibility to use Forms SB-2, F-3 and S-3 and non-accelerated filer status.

³⁹ Because public float by definition excludes shares held by affiliates, calculation of public float relies upon an accurate assessment of affiliate status of officers, directors and shareholders. As the Commission acknowledged in the Rule 144 context, this requires a subjective, facts and circumstances determination that entails a great deal of uncertainty. See Revision of Rule 144, Rule 145 and Form 144, SEC Release No. 33-7391 (Feb. 20, 1997) [62 FR 9246].

⁴⁰ 15 U.S.C. 77c(b).

⁴¹ Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation* 387 (2004). The Commission has adopted a number of exemptive measures for small issuers pursuant to its authority under Section 3(b), including Rules 504 and 505, Regulation A and the original version of Rule 701.

their securities. At first, the Exchange Act required companies to register only if their securities were traded on a national securities exchange. This assured that smaller companies of insufficient size to warrant exchange listing would not be subject to overly burdensome federal securities regulation.

In 1964, Congress extended the reach of most of the Exchange Act's public company provisions to cover companies whose securities trade over-the-counter.⁴² Since all securities other than exchange-listed securities technically trade "over-the-counter," this expansion required limiting the companies covered to avoid creating a burden on issuers and the Commission that was "unwarranted by the number of investors protected, the size of companies affected, and other factors bearing on the public interest."⁴³ Congress wanted to ensure that "the flow of reports and proxy statements [would] be manageable from the regulatory standpoint and not disproportionately burdensome on issuers in relation to the national public interest to be served."⁴⁴ Accordingly, Congress chose to limit coverage to companies with a class of equity security held of record by at least 500 persons and net assets above \$1 million.⁴⁵ Over time, the standard set by Congress at 500 equity holders of record and \$1 million in net assets required adjustment to assure that the burdens placed on issuers and the Commission were justified by the number of investors protected, the size of companies affected, and other factors bearing on the public interest, as originally intended by Congress. The Commission has raised the minimum net asset level several times; it now stands at \$10 million.⁴⁶

In 1992, the Commission adopted Regulation S-B,⁴⁷ a major initiative that allows companies qualifying as "small business issuers" (currently, companies with revenues and a public float of less than \$25 million⁴⁸) to use a set of abbreviated disclosure rules scaled for smaller companies. In 2002, the Commission divided public companies into two categories, "accelerated filers"

and "non-accelerated filers," and in 2005 added a third category of "large accelerated filers," providing scaled securities regulation for these three tiers of reporting companies.⁴⁹ Non-accelerated filers are fundamentally public companies with a public float below \$75 million, and large accelerated filers are public companies with a public float of \$700 million or more.⁵⁰

Notwithstanding the benefits to which smaller business issuers and non-accelerated filers are entitled under the Commission's current rules, we believe significant changes to the federal securities regulatory system for smaller public companies, such as those recommended in this report, are required to assure that it is properly scaled for smaller public companies. Our experience with smaller public companies, as well as the testimony and written statements we received, support this view. We believe that the problem of improper scaling for smaller public companies has existed for many years, and that the additional regulations imposed by the Sarbanes-Oxley Act only exacerbated the problem and caused it to become more visible.

Part III. Internal Control Over Financial Reporting

Introduction

From the earliest stages of its implementation, Sarbanes-Oxley Act Section 404 has posed special challenges for smaller public companies. To some extent, the problems smaller companies have in complying with Section 404 are the problems of companies generally:

- Lack of clear guidance;
- An unfamiliar regulatory environment;
- An unfriendly legal and enforcement atmosphere that diminishes the use and acceptance of professional judgment because of fears of second-guessing by regulators and the plaintiff's bar;⁵¹
- A focus on detailed control activities by auditors; and

⁴⁹ See Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Report, SEC Release No. 33-8128 (Sept. 16, 2002) [67 FR 58480].

⁵⁰ 17 CFR 240.12b-2. Both accelerated filers and large accelerated filers must also have been reporting for at least 12 months, have filed at least one annual report and not be eligible to use Forms 10-KSB and 10-QSB.

⁵¹ See Conference Panelists Discuss Earnings Guidance and Accounting Issues, SEC Today (Feb. 14, 2006), at 2 (quoting Teresa Iannaconi as stating that while she believes the PCAOB is sincere in its attempt to bring greater efficiency to the audit process, accounting firms are not ready to step back, because they have all received deficiency letters, none of which say that the auditors should be doing less rather than more).

• The lack of sufficient resources and competencies in an area in which companies and auditors have previously placed less emphasis.

But because of their different operating structures, smaller public companies have felt the effects of Section 404 in a manner different from their larger counterparts. With more limited resources, fewer internal personnel and less revenue with which to offset both implementation costs and the disproportionate fixed costs of Section 404 compliance, these companies have been disproportionately subject to the burdens associated with Section 404 compliance. Moreover, the benefits of documenting,⁵² testing and certifying the adequacy of internal controls, while of obvious importance for large multinational corporations, are of less certain value for smaller public companies, who rely to a greater degree on "tone at the top" and high-level monitoring controls, which may be undocumented and untested, to influence accurate financial reporting. The result is a cost/benefit equation that, many believe, diminishes shareholder value, makes smaller public companies less attractive as investment opportunities and impedes their ability to compete.

This last factor is particularly problematic in light of the crucial role smaller public companies play in job creation and economic growth. In addition, we are increasingly participating in a global economy and (1) the much higher costs for Sarbanes-Oxley compliance in general, and Section 404 compliance in particular, (2) the loss of foreign issuers who are either not listing in the U.S. or are departing from U.S. markets and (3) domestic issuers who are going dark or private could pose significant competitive risks to U.S. companies and markets.⁵³

⁵² SEC rules require that a company maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the company's internal control over financial reporting. See Section II.B. of Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, SEC Release No. 33-8238 (June 5, 2003) [68 FR 36636]. See note 58 *infra*.

⁵³ See William J. Carney, *The Costs of Being Public After Sarbanes-Oxley: The Irony of 'Going Private'*, Emory Law and Economics Research Paper No. 05-4 at 1 (Feb. 2005), available at SSRN: <http://ssrn.com/abstract=672761> ("In an economically rational world we don't want to prevent all fraud, because that would be too expensive. Instead, the goal should be to keep on spending on fraud prevention until the returns on a dollar invested in prevention are no more than a dollar. There is an 'Optimal Amount of Fraud.'"); Roberta Romano, *The Sarbanes-Oxley Act and the*

⁴² Securities Acts Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 565 (adding Section 12(g), among other provisions, to the Exchange Act).

⁴³ S. Rep. No. 88-379, at 19 (1963).

⁴⁴ *Id.*

⁴⁵ 15 U.S.C. 78j(g).

⁴⁶ 17 CFR 240.12g5-1.

⁴⁷ 17 CFR 228.10 *et seq.*

⁴⁸ 17 CFR 228.10(a)(1). "Small business issuers" must also be U.S. or Canadian companies, not investment companies and not majority owned subsidiaries of companies that are not small business issuers.

We acknowledge that in the course of our deliberations we heard certain respected persons question whether the Section 404 problem for smaller public companies is, in fact, overstated.⁵⁴ In the view of some, the benefits of Section 404 for small companies outweigh the costs, authoritative guidance for smaller public companies will provide issuers with sufficient guidance in areas where clarity is currently lacking, and at any rate Section 404 expenditures will decrease substantially as issuers and their auditors become more familiar with the law's requirements. However, the experience of most of our members, and the outpouring of testimony, comment letters and input we received, suggests otherwise.

After thorough consideration of the evidence presented, we believe that Section 404 represents a clear problem for smaller public companies and their investors, one for which relief is urgently needed. Our recommendations as to how to improve the existing structure, consistent with investor protections, are discussed below. Although these recommendations are based upon 13 months of intensive study and debate, they essentially derive from a few fundamental ideas: the primary objective of internal control over financial reporting requirements should be the prevention of materially inaccurate financial statements; companies operate differently, depending on size, and internal control rules should reflect this fact; and the benefits of any regulatory burden—Section 404-related or otherwise—should outweigh the costs.

Making of Quack Corporate Governance, 114 Yale L. J. 1521, 1587–91 (2005); Joseph A. Grundfest, *Fixing 404* (2005) (unpublished manuscript, on file in SEC Public Reference Room File No. 265–23) (“While there is substantial debate over the costs and benefits of Section 404 as implemented by PCAOB Statement No. 2, there is far greater consensus that these rules are not cost effective. Put another way, regardless of whether Section 404’s social benefits exceed its social costs, a very large portion of Section 404’s benefits can be generated while imposing substantially lower costs on the economy. Consistent with this view, the current head of the PCAOB states ‘It is * * * clear to us that the first sound of internal control audits cost too much.’”) Moreover, Congress, in the form of Securities Act Section 2(b), has mandated that whenever the SEC engages in rulemaking it is required to consider in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. See Peter J. Wallison, *Buried Treasure: A Court Rediscovered A Congressional Mandate the SEC Has Ignored*, AEI Online (Oct. 2005) available at http://www.aei.org/publications/pubID.23310/pub_detail.asp. See also *infra* notes 87 through 90 and accompanying text.

⁵⁴ See, e.g., *Record of Proceedings* 64 (Sept. 19, 2005) (testimony of Lynn E. Turner), available at <http://www.sec.gov/info/smallbus/acspc/acspctranscript091905.pdf>.

Because an appreciation of the existing Section 404 problem requires an understanding of the problem’s origin, we have included below a brief background section, followed by an overview of our recommendations and the recommendations themselves.

Background of Section 404

Sarbanes-Oxley Act Section 404 directed the SEC to adopt rules requiring all reporting companies, other than registered investment companies, to include in their annual reports a statement of management’s responsibility for establishing and maintaining adequate internal control over financial reporting, together with an assessment of the effectiveness of those internal controls. Section 404 further required that the company’s independent auditors attest to, and report on, this management assessment.

In accordance with Congress’ directive, on June 5, 2003 the Commission adopted the basic rules implementing Section 404 with regard to management’s obligations to report on internal control over financial reporting.⁵⁵ In addition, on June 17, 2004 the Commission issued an order approving PCAOB Auditing Standard No. 2, entitled *An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements (AS2)*, which established the requirements that apply to an independent auditor when performing an audit of a company’s internal control over financial reporting.⁵⁶ The rules adopted by the Commission and the PCAOB implementing Section 404 require management to base its evaluation of internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.⁵⁷ Commission rules implementing both Section 404 and AS2 specifically identify the internal control framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (the COSO Framework) as suitable for such purposes, and indeed, the COSO Framework has emerged as the only internal control framework available in

the U.S. and the framework used by virtually all U.S. companies.⁵⁸

As noted above, during the early stages of implementation of Section 404, it became clear that smaller public companies, due to their size and structure, were experiencing significant challenges, both in implementing that provision’s requirements and in applying the SEC and PCAOB-endorsed COSO Framework. Many expressed serious concerns about the ability to apply Section 404 to smaller public companies in a cost-effective manner, and also about the need for additional guidance for smaller businesses in applying the COSO Framework. Against this backdrop, and at the encouragement of the SEC staff, COSO in October 2005 issued for public comment an exposure draft entitled “Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting.”⁵⁹ While intended to provide much needed clarity, the guidance has to date received mixed reviews, with many questioning whether it will significantly change the disproportionate cost and other burdens or the cost/benefit equation associated with Section 404 compliance for smaller public companies.⁶⁰

⁵⁸ COSO is a voluntary private sector organization sponsored by the American Institute of Certified Public Accountants (AICPA), the American Accounting Association, Financial Executives International, the Institute of Internal Auditors, and the Institute of Management Accountants. COSO published the COSO Framework, formally titled “Internal Control—Integrated Framework, in 1992. The COSO Framework is available at http://www.casa.org/publications/executive_summary_integrated_framework.htm. The COSO Framework presents a common definition of internal control and provides a framework against which internal controls within a company can be assessed and improved. Under the COSO Framework, internal control over financial reporting is defined as a process, effected by an entity’s board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the reliability of financial reporting. Internal control over financial reporting includes five interrelated components: Control environment, risk assessment, control activities, information and communication, and monitoring. The COSO Framework recognizes that formal documentation is not always necessary, and that informal and undocumented controls, even when communicated orally, can be highly effective. See COSO Framework at 30, 73.

⁵⁹ Available at <http://www.ic.coso.org>.

⁶⁰ Several comment letters submitted to COSO in respect of the guidance are illustrative, including the following: Letter from PCAOB to COSO (Jan. 18, 2006) (“[S]ome of the approaches and examples in the draft may be inappropriate or impractical for the smallest public companies. We recommend that COSO reconsider whether there is additional, more practical advice that COSO could give to such companies.”); Letter from Institute of Management Accountants to COSO (Oct. 24, 2005) (“The IMA is unclear as to how this guidance, built on the existing COSO Framework, tangibly reduces SOX compliance costs for small businesses or businesses

⁵⁵ SEC Release No. 33–8238 (June 5, 2003) [68 FR 36636].

⁵⁶ SEC Release No. 34–49884 (June 17, 2004) [69 FR 35083].

⁵⁷ See Exchange Act Rules 13a–15(c) and 15d–15(c), 17 CFR 240.13a–15(c) & 240.15d–15(c).

Reporting companies initially were to be required to comply with the internal control reporting provisions for the first time in connection with their fiscal years ending on or after June 15, 2004 (accelerated filers)⁶¹ or April 15, 2005 (non-accelerated filers and foreign private issuers). Recognizing the importance of these provisions and the time necessary to implement them properly, on February 24, 2004 the Commission extended these compliance dates to fiscal years ending after November 15, 2004 for accelerated filers and July 15, 2005 for non-accelerated filers and foreign private issuers.⁶²

On March 2, 2005, the Commission further extended the compliance dates for non-accelerated filers and foreign private issuers to fiscal years ending after July 15, 2006.⁶³ Additionally, due to the continuing evaluation of the impact of the Section 404 requirements on smaller public companies by this Committee, on September 21, 2005, the Commission provided an additional one-year extension of the compliance deadline for non-accelerated (but not larger foreign) filers to fiscal years ending after July 15, 2007.⁶⁴

Unintended Consequences of Attempts To Address Internal Controls

The legislative history of Section 404 makes clear that regulators and members of Congress never anticipated many of the challenges that Section 404 compliance has presented. Section 404 itself states that the auditor's attestation "shall not be the subject of a separate

of any size."); Letter from Deloitte & Touche LLP to COSO (Dec. 30, 2005 ("We believe that many of the examples in the exposure draft are too high-level and generic and do not address the issues faced by smaller public companies."); Letter from Crowe Chizek and Company LLC to COSO (Dec. 29, 2005) ("While the document will help smaller companies, we do not believe that it will result in substantial reduction in the cost of evaluating and documenting the internal control process by management, and on the cost to audit internal controls by companies' auditing firms."); Letter from Ernst & Young LLP to COSO (Jan. 15, 2006) ("[A]lthough we believe the Guidance will be an excellent implementation aid, we are less convinced that it will significantly reduce the cost of 404 implementation for smaller companies, at least to the degree expected by some."). All such comment letters are available at <http://www.ic.coso.org/coso/cosospic.nsf/COSO%20Public%20Comments%20Document.pdf>. The Chairman of COSO made a presentation at our San Francisco meeting and met informally with members of our Internal Control Over Financial Reporting Subcommittee.

⁶¹ The term "accelerated filer" is defined in Rule 12b-2, 17 CFR 240.12b-2, under the Exchange Act, 15 U.S.C. 78a et seq.

⁶² SEC Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722].

⁶³ SEC Release No. 33-8545 (Mar. 2, 2005) [70 FR 11528].

⁶⁴ SEC Release No. 33-8545 (Sept. 22, 2005) [70 FR 11528].

engagement."⁶⁵ Moreover, the Senate Committee Report that accompanied Section 404 to the Senate floor included the following language:

In requiring the registered public accounting firm preparing the audit report to attest to and report on management's assessment of internal controls, the Committee does not intend that the auditor's evaluation be the subject of a separate engagement or the basis for increased charges or fees. High quality audits typically incorporate extensive internal control testing. The Committee intends that the auditor's assessment of the issuer's system of internal controls should be considered to be a core responsibility of the auditor and an integral part of the audit report.⁶⁶

Additionally, the Commission's June 2003 release adopting internal control rules, which predated adoption and approval of AS2, estimated that the average annual internal cost of compliance with Section 404 over the first three years would be \$91,000, and that cost would be proportional relative to the size of the company.⁶⁷ The reality has, of course, been much different.

The anxieties that Section 404 has produced, and the heavy expenses that have been incurred in an attempt to comply with its requirements, parallel those experienced as a result of Congress' last major initiative to address internal accounting controls, the Foreign Corrupt Practices Act of 1977, or FCPA.⁶⁸ That statute added two accounting requirements applicable to public companies under the Exchange Act, including Section 13(b)(2)(B), the provision that requires public companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that specified objectives are attained.⁶⁹ Then, as now, Congress acted to address public concerns following several high profile cases of corporate malfeasance. And then, as now, arguably uncertain standards of compliance, combined with the threat of significant liability for non-compliance, worked to create an atmosphere in which companies and their advisors strayed far from the statute's original

intent. In both instances, what began with an idea with which few would disagree—that companies should have in place effective controls over their transactions and dispositions of assets—unexpectedly became a source of significant anxiety, activity and expense.

With respect to the FCPA, the fears of public companies and their advisors were put to rest by a speech that then SEC Chairman Harold Williams gave in 1981, in which he outlined a Commission approach to FCPA compliance based upon reasonableness and minimal intrusion in internal corporate decision making.⁷⁰ The speech was adopted by the Commission as an official agency interpretation and policy statement, and retains that status to this day.⁷¹ Chairman Williams' approach served to calm much of the anxiety that had arisen, and his address and the Commission's adoption of it as official agency policy are not only instructive, but also are relevant to today's Section 404 environment. We urge the Commission to republish and re-emphasize the Williams statement and make it the framework for management's establishment of internal controls.

Origin of the Current Problem

The expectation on the part of lawmakers and regulators in enacting and implementing Section 404 was that if internal controls over financial reporting are operating effectively, then confidence in the financial statements *ipso facto* will be higher. In theory, this idea appears sound, particularly for larger companies, where financial statement preparation relies heavily on the effective operation of business process controls. The requirements that management assess, and that the external auditor attest to the adequacy of, internal controls likewise appear to be sensible objectives.

In practice, however, several factors have led to an unexpected explosion of activity in connection with implementing Section 404. First, although AS2 was developed as a guide for external auditors in determining whether internal control over financial reporting is effective, no similar guide has been developed for management. SEC rules require management to base its assessment of internal control over financial reporting on a suitable,

⁶⁵ 15 U.S.C. 7262.

⁶⁶ S. Rep. No. 107-205, at 31 (2002).

⁶⁷ See Sections IV and V of Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, SEC Release No. 33-8238 (June 5, 2003) [68 FR 36636] ("[W]e assumed that there is a direct correlation between the extent of the burden and the size of the reporting company, with the burden increasing commensurate with the size of the company."). The Commission did, however, anticipate that for many companies the first-year internal cost of compliance would be well in excess of the average.

⁶⁸ Pub. L. No. 95-213, tit. I (1977).

⁶⁹ 15 U.S.C. 78m(b)(2)(B).

⁷⁰ See Foreign Corrupt Practices Act of 1977: Statement of Policy, SEC Release No. 34-17500 (Jan. 29, 1981) [46 FR 11544] (presenting address by SEC Chairman Harold Williams to AICPA Annual Conference as Commission statement of policy) (included as Appendix M).

⁷¹ 17 CFR 241 (citing *id.*).

recognized control framework. Although the COSO Framework provides criteria against which to assess internal control, it does not provide management with guidance on how to document and test internal control or how to evaluate deficiencies identified. Consequently AS2 has become the *de facto* guide for management, even though it was only intended to be used as an auditing standard; management has tried to meet the same requirements as auditors in performing their assessments, when in fact management and auditors likely perform their assessments of internal controls differently. Adding to the problem has been the absence of any clear definition or guide as to what constitutes adequate internal controls for smaller companies. This problem has been compounded by the different requirements in Section 404 for management and for their external auditors.⁷² Management must assess the effectiveness of the internal controls over financial reporting, while the external auditor must report on whether management's assessment of the effectiveness of internal control is fairly stated and provide (attest to) a separate opinion on whether the company's internal control is effective.

Second, as both accelerated filers and non-accelerated filers busily prepared for the first audit of internal control and as Section 404 implementation efforts were taking place, there had been little attempt to tailor, or "scale" regulation to address the specific manner in which smaller companies operate. Although many feel that smaller companies are operationally different from larger companies in ways relevant to internal controls, and hence that small companies' internal controls and methods of evaluating them should be

⁷² The distinction between the Section 404 requirements for management versus those for the external auditors is misunderstood, and often overlooked. This distinction is important because our recommendation is that as companies grow in size and complexity, they should take on more expansive Section 404 requirements. For smaller companies, we think there should be a management assertion as to the adequacy of the internal control over financial reporting, but that the need for the external auditor involvement does not arise until a company reaches a certain size and complexity. Therefore, there is a need for a definition and guide for management on what are adequate internal controls for smaller companies.

scaled accordingly, neither AS2 nor any other source provides a clear definition or guide for management as to what constitutes adequate internal controls for smaller companies.⁷³ As noted above, COSO is developing guidance intended to facilitate the application of the COSO Framework in the small business environment; however, the draft guidance recently exposed for public comment by COSO does not fully offer a solution for small businesses and may not reduce costs of implementing Section 404 in a small business environment.

Moreover, even though auditors maintain that they are already taking a risk-based approach to the AS2 audit, we heard significant testimony from companies suggesting that implementation of AS2 has resulted in very rigid, prescriptive audits as a result of onerous AS2 requirements. Most issuer comments we received indicated that auditors applied a one-size-fits-all standard, even as auditors maintained that each audit stands on its own; as the Commission's May 2005 guidance suggests, and the input we received confirms, auditors in many instances utilize an approach that is "bottom-up" rather than "top-down."⁷⁴ This results in audits that are not risk-based and, in particular, involve extensive testing of information technology (IT) controls. The result is extensive focus by auditors on detailed processes, a number of which create little or no risk to the integrity of the financial statements.

Finally, the Sarbanes-Oxley Act created the PCAOB to monitor the performance of the external auditors. The creation of this regulatory watchdog, the introduction of PCAOB

⁷³ Many believe that AS2, in practice, has proven not to be scalable in a manner that would make it applicable in a cost-effective way to smaller companies. Although the PCAOB proposed for comment a draft AS2 that included an appendix for smaller companies, the appendix was not included in the version of AS2 that the PCAOB and, later, the Commission approved. Additionally, the COSO Framework includes some guidance regarding smaller companies but it is minimal. Many observers acknowledge the need to scale for smaller public companies, but because of the challenges involved, have avoided attempting to scale despite such need.

⁷⁴ Despite the May 2005 guidance's call for a more top-down, risk-based approach, testimony we heard indicated that such guidance has not substantially altered the approach of auditors.

inspectors and the subsequent issuance of AS2 have altered auditor behavior and, we believe, has diminished the exercise of professional judgment.⁷⁵

Disproportionate Impact: The Smaller You Are, the Larger the Hit

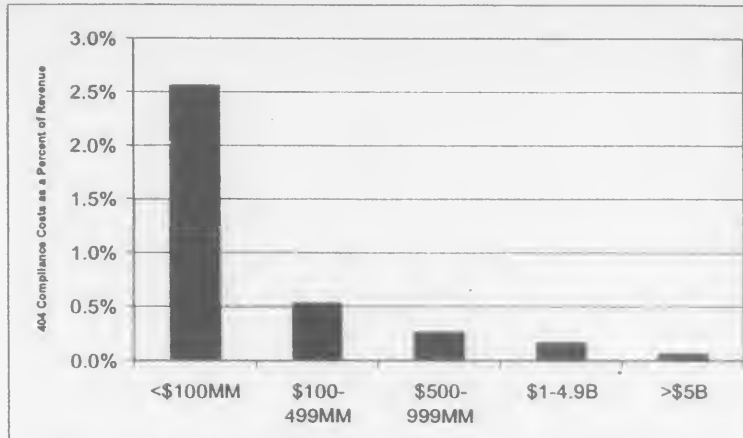
Studies into the consequences of Section 404 indicate that actual average costs of Section 404 compliance have in fact been far in excess of what was originally anticipated. In addition, although costs generally decline following the first year of implementation, a recent study commissioned by the Big Four accounting firms acknowledges that second year total costs for public companies with a market capitalization between \$75 million and \$700 million will still equal, on average, approximately \$900,000.⁷⁶

But beyond the aggregate costs involved with Section 404 compliance, costs have been disproportionately borne by smaller public companies. The lack of proportionality of the cost and amount of resources devoted to Section 404 compliance for smaller public companies is evidenced by data which shows that the expected cost of Section 404 implementation, as a percentage of revenue, is dramatically higher for smaller public companies than it is for larger public companies. The following chart illustrates this disparity:⁷⁷

⁷⁵ See After Sarbanes-Oxley, National Law Journal Online (Dec. 12, 2005) (remarks of former SEC Commissioner Joseph Grundfest).

⁷⁶ See CRA International Sarbanes-Oxley Section 404 Costs and Implementation Issues: Survey Update, at 1. For further information concerning the impact of Section 404, see American Electronics Association, Sarbanes-Oxley Section 404: The "Section" of Unintended Consequences and Its Impact on Small Business (Feb. 2005) and Financial Executives International, FEI Special Survey on Sarbanes-Oxley Section 404 Implementation (Mar. 2005). Although these studies are subject to further critical analysis, they indicate considerably higher Section 404 compliance costs than the Senate, the SEC and others estimated.

⁷⁷ This table is based on data from the Financial Executives' International study and estimates of the Section 404 working group of the American Electronics Association. We note that companies with a market capitalization of less than \$75 million generally did not have to comply with Section 404 in 2004. Many expect that compliance costs for the smallest companies in the chart will consequently be much higher when such companies are required to comply.

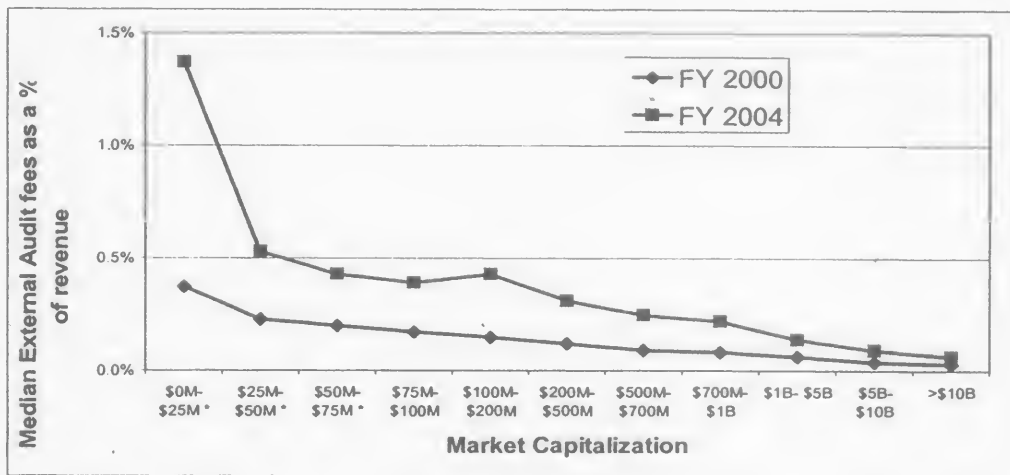


Source: American Electronics Association (AEA) Report on Sarbanes-Oxley Section 404, The 'Section' of Unintended Consequences and Its Impact on Small Business; February 2005

We also note that external auditor fees have overall been increasing, both before and after implementation of the Sarbanes-Oxley Act. The graph below illustrates the change in external audit fees and audit related fees as a

percentage of revenue that has occurred for companies of varying market capitalizations, between 2000 and 2004.⁷⁸ This shows that external fees for smaller public companies have roughly tripled as a percentage of revenue

between 2000 and 2004, and that the fees for these smaller public companies as a percentage of revenue have remained many times higher for larger public companies over this period.⁷⁹



Many commentators, including the Commission, the Big Four audit firms, NASDAQ and the American Electronics Association, have estimated that the external audit fees represent between one quarter and one third of the total cost of implementing Section 404. When one factors in this multiplier (i.e., that total Section 404 implementation costs are three to four times external audit

fees) on the cost borne by smaller public companies, it is clear that this results in a significant disproportionate cost for their shareholders.

Management Override and the Resulting Increase in Cost Structure for Smaller Public Companies

We believe that the risk of management override in any company is

a key risk, and effective internal controls, particularly at the entity level, need to be in place to prevent such overrides from occurring.⁸⁰ In a smaller public company, this risk is increased due to top management's wider span of control and more direct channels of communication. The concentration of decision-making authority at the top of a typical smaller company results in

⁷⁸ Source: SEC Office of Economic Analysis, *Background Statistics: Market Capitalization and Revenue of Public Companies* (Aug. 2, 2005) (included as Appendix I). We note that this graph shows changes in fees for companies affected by Section 404 and non-accelerated filers that have not

been required to comply with that provision's requirements.

⁷⁹ Percentage growth varies depending on the size of the company and measurement method. See Tables 8, 10 & 23 in Appendix I.

⁸⁰ See American Institute of Certified Public Accountants, *Management Override of Internal Controls: The Achilles' Heel of Fraud Prevention* (2005), available at http://www.aicpa.org/audcommctr/download/achilles_heel.pdf.

both an increased chance of fraud due to management override, and also, conversely and more importantly, a significant increase in the probability that errors or fraud in financial reporting will be discovered through an honest senior management process that directly oversees financial reporting.⁸¹ This dichotomy creates much of the tension in the debate over Section 404. Some members of this Committee believe that this fundamental difference in how large and small companies are managed deserves more focus and, as a result, are of the view that strengthening internal controls over top management in the smaller company will reduce the risk of management override and will provide investors better protection from a material fraud. Some also believe that, in a smaller company, it is difficult if not impossible for a widespread fraud to occur that does not involve senior management.

In smaller companies, people wear multiple hats. It simply is not feasible to have a person who focuses on a single area. It also means that personnel need to be cross trained in multiple jobs in order to fill in as needed or when someone is absent. The result is that segregation of duties, a key element of effective internal control, may not be achievable to the extent desired. This lack of segregation of duties requires senior management to be involved in all material transactions and directly involved in financial reporting.⁸² Smaller companies, by their nature, need to be flexible and the environment they operate in requires them to make changes quickly in order to compete effectively with much larger and more entrenched competitors. In fact, it is this versatility and the ability to change

quickly that is their single most effective competitive strength. By their nature, smaller companies are more dynamic and are constantly evolving, changing and growing more rapidly than larger companies. This dynamic nature requires frequent changes in process and more frequent job changes inside the company, which limits their ability to have static processes that are well documented. It also creates the need for top management involvement and review over financial reporting. Larger companies have more rigidly defined roles and processes that enable them to segregate duties to the extent that the internal control environment can be relied on for financial reporting. In fact, it is essential that larger companies have well-defined processes that enable them to create "boundaries" in order to be efficient and effective in competing with other companies, both large and small. This is the basic difference between large and small companies and is at the heart of the Committee's recommendations. Simply put, well established boundaries and flexibility are incompatible and not totally possible in a smaller company. Section 404 and AS2 can be effective in larger companies because of the boundaries inherent in those companies. Many believe that in a smaller company these requirements cause the company to lose its flexibility, and as a result put these companies at a competitive disadvantage without significantly improving investor protection.

In our deliberations we focused on three financial reporting concerns as they relate to Section 404 applicability to smaller public companies. First, the lack of segregation of duties in these companies creates an internal control environment that is not primarily relied upon for financial reporting purposes by either management or auditors.⁸³ It is important to note that we believe these companies should be concerned with internal control, and we note that ample law is on the books today that requires all public companies to have an effective internal control system in place.⁸⁴ The point is that in the smaller public company, these controls are not primarily relied upon for financial reporting and are at times ineffective at preventing fraud at the executive level.

Second, the significant risk of management override in all companies creates an increased need for entity level controls and board oversight. At the process level, controls are not

effective at controlling this risk; we believe there are more effective controls that can be put in place to reduce the risk of management override, especially at smaller companies. These include an increased oversight role for the board and audit committee, a more robust communication system between the board and the executive levels of the company, and increased scrutiny from external auditors in key areas where override can occur.⁸⁵

Third, the requirements of AS2 and the requirements of auditors to document controls and the redundancy of control testing creates an environment in smaller companies that limit their ability to be flexible, and thereby hinders their competitiveness. We believe strongly that the formation of new companies and their ability to access the U.S. capital markets in a responsible manner should be encouraged by all market participants. Therefore we believe investor risk protection should be encouraged. We also strongly believe that a company must focus on value creation for its investors, and that our recommendations strike a more appropriate balance between the costs and benefits of Section 404.

We also note that the AICPA's Proposed Statement on Auditing Standards, *Communication of Internal Control Related Matters Noted in an Audit*, could be adopted by the PCAOB to improve communication on internal control matters between the auditor and audit committee in the case of companies whose internal controls are not audited pursuant to our recommendation.

Moreover and very importantly, the application of not only Section 404 but the other regulations adopted under Sarbanes-Oxley have serious cost and profitability ramifications for smaller public companies in addition to the financial reporting and management override aspects.

First, the flexibility and requirement to change quickly is imposed on the smaller company by the customer; *i.e.*, it is not management's choice. It is what the customer expects—indeed demands—for the smaller company's price, which often times is slightly higher than that charged by a larger company. Flexibility and quick change often means that processes and controls change, and consequently that the

⁸¹ The COSO Framework described management control activities for small and mid-size companies as follows: "Further, smaller entities may find that certain types of control activities are not always relevant because of highly effective controls applied by management of the small or mid-size entity. For example, direct involvement by the CEO and other key managers in a new marketing plan, and retention of authority for credit sales, significant purchases and draw downs on lines of credit, can provide strong control over those activities, lessening or obviating the need for more detailed control activities. Direct hands-on knowledge of sales to key customers and careful review of key ratios and other performance indicators often can serve the purpose of lower level control activities typically found in large companies." COSO Framework at 56.

⁸² The COSO Framework states: "An appropriate segregation of duties often appears to present difficulties in smaller organizations, at least on the surface. Even companies that have only a few employees, however, can usually parcel out their responsibilities to achieve the necessary checks and balances. But if that is not possible—as may occasionally be the case—direct oversight of the incompatible activities by the owner-manager can provide the necessary control." *Id.*

⁸³ *Id.*

⁸⁴ See Exchange Act § 13(b)(2)(B), 15 U.S.C. 78m(b)(2)(B) (codifying part of Foreign Corrupt Practices Act of 1977, § 102, Pub. L. 95-213).

⁸⁵ The COSO Framework states: "Because of the critical importance of a board of directors or comparable body, even small entities generally need the benefit of such a body for effective internal controls." p. 31. See also Exposure Draft of AICPA, *Communication of Internal Control Related Matters Noted in an Audit* (Sept. 1, 2005).

documentation of those controls change, resulting in a cost of keeping documentation that remains more or less constant each year. Given this dynamic, for smaller companies the cost of documentation, preparation and testing under AS2 will not likely be reduced as much as anticipated, and not to the extent it will in larger companies with more stable, rigid processes.

Second, larger companies frequently have lower material costs and can leverage their buying power. It is not unusual to see a whole percentage point difference in material costs between a large company and a small company. The small company must offset that large company advantage with their package of value (service, superior product, flexibility, adaptability). Because the price is often set by the customer, a smaller company must squeeze profitability out of overhead. That aspect of the cost structure must be smaller when compared to the large company. It must both offset the higher material costs and also support profitability, which is the ultimate determination of shareholder value. Increasing the burden for a small company directly and quickly erodes shareholder value. Because the estimate of the costs for Section 404 implementation was underestimated so dramatically (millions of dollars per year, versus \$91,000), the pain and loss of value has been significantly greater for a small company.

Third, the Sarbanes-Oxley Act not only added Section 404 costs and other burdens that fell disproportionately on smaller companies, it introduced burdens that, because of the nature of smaller companies, will be ongoing rather than one time. The incremental cost of operating a board of directors, for example, has increased because of higher director and officer insurance costs, the increased activity and oversight responsibilities of the compensation, audit and nominating committee, more costly legal and audit fees, and increased fees for independent advisors to the committees, a new and sometimes uncontrollable expense. The pass-through cost from the supply chain (for Sarbanes-Oxley) is starting to find its way into the overall cost structure. These are compounding the increased burden cost and they are repetitive—one time—costs.

In summary, these characteristics, result in frequent documentation change and sustained review and testing for certification under Section 404, the cost of which is more of a sustained annual cost. This forced cost choice, combined with increased board operation costs and other costs incurred as a result of

Sarbanes-Oxley dramatically and adversely affect the cost structure of a small company.

Overview of Recommendations

As noted above, we believe that the crux of the existing problem, and the cornerstone of our recommended solution, is that smaller and larger public companies operate in a very different manner. As companies grow in size and complexity, they rely more on formal, prescriptive and transactional internal controls to maintain the operations of the company. This sentiment was confirmed by the significant input we received indicating that small and typically less complex companies are very different from larger companies and therefore, the reforms made by the Commission and the stock exchanges should be applied differently, depending on the size of the company. A number of witnesses challenged the application of AS2 to smaller, less complex businesses, regardless of structure, size or strategy. Faced with this reality, and in order to properly scale Section 404 treatment to ensure that the benefits of implementation outweigh burdens, we propose differing 404 compliance requirements based upon company size. By way of introduction to the recommendations below, we believe that two items bear mentioning at the outset: (1) The opt-in approach of our recommendations and (2) the use of revenue filters as a means of capturing company complexity and consequently the cost-effectiveness of applying Section 404 requirements.

Opt-In Approach

An essential component of the exemptive relief we are proposing for smaller public companies is that an issuer, through its board of directors, and in consultation with its audit committee and external auditor, could very well decide not to take advantage of the exemptive relief available and instead comply with the Section 404 rules applicable to larger public companies.⁸⁶

Some argue that internal control over financial reporting should be beneficial to smaller public companies because it will make it easier for them to attract capital. At this point in the development of the internal control requirements, we think the evidence is quite mixed on this question and, if anything, is tending in the opposite

⁸⁶ For a discussion of the benefits of such an optional approach, as well as the circumstances that led to the formation of our Committee, see Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 *Yale L.J.* 1521, 1595–1597 (2005).

direction. A number of data points lead us in this direction, but we recognize that the evidence has not been fully analyzed and it may be premature to make any conclusions. Nevertheless, the following developments should be carefully monitored:

- Some companies are either going dark or going private or considering doing so;⁸⁷
- The London Exchange's Alternative Investment Market (AIM) for smaller public companies is gaining momentum;⁸⁸
- Foreign new listings in the United States during 2005 dropped considerably from the previous year;⁸⁹
- Foreign issuers are departing from the U.S. market (and their institutional investors are voting for their going offshore); and
- U.S. investors continue to invest in foreign securities even though the

⁸⁷ We received several answers to this effect in response to Question 1 of Request for Public Input by Advisory Committee on Smaller Public Companies, SEC Release No. 33-8599 (Aug. 5, 2005) available at <http://www.sec.gov/rules/other/265-23survey.shtml>. See William J. Carney, *The Costs of Being Public After Sarbanes-Oxley: The Irony of 'Going Private'*, Emory Law and Economics Research Paper No. 05-4 at 1 (February 2005) available at SSRN: <http://ssrn.com/abstract=672761>; Joseph N. DiStefano, *Some Public Firms See Benefit in Going Private*, *Phil. Inq.*, Jan. 21, 2006 (reporting on a discussion at the 11th Annual Wharton Private Equity Conference), available at <http://www.philly.com/mld/inquirer/business/13676241.htm>. The Ziegler Companies, Inc. is an example of a public company that decided to delist from the American Stock Exchange and deregister under the Exchange Act. As reasons for the delisting and deregistration, Ziegler said, among other things: "the costs associated with being a reporting company under the '34 Act are significant and are expected to continue to rise, thereby diminishing the Company's future profitability; the benefits of remaining a listed company with continued '34 Act reporting obligations are not sufficient to justify the current and expected future costs and no analysts cover the Company's shares." Ziegler's shares are now traded in the Pink Sheets and the company provides its shareholders with, among other items, annual reports including audited financial statements, news of important events and a proxy statement. It also has a Web page including financial and governance information.

⁸⁸ The AIM Market is actively and successfully prospecting for listing companies in the United States. See G. Karmin and A. Luchetti, *New York Loses Edge in Snagging Foreign Listings*, *Wall St. J.*, Jan. 26, 2006, at C1, and Stephen Taub, *VCs Look For Poyday in London*, *CFO.com*, Feb. 3, 2006, available at http://www.cfo.com/article.cfm/5487545/c_5486496?f=TodayInFinance_Inside. See also Letter from John P. O'Shea to Committee (June 16, 2005), available at <http://www.sec.gov/rules/other/265-23/jposhea061605.pdf>. See also *Record of Proceedings* 189 (Aug. 9, 2005) (testimony of James P. Hickey, Principal, Co-Head of Technology Group, William Blair & Co. indicating that strong IPO candidate elected to go public on the AIM exchange expressly to avoid costs and burdens of Sarbanes-Oxley Act compliance).

⁸⁹ See Patrick Hosking, *Call of U.S. Investors Set a Worrying Precedent*, *Times Online*, Feb. 2, 2006, available at <http://business.timesonline.co.uk/article/0,,13129-2020817,00.html>.

issuers are not subject to internal control requirements like those promulgated under Section 404.⁹⁰

Without deciding whether Section 404 is beneficial for investors in smaller public companies, we believe that in light of our reasons for recommending exemptive relief for these companies, permitting them to comply or take advantage of the relief is the appropriate course of action to recommend.

Use of Revenue Filters

We would add a revenue filter or criterion as a condition to providing Section 404 exemptive relief for smaller public companies, because we think that when evaluating the costs and benefits of applying the Section 404 requirements to smaller public companies, revenues are a very important factor. We believe that companies with revenues in excess of \$250 million are generally complex, and hence rely more on process controls to generate their financial statements. Because auditors of such companies, as part of the financial audit, are likely to have relied on and thus tested these internal controls as part of the financial audit in the past, it is likely to be relatively less expensive, when compared to smaller, less complex companies with respect to which controls weren't previously tested for purposes of the financial audit, to comply with Section 404. Conversely, we believe that companies with large market capitalizations and minimal revenues, such as development stage companies that trade on very large multiples because of potential, are generally simple in terms of operations and pose a lesser risk of material financial fraud. Therefore, our recommendations provide that a smallcap company whose annual product revenue in the last fiscal year did not exceed \$10 million would, solely for purposes of our Section 404 recommendations, be treated the same as a microcap company.

We acknowledge that there exists no clear, obvious line for distinguishing between companies based on revenues. Our collective experience indicates, however, that companies with revenues of \$250 million or more a year are getting large enough and complex enough that auditors rely more on the

internal controls to conduct the financial statement audit than they do for companies with less revenues. Specifically, auditors of smaller companies and internal financial teams of smaller companies confirm that the smaller the company, the less valuable the internal control audit is to the financial statement audit. For smaller companies, the financial audits tend to become more substantive in nature, with particular attention on key, high risk areas (inventory, revenue recognition, etc.). Indeed, financial experts testified that the larger the company the more the auditor relies on the operation of internal controls to perform the financial statement audit. This is because, the larger the company, the more far flung and complex the operations become and the less practical it is to test significant numbers of transactions.

Internal Control Over Financial Reporting—Primary Recommendations

We recommend that the Commission and other bodies, as applicable, effectuate the following:

Recommendation III.P.1

Unless and until a framework for assessing internal control over financial reporting for such companies is developed that recognizes their characteristics and needs, provide exemptive relief from Section 404 requirements to microcap companies with less than \$125 million in annual revenue and to smallcap companies with less than \$10 million in annual product revenue that have or expand their corporate governance controls that include:

- Adherence to standards relating to audit committees in conformity with Rule 10A-3 under the Exchange Act;
- Adoption of a code of ethics within the meaning of Item 406 of Regulation S-K applicable to all directors, officers and employees and compliance with the further obligations under Item 406(c) relating to the disclosure of the code of ethics; and
- Design and maintain effective internal controls over financial reporting.

In addition, as part of this recommendation, we recommend that the Commission confirm, and if necessary clarify, the application to all microcap companies, and indeed to all smallcap companies also, of the existing general legal requirements regarding internal controls, including the requirement that companies maintain a system of effective internal control over financial reporting, disclose modifications to internal control over

financial reporting and their material consequences and apply CEO and CFO certifications to such disclosures.⁹¹

Moreover, management should be required to report on any known material weaknesses. In this regard, the Proposed Statement on Auditing Standards of the AICPA, "Communications of Internal Control Related Matters Noted in an Audit," if adopted by the AICPA and the PCAOB, would strengthen this disclosure requirement and provide some external auditor involvement in the internal control over financial reporting process.

Our first recommendation primarily concerns microcap companies, which represent the lowest 1% of total U.S. equity market capitalization.⁹² In our view, these companies should be entitled to full Section 404 exemptive relief, preconditioned upon their compliance with the enhanced corporate governance provisions described above.⁹³ The following federal securities law requirements would remain applicable to all companies that would qualify for full Section 404 relief in accordance with this recommendation:

- Maintain a system of internal controls that provides reasonable assurances as to accuracy, as required

⁹¹ Messrs. Jensen, Schacht and Veihmeyer dissented from the majority vote on this recommendation. The reasons for their dissents are contained in Parts VII, VIII and IX of this report. All other members present voted in favor of this recommendation.

⁹² The statistics we were provided indicate that 4,641, or 49%, of the 9,428 U.S. public companies would be eligible for exemptive relief under this recommendation. See SEC Office of Economic Analysis, *Background Statistics: Market Capitalization and Revenue of Public Companies*, Tables 2, 19 & 26 (Aug. 2, 2005) (included as Appendix I).

⁹³ The approach adopted by the Committee has been raised as a possibility by various parties. See, e.g., Letter from Ernst & Young LLP to SEC, at 16 (Apr. 4, 2005) (Ernst & Young said, with a number of reservations, including the lack of sufficient information and longer term experience with 404: "Should the level of costs necessary to do the job right be determined to be unacceptable in relation to the benefits provided to investors in smaller public companies, the SEC could then consider using its exemptive authority to provide alternatives, including annual reporting by management on the issuer's internal controls over financial reporting with no auditor attestations or with less frequent auditor attestations (for example, auditor attestations every other year) or even complete elimination of annual reporting by management on the issuer's internal controls over financial reporting.") (on file in SEC Public Reference Room File No. 4-497), available at <http://www.sec.gov/news/press/4-497/eyllp040405.pdf>. We note that Mr. Veihmeyer, in his discussion of reasons for dissenting from this recommendation (included in Part IX of this report), states that after further study and experience with Section 404 "it may become evident * * * that an audit of internal control over financial reporting may not be justified for certain very small public companies that evidence certain characteristics."

⁹⁰ *Record of Proceedings* 100 (Oct. 14, 2005) (testimony of Gerald I. White). See also Rebecca Buckman, *Tougher Venture: IPO Obstacles Hinder Start-ups*, Wall St. J., Jan. 25, 2006, at C1 (stating that "[l]ast year, 41 start-ups backed by venture-capital investors became publicly traded U.S. companies, down from 67 in 2004 and 250 in the boom year of 1999" and that "[o]verall IPO's of U.S. companies also declined last year, but not as sharply, to 215, from 237 in 2004").

by Exchange Act Section 13(b)(2)(B) enacted under the FCPA;

- Provide chief executive officer and chief financial officer certifications under Sarbanes-Oxley Act Section 302;⁹⁴
- Receive external financial audits;
- Comply with the requirements of Item 9A of Form 10-K and Item 4 of Part I of Form 10-Q; and
- Disclose, consistent with current Section 404 rules, all material weaknesses known to management, including those uncovered by the external auditor and reported to the audit committee.⁹⁵

For microcap companies that comply with these requirements, we envision that full Section 404 relief would be effective immediately.

While we are convinced that the costs associated with Section 404 compliance are disproportionate and unduly burdensome to smaller public companies, we are also mindful of the Commission's investor protection mandate. We believe that our recommendation provides a more cost-effective method of enhancing investor protection. We believe that enhanced audit committee standards and practices and the adoption and enforcement of ethics and compliance programs are effective, as well as cost-effective, means of maintaining investor protections.

Rule 10A-3 under the Exchange Act requires national securities exchanges and associations to prohibit the initial or continued listing of a security of an issuer that is not in compliance with specified listing standards relating to audit committees. These standards relate to: Audit committee member independence; responsibility for the appointment, compensation, retention and oversight of an issuer's registered public accounting firm; the establishment of procedures for the receipt of accounting-related complaints, including anonymous

submissions by employees; the authority to engage advisors; and funding. The New York and American Stock Exchanges and the NASDAQ Stock Market have now incorporated the requirements of Rule 10A-3 into their respective listing standards. The audit committee standards mandated by Rule 10A-3 currently do not apply to any smaller public companies that are not subject to those listing standards. We believe that if Section 404 relief is granted to the microcap and smallcap companies that we recommend for relief, those companies should, as a condition to such relief, be required to adhere to the audit committee standards embodied in Rule 10A-3.

Item 406 of Regulation S-K requires a reporting company to disclose whether it has adopted a code of ethics that applies to its principal executive officer, chief financial officer and other appropriate executives and, if it has not adopted such a code, to state why it has not done so. Item 406 defines a code of ethics to be written standards that are reasonably designed to deter wrongdoing and to promote: Honest and ethical conduct, including handling of conflicts of interest; full, fair, accurate, timely and understandable disclosure in reports and documents filed with the Commission and in other public communications; compliance with applicable governmental laws, rules and regulations; prompt internal reporting of violations of the code; and accountability for adherence to the code. A reporting company is also required to file a copy of its code of ethics with the Commission as an exhibit to its annual report, or to post the text of the code on its Web site. Item 406 mandates disclosure as to whether a code of ethics exists, but does not require the adoption of a code. The major exchanges, including the NYSE, AMEX and the NASDAQ Stock Market, go further and require, as part of their listing standards, the adoption of a code of ethics meeting the fundamental requirements embodied in Item 406, and extend the coverage to the directors and employees of listed companies.⁹⁶ As is the case with the audit committee standards described above, issuers not subject to listing standards requiring the adoption of a code of ethics are not obligated to do so under Commission rules. We believe that the adoption and enforcement of a code of ethics is both cost effective and appropriate for smaller public companies that receive relief from the attestation requirements

of Section 404. A recent integrity survey undertaken by KPMG Forensic noted that employees who work in companies with comprehensive ethics and compliance programs reported fewer observations of misconduct and higher levels of confidence in management's commitment to integrity.⁹⁷

With regard to the penultimate paragraph of the recommendation above, we simply wish for the Commission to make clear, to the extent clarity is lacking, that those smaller public companies qualifying for exemptive relief will continue to be required to (1) maintain a system of internal control sufficient to provide reasonable assurance that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, (2) disclose any modifications to internal control over financial reporting and (3) certify such disclosures.

Recommendation III.P.2

Unless and until a framework for assessing internal control over financial reporting for such companies is developed that recognizes their characteristics and needs, provide exemptive relief from external auditor involvement in the Section 404 process to the following companies, subject to their compliance with the same corporate governance standards as detailed in the recommendation above:⁹⁸

- Smallcap companies with less than \$250 million in annual revenues but greater than \$10 million in annual product revenue; and
- Microcap companies with between \$125 and \$250 million in annual revenue.⁹⁹

Smallcap companies that qualify for the Section 404 external audit of internal control relief still would be subject to the rest of Section 404's requirements, all otherwise applicable federal securities law requirements and, in addition, in the case of companies not listed on the NYSE, AMEX or NASDAQ Stock Market, all of the corporate governance standards

⁹⁴ We expect that the Section 302 certifications of companies receiving exemptive relief from Section 404 would still be required to include the introductory language in paragraph 4 of that provision (which refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting) and paragraph 4(b) (which refers to the internal control over financial reporting having been designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements).

⁹⁵ We considered other possible corporate governance and disclosure standards that might be imposed as a condition to any Section 404 relief for smaller public companies. In the final analysis, however, we felt that imposing conditions beyond those described above could result in hardship for smaller public companies that would not be commensurate with the benefits received from an investor protection standpoint.

⁹⁶ New York Stock Exchange Rule 303A.10; NASDAQ Stock Market Rule 4350(n); AMEX Company Guide Sec. 807.

⁹⁷ KPMG Forensic Integrity Survey 2005-2006.

⁹⁸ Messrs. Jensen, Schacht and Veihmeyer dissented from the majority vote on this recommendation. The reasons for their dissents are contained in Parts VII, VIII and IX of this report. All other members present voted in favor of this recommendation.

⁹⁹ The statistics we were provided indicate that 1,957, or 21%, of the 9,428 U.S. public companies would be eligible for exemptive relief under this recommendation. See SEC Office of Economic Analysis, *Background Statistics: Market Capitalization and Revenue of Public Companies*, Tables 2, 19 & 26 (Aug. 2, 2005) (included as Appendix I).

specified above applicable to companies so listed. Among the federal securities law requirements that would remain applicable to all smallcap companies that qualify for the Section 404 external audit of internal control exemptive relief would be the requirements to:

- Maintain a system of internal controls that provides reasonable assurances as to accuracy, as required by Exchange Act Section 13(b)(2)(B) enacted under the FCPA;
- Complete and report on management's assessment of internal control under Section 404;
- Provide chief executive officer and chief financial officer certifications under Section 302;
- Receive external financial audits;
- Comply with the requirements of Item 9A of Form 10-K and Item 4 of Part I of Form 10-Q; and
- Disclose, consistent with current Section 404 rules, all material weaknesses known to management, including those uncovered by the external auditor and reported to the audit committee.

For smallcap companies that comply with these requirements, we envision that Section 404 external audit of internal control relief would be effective immediately.¹⁰⁰

¹⁰⁰ We are aware that questions have arisen regarding the Commission's authority to provide exemptive relief from full compliance with the requirements of Section 404 in accordance with this recommendation and the recommendation above. As a committee, we are not authorized or capable of rendering legal opinions on this issue. We are aware, however, that Section 3(a) of the Sarbanes-Oxley Act, 15 U.S.C. 7202(a), provides the Commission with broad authority to promulgate "such rules and regulations as may be necessary or appropriate in the public interest or for the protection of investors" in furtherance of Section 404. We believe that the relief we propose satisfies this standard and that the reasoning we have provided for our recommendations demonstrates the reasonableness of this conclusion. Furthermore, we are aware of the view expressed by the Committee on Federal Regulation of Securities of the American Bar Association's Section of Business Law that the Commission has authority to provide exemptive relief for smaller public companies from strict adherence to technical requirements of Section 404, as follows:

"We believe the Commission's authority [to provide relief from the auditor attestation requirements in Section 404(b) for smaller public companies] stems from both the [Exchange Act] and [the Sarbanes-Oxley Act] itself. Section 36(a)(1) of the Exchange Act gives the Commission broad exemptive authority under the Exchange Act. [Sarbanes-Oxley] section 3(b)(1) provides that a violation of [the Act's provisions] will be treated as a violation of the Exchange Act. Therefore, under Exchange Act Section 36(a)(1), the Commission can adopt rules exempting classes of persons (here, smaller public companies) from compliance with [Sarbanes-Oxley] provisions, including * * * Section 404(b)."

Letter from Committee on Federal Regulation of Securities, American Bar Ass'n, to SEC, p.4 n.2 (Nov. 28, 2005) (on file in SEC Public Reference Room File Nos. S7-40-02 & S7-06-03), available at

Recommendation III.P.3

While we believe that the costs of the requirement for an external audit of the effectiveness of internal control over financial reporting are disproportionate to the benefits, and have therefore adopted the second Section 404 recommendation above, we also believe that if the Commission reaches a public policy conclusion that an audit requirement is required, we recommend that changes be made to the requirements for implementing Section 404's external auditor requirement to a cost-effective standard, which we call "ASX," providing for an external audit of the design and implementation of internal controls.¹⁰¹

If the Commission decides to pursue this non-preferred alternative recommendation, we recommend that it direct the PCAOB to take certain steps, and consider taking certain other steps, in connection with developing the necessary new Audit Standard No. X, or ASX, described below. If those steps have been taken and considered, respectively, and complementary additional guidance is available that enables management to assess internal controls in a cost-effective manner,¹⁰² this alternative recommendation should be made effective for fiscal years starting one year after the PCAOB issues ASX.¹⁰³

<http://www.sec.gov/rules/proposed/s70603/aba112805.pdf>. We also are aware that the Commission's broad rulemaking authority under Section 36(a)(1) of the Exchange Act may be exercised to provide exemptive relief from the requirements of Section 13(b)(2)(B) of the Exchange Act, the provision that requires public companies to devise and maintain the systems of internal accounting controls that are the subject of management's internal control report and the auditor's report required under Section 404. We also are aware that the Commission itself already has provided exemptive relief from Section 404 for certain reporting entities, such as asset-backed issuers, indicating that the SEC believes it has exemptive authority to provide relief from technical compliance with Section 404. We believe the Commission could cite these and other authorities to demonstrate its authority to provide exemptive relief from the requirements of Section 404. In addition, the Commission could consider applying the canon of construction known as "in pari materia" to construe Section 404 as subject to the Commission's broad exemptive authority in the Exchange Act because the two statutes relate to the same subject matter and must be construed harmoniously.

¹⁰¹ Mr. Barry abstained from the vote on this recommendation. Messrs. Jensen, Schlein and Veihmeyer dissented from the majority vote on this recommendation. Mr. Jensen's and Mr. Veihmeyer's reasons for their dissents are set forth in separate statements in Parts VII and IX, respectively, of this report.

¹⁰² The recommendation immediately below provides details regarding the additional guidance.

¹⁰³ We expect that the alternative recommendation could be effective for fiscal years beginning after December 31, 2007.

The Commission should direct the PCAOB to take the following steps:

- Develop a new audit standard for smaller public companies (ASX) that provides guidance for the external audit of only the design and implementation of internal controls to make the work performed by auditors on internal controls more efficient for these companies;
- Have the standard specify a report that would be similar in scope to the report described in Section 501.71 of Standards for Attestation engagements (plus walkthroughs) of the AICPA; and
- Help to ensure that the standard would meet the cost-effectiveness requirement of the alternative recommendation, by performing a cost-benefit analysis before the standard is included in proposed form and a follow-up analysis before the standard is considered for adoption.

The Commission should direct the PCAOB to consider taking the following steps in developing ASX:

- Involve all stakeholders in audits of internal control and include a field trial period to ensure that the approach is practical and results in achievement of required objectives;
- Take into account that a company would more likely engage its auditors to conduct an AS2 audit as the company gets more complex and the auditor plans or needs to place a high degree of reliance on internal controls to significantly reduce substantive audit procedures (but an auditor still would be permitted to place reliance on controls to reduce substantive testing in selected areas by testing specific controls without performing an AS2 audit); and
- Require that:
 - The same auditor perform and integrate the ASX and financial statement audits;
 - The auditor evaluate control deficiencies identified during the financial statement audit to determine their impact as to the ASX audit; and
 - An auditor who identifies material weaknesses in either the design or operation of controls, should disclose the material weaknesses in its report and state that internal controls are not effective.

Internal Control Over Financial Reporting—Secondary Recommendations

In addition to the foregoing primary recommendations in the area of internal control over financial reporting, we also set forth below for the Commission's consideration the following secondary recommendations:

Recommendation III.S.1

Provide, and request that COSO and the PCAOB provide, additional guidance to help facilitate the assessment and design of internal controls and make processes related to internal controls more cost-effective; also, assess if and when it would be advisable to reevaluate and consider amending AS2.

Clear guidance does not yet exist for smaller public company managers on how to develop and support a proper Section 404 assessment of the effectiveness of internal control.

Section 404 requires management to report on its assessment of the effectiveness of the company's internal controls and requires an external auditor to report on its audit of management's assessment and control effectiveness. As the COSO Framework is currently the most widely used internal control framework in the U.S., managements and auditors have used it to assess internal control. Based on the input provided by COSO on its framework, we have concluded that clear guidance does not yet exist for smaller public company managers on how to support a proper Section 404 assessment of internal control absent AS2.

While COSO has proposed additional guidance for smaller companies, there is currently little practical guidance available to assist smaller companies in implementing the COSO Framework in a cost-effective manner. AS2 provides guidance for an auditor to assess internal control effectiveness. It was not intended to provide management guidance. As a practical matter, however, because AS2 provides detailed guidance for assessing internal control, it is by default the standard that management uses. We do not think that COSO's revised guidance for smaller companies will result in a cost effective or proportional alternative for implementing Section 404.

The Commission should ask COSO to provide additional guidance to help management of smaller companies assess internal controls because of the lack of practical guidance and the absence of a standard to enable management of smaller companies to address internal control.

The Commission could, for example, ask COSO to:

- Add post-year one monitoring guidance with selective testing where appropriate (in this regard, we note that the PCAOB, in its January 17, 2006 comment letter to COSO, noted that "auditability should not be the primary goal of the guidance."); and

- Emphasize that "materiality" for the purposes of evaluating a "material weakness" is to be determined on an annual but not on a quarterly basis (we note that this might require amendments to AS2 and SEC rules).

The Commission should also ask the PCAOB to:

- Address the ability to rely on compensating controls (especially for smaller public companies);
- Describe ways to reduce compliance costs relating to information technology controls, a significant source of internal control compliance costs, consistent with the underlying risks; and

- Provide for smaller public companies:

- If no external audit of internal control is required, guidance on how management, in general, can assess internal controls efficiently and on a stand-alone (*i.e.*, no external auditor involvement) basis;¹⁰⁴ and
- If ASX is required, guidance on how management, in general, can assess internal controls efficiently and in satisfaction of the requirements of the external auditor acting under ASX without following the auditor-directed guidance in ASX or AS2.

The PCAOB in its January 17, 2006 comment letter to COSO recommended that COSO reconsider whether there is additional, more practical guidance that COSO could provide to smaller public companies. We support this goal and consider such practical guidance as critical to smaller public companies having a cost-effective approach to assessing their internal controls.

We believe that the Commission also should assess, in light of, among other factors, existing and suggested guidance, when it would be advisable to reevaluate and consider amending AS2. Furthermore, the Commission should provide additional guidance by clarifying considerations, and encouraging cost-effectiveness, relating to management's design and assessment of internal controls and by developing resources to enhance the availability of additional guidance.

In order to provide this clarification and encouragement, the Commission could, for example,

- State that "materiality" for the purposes of assessing a "material weakness" under Section 404 is to be determined on an annual but not on a quarterly basis;

¹⁰⁴ While AS2 provides a way to assess internal controls, it is designed for external auditors rather than management and has not proven to be a cost-effective tool in regard to smaller companies.

- Note the ability to rely on compensating controls, especially for smaller public companies; and
- Suggest methods to reduce compliance costs relating to information technology controls, a significant source of internal control compliance costs, consistent with the underlying risks.

In order to develop resources to enhance the availability of additional guidance, the Commission could, for example, allocate resources to develop a free Web site with a title such as "Center of Excellence for Reporting and Corporate Governance for Smaller Public Companies." The Web site could contain, for example, best practices, frequently asked questions and complex transaction accounting advice.

The Commission should also ask the PCAOB to provide additional guidance to help clarify and encourage greater cost-effectiveness in the application of AS2. The Commission should, for example, ask the PCAOB to reinforce and re-emphasize (including through the inspection process¹⁰⁵) the helpful points made in the PCAOB's May 16 guidance¹⁰⁶ and its November 30, 2005 report,¹⁰⁷ including, in particular, the following:

- A risk-based approach is needed;
- Controls should provide management with reasonable assurance, not absolute or perfect certainty;
- "More than remote" means "reasonably possible";
- Control testing is to find material weaknesses, and other testing should be scaled back (*i.e.* testing is not to find deficiencies and significant deficiencies);
- The financial and internal control audits should be integrated (especially at smaller companies);
- All restatements should not be treated as material weaknesses because accounting complexity not control deficiencies are at the root of many restatements; and
- Management's consultation with the external auditor regarding the

¹⁰⁵ See Conference Panelists Discuss Earnings Guidance and Accounting Issues, SEC Today (Feb. 14, 2006), at 2 (quoting Teresa Iannaconi as stating that while she believes the PCAOB is sincere in its attempt to bring greater efficiency to the audit process, accounting firms are not ready to "step back," because they have all received deficiency letters, none of which say that the auditors should be doing less rather than more).

¹⁰⁶ PCAOB Release No. 2005-009, Policy Statement Regarding Implementation of Auditing Standard No. 2, an Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements (May 16, 2005).

¹⁰⁷ PCAOB Release No. 2005-023, Report on the Initial Implementation of Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements (Nov. 30, 2005).

proper accounting for a transaction should not lead the auditor conclude a material weakness exists.

In addition, the Commission could ask the PCAOB to:

- State that materiality for the purposes of assessing a "material weakness" under Section 404 should be determined on an annual rather than quarterly basis;
- Describe ways to reduce compliance costs relating to information technology controls, a significant source of internal control compliance costs, consistent with the underlying risks; and
- Consider and publicize additional ways to reduce the complexity of AS2 as currently being implemented.

Recommendation III.S.2

Determine the necessary structure for COSO to strengthen it in light of its role in the standard-setting process in internal control reporting.

COSO has been placed in an elevated role by virtue of being referenced in AS2 and the Commission's release adopting the Section 404 rules. While the rules do not require the use of the COSO Framework in performing Section 404 assessments, COSO is by far the most widely used internal control framework for such purposes.

In addition, COSO has issued preliminary guidance for smaller public companies. As a result, COSO has become a *de facto* standard setting body for preparers of financial statements though it is not recognized as an official standard setter, nor is it funded and structured as one.

The Commission, in conjunction with other interested bodies, as appropriate, should determine the necessary structure for COSO, including a broader member constituency, to strengthen it in light of its important role in establishing and providing guidance with respect to the internal control framework used by most companies and auditors to evaluate the effectiveness of internal control over financial reporting.

* * * * *

We fully agree with the goals of recent regulatory reforms, including the Sarbanes-Oxley Act, and believe that they have helped to improve corporate governance and restore investor confidence. These include reforms relating to board independence, management certifications and whistleblower programs. We disagree strongly, however, with the assertion that Section 404, as currently being implemented, is worth the significant "tax" it has placed on American business, in terms of dollars spent, time committed, and organizational

mindshare that has been diverted from operating and growing their businesses.

The proportionately larger costs for smaller public companies to comply with Section 404 may not generate commensurate benefits, adversely affecting their ability to compete with larger U.S. public companies, U.S. private companies and foreign competitors. Smaller companies would have to allocate their limited resources toward Section 404 compliance even though the required control processes may not add significant value to their financial statements. If their ability to compete is diminished, these smaller U.S. companies may find it more difficult to raise capital to engage in value-producing investments.

The significant, disproportionate compliance burden placed on the shareholders of smaller public companies has had a negative effect on their ability to compete with their larger U.S. public company competitors, and, to an even greater extent, their foreign competitors. This reduction in the competitiveness of U.S. smaller public companies will hurt their capital formation ability and, as a result, hurt the U.S. economy. Smaller companies have limited resources, which are being allocated unnecessarily to internal processes for Section 404 compliance. Since these processes play less of a role in the preparation of financial statements for smaller companies, this effort results in diminished shareholder value that makes these companies less attractive investments and, thereby, harms their capital formation ability.

The major drivers of the disproportionate burden are that smaller companies lack the scale to cost-effectively implement standards designed for large enterprises and that there are no guides available for management on how to make its own independent Section 404 assessment or for auditors on how to "right-size AS2" for smaller companies.

The "cost/benefit" challenge is being raised by companies of all sizes, but most acutely by smaller companies on which the burden of cost, time and mindshare diversion fall most heavily.

Part IV. Capital Formation, Corporate Governance and Disclosure

We have conducted a full review of corporate governance and disclosure requirements applicable to smaller public companies. We concluded that, in general, aside from the significant regulatory scaling deficiencies outlined above, the current securities regulatory system for smaller public companies works well to protect investors. The oral testimony and written statements we

received generally supported this conclusion. We did identify some areas, however, where we believe changes in regulation could be made that would reduce compliance costs without compromising investor protection.

In terms of capital formation matters, we heard ample testimony and reviewed a significant amount of data regarding the disproportionate burden that the Sarbanes-Oxley Act, particularly Section 404, imposes on smaller companies. In terms of capital formation, we believe that the increased burden brought about by implementation of Section 404 and other regulatory measures have had a significant effect on both the nature of the relationship between private and public capital markets and on the attractiveness of the U.S. capital markets in relation to their foreign counterparts.

In our view, public companies today must be more mature¹⁰⁸ and sophisticated, have a more substantial administrative infrastructure and expend substantially more resources simply to comply with the increased securities regulatory burden. Additionally, the liquidity demands of institutional investors, the consolidation of the underwriting industry and the increased cost of going public have dictated that companies be larger,¹⁰⁹ and effect larger transactions, in order to undertake an initial public offering. Stated simply, we believe that it is today far more difficult and expensive to go—and to remain—public than just a decade ago, and as a consequence, companies are increasingly turning to the private capital markets to satisfy their capital needs.

In light of the continued importance of the private markets, and our perception that most of the more obvious regulatory impediments to the efficient formation of capital lie in the private realm, we are making a number of recommendations that we believe will improve the ability of private companies to efficiently reach and communicate with investors, while continuing to protect those investors most in need of the protections afforded by registration under the Securities Act.

In terms of the public markets, there is a concern that U.S. markets may

¹⁰⁸ With respect to venture-backed startups, the average time from initial venture financing to initial public offering has increased from less than three years in 1998 to more than five and a half years today. Rebecca Buckman, *Tougher Venture: IPO Obstacles Hinder Start-ups*, Wall St. J., Jan. 25, 2006, at C1.

¹⁰⁹ The median stock market value of a venture-backed company going public last was \$216 million, a marked increase from the \$138 million median value in 1997 and the just under \$80 million median value in 1992. *Id.* at 3.

become increasingly less attractive for companies wishing to raise capital. The U.S. percentage of all money raised from foreign companies undertaking a new stock offering declined from 90% of all such money raised in 2000 to less than ten percent in 2005.¹¹⁰

To address these issues, and to promote healthier and more robust capital markets, will require removing duplicative regulation, enhancing disclosure and promoting an improved atmosphere for independent analyst coverage of smaller public companies.

Capital Formation, Corporate Governance and Disclosure—Primary Recommendations.

We recommend that the Commission and other bodies, as applicable, effectuate the following:

Recommendation IV.P.1

Incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K, make them available to all microcap companies, and cease prescribing separate specialized disclosure forms for smaller companies.

As discussed above, we are recommending that the Commission establish a new system of scaled or proportional securities regulation for smaller public companies that would replace Regulation S-B and make scaled regulation available to a much larger group of smaller public companies. We are not recommending, however, that the scaled *disclosure* accommodations now available to small business issuers under Regulation S-B be discarded. Instead, we are recommending that they be integrated into Regulation S-K and made available to all microcap companies, defined as we recommend under "Part II. Scaling Securities Regulation for Smaller Companies." In Recommendation IV.P.2 immediately below, we recommend that all scaled *financial statement* accommodations now available to small business issuers under Regulation S-B be made available to all smaller public companies, defined as we recommend under "Part II. Scaling Securities Regulation for Smaller Companies." In addition, we

are recommending that the Commission cease prescribing separate disclosure Forms 10-KSB, 10-QSB, 10-SB, SB-1 and SB-2 for smaller companies. All public companies would then use the same set of forms, such as Forms 10-K, 10-Q, 10, S-1 and S-3.

As discussed briefly above, Regulation S-B was adopted by the Commission in 1992 as an integrated registration and reporting system covering both disclosure and financial statement rules for "small business issuers."¹¹¹ "Small business issuer" is defined as an issuer that with both revenues and a public float of less than \$25 million.¹¹² The system provides specialized forms under the Securities and Exchange Acts with disclosure and financial statement requirements that are somewhat less rigorous than the requirements applicable to larger companies under Regulation S-K, the integrated disclosure system, and Regulation S-X, the integrated financial statement system, for larger companies.¹¹³

We reviewed the benefits and drawbacks of Regulation S-B and considered whether the accommodations in Regulation S-B should be expanded, contracted, or extended to a broader range of smaller public companies. We considered oral and written testimony as to the benefits and limitations of Regulation S-B, including testimony and discussion during a joint meeting with the Commission's annual Forum on Small Business Capital Formation.¹¹⁴

¹¹¹ Small Business Initiatives, SEC Release No. 33-6949 (July 30, 1992) [57 FR 36442]. Regulation S-B is codified at 17 CFR 228.10 *et seq.*

¹¹² In addition, small business issuers must be U.S. or Canadian companies, cannot be investment companies or asset-backed issuers and cannot be majority owned subsidiaries of companies that are not small business issuers. 17 CFR 228.10(a)(1).

¹¹³ Regulation S-K is codified at 17 CFR 229.10 *et seq.* Regulation S-X, which provides accounting rules for larger companies, is codified at 17 CFR 210.01.01 *et seq.* The accounting rules for small business issuers using Regulation S-B generally are contained in Item 310 of Regulation S-B, 17 CFR 228.310.

¹¹⁴ See *Record of Proceedings* 48, 143, 148 (June 17, 2005) (testimony of William A. Loving, David N. Feldman and John P. O'Shea. See also Letter from Brad Smith to Committee (May 24, 2005) (on file in SEC Public Reference Room), available at <http://www.sec.gov/rules/other/265-23/bsmith2573.htm>; Letter from Kathryn Burns to Committee (May 24, 2005), available at <http://www.sec.gov/rules/other/265-23/kburns052405.pdf>; Letter from David N. Feldman to Committee (May 30, 2005), available at <http://www.sec.gov/rules/other/265-23/dnfeldman053005.htm>; Letter from Michael T. Williams to Committee (May 30, 2005), available at <http://www.sec.gov/rules/other/265-23/mwilliams053005.pdf>; Letter from KPMG to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/kpmg053105.pdf>; Letter from BDO Seidman to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/bdoseidman053105.pdf>; Letter from Stephen M. Brock (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/smbrock1317.pdf>; Letter from Ernst & Young (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/ey053105.pdf>; Letter from Small Business & Entrepreneurship Council to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/kkerrigan8306.pdf>; Letter from Society of Corporate Secretaries & Governance Professionals (June 7, 2005), available at <http://www.sec.gov/rules/other/265-23/sspc-slcscsgp060705.pdf>; Letter from Mark B. Barnes to Committee (August 2, 2005), available at <http://www.sec.gov/rules/other/265-23/mbarnes080205.pdf>; and Letter from Gregory C. Yardley, Jean Harris, Stanley Keller, A. John Murphy, and A. Yvonne Walker to Committee (Sept. 12, 2005), available at <http://www.sec.gov/rules/other/265-23/gcyadley091205.pdf>.

¹¹⁰ G. Karmin and A. Luchetti, *New York Loses Edge in Snogging Foreign Listings*, Wall St. J., Jan. 26, 2006, at C1 ("[Undertaking an offering outside the U.S.] would have been an unusual move as recently as 2000, when nine out of every 10 dollars raised by foreign companies through new stock offerings were done in New York rather than London or Luxembourg * * * But by 2005, the reverse was true: Nine of every 10 dollars were raised through new company listings in London or Luxembourg, the biggest spread favoring London since 1990.").

Listed below are the primary disclosure accommodations currently available to small business issuers under Regulation S-B. We are recommending that all of these be integrated into Regulation S-K and be made available to all microcap companies. Microcap companies would have the option of following the disclosure requirements for larger companies if they chose to do so.

- Under Item 101 of Regulation S-B, small business issuers are required to provide a less detailed description of their business and to disclose business development activities for only three years, instead of the five years required of larger companies by Regulation S-K.

- Regulation S-B currently does not include an Item 301 (selected financial data) or Item 302 (supplementary financial information), which are included in Regulation S-K, meaning that small business issuers are not required to disclose this information.

- Regulation S-B provides for more streamlined disclosure for management's discussion and analysis of financial condition and results of operations by requiring only two years of analysis if the company is presenting only two years of financial statements, instead of the three years required of companies that present three years of financial statements, as required under Regulation S-K.¹¹⁵

- Regulation S-B does not require smaller companies to provide a tabular disclosure of contractual obligations as larger companies must do under Item 303(a)(5) of Regulation S-K.¹¹⁶

- Regulation S-B does not require small business issuer filings to contain quantitative and qualitative disclosure about market risk section as required of larger companies under Item 305 of Regulation S-K.¹¹⁷

¹¹⁵ MD&A requirements are found in Item 303 of both Regulation S-K and Regulation S-B, 17 CFR 229.303 & 17 CFR 228.303.

¹¹⁶ 17 CFR 229.303(a)(5).

¹¹⁷ 17 CFR 229.305.

• Under Item 402 of Regulation S-B, small business issuers currently are not required to include a compensation committee report or a stock performance graph in their executive compensation disclosures, as larger companies are required to do under Item 402 of Regulation S-K.¹¹⁸

We have numerous reasons for recommending the abandonment of Regulation S-B as a separate, stand alone integrated disclosure system, including the abandonment of separate prescribed forms for small business issuers. The drawbacks associated with Regulation S-B include a lack of acceptance of "S-B filers" in the marketplace, a possible stigma associated with being an S-B filer, and the complexity for the SEC and public companies and their counsel of maintaining and staying abreast of two sets of disclosure rules that are substantially similar. Further, we received input that many securities lawyers saying they are not familiar with Regulation S-B and therefore are hesitant to recommend that their clients use this alternative disclosure system.¹¹⁹

We heard numerous comments to the effect that the thresholds for using Regulation S-B are too low and should be increased to permit a broader range of smaller public companies to be eligible for its benefits, particularly in light of the increased costs associated with reporting obligations under the Exchange Act since passage of the Sarbanes-Oxley Act.¹²⁰

¹¹⁸ Executive compensation disclosure requirements are found in Item 402 of both Regulation S-K and Regulation S-B, 17 CFR 228.402 and 17 CFR 229.402. The Commission recently proposed major amendments to the executive compensation disclosure rules under both Regulation S-B and Regulation S-K. See Executive Compensation and Related Party Disclosure, SEC Release No. 33-8655 (Jan. 27, 2006) [71 FR 6541]. We recommend that the Commission apply whatever executive compensation disclosure rules ultimately are adopted for smaller issuers to microcap companies as we propose to define that term rather than only to small business issuers as currently defined under Regulation S-B.

¹¹⁹ See *Record of Proceedings* 48, 143, 148 (June 17, 2005) (testimony of William A. Loving, David N. Feldman and John P. O'Shea).

¹²⁰ See Letter from Brad Smith to Committee (May 24, 2005) available at <http://www.sec.gov/rules/other/265-23/bsmith2573.htm>; Letter from Kathryn Burns to Committee (May 24, 2005), available at <http://www.sec.gov/rules/other/265-23/kburns052405.pdf>; Letter from David N. Feldman to Committee (May 30, 2005) available at <http://www.sec.gov/rules/other/265-23/dnfeldman053005.htm>; Letter from Michael T. Williams to Committee (May 30, 2005), available at <http://www.sec.gov/rules/other/265-23/mtwilliams6614.pdf>; Letter from KPMG to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/kpmpg053105.pdf>; Letter from BDO Seidman to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/bdoseidman053105.pdf>; Letter from Stephen M. Brock to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/smbrock1317.pdf>; Letter from Ernst & Young to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/ey053105.pdf>; Letter from Small Business & Entrepreneurship Council to Committee (May 31, 2005), available at <http://www.sec.gov/rules/other/265-23/kkerrigan8306.pdf>; Letter from Society of Corporate Secretaries & Governance Professionals to Committee (June 7, 2005), available at <http://www.sec.gov/rules/other/265-23/sspc-slc-scsgp060705.pdf>; Letter from Mark B. Barnes to Committee (Aug. 2, 2005), available at <http://www.sec.gov/rules/other/265-23/mbarnes080205.pdf>; and Letter from Gregory C. Yardley, Jean Harris, Stanley Keller, A. John Murphy, and A. Yvonne Walker to Committee (Sept. 12, 2005), available at <http://www.sec.gov/rules/other/265-23/gcyadley091205.pdf>.

In summary, we believe that incorporating the disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K, rather than retaining them in a separate but similar and parallel system, will result in many benefits. Among them, any stigma associated with taking advantage of the accommodations would be lessened. In addition, this would reduce the complexity of SEC rules, in keeping with the overarching goal expressed in our Committee Agenda of "keeping things simple."

Recommendation IV.P.2

Incorporate the primary scaled financial statement accommodations currently available to small business issuers under Regulation S-B into Regulation S-K or Regulation S-X and make them available to all microcap and smallcap companies.

As discussed above, we are recommending that the Commission establish a new system of scaled or proportional securities regulation for smaller public companies that would replace Regulation S-B. In Recommendation IV.P.1 immediately above, we recommend that the disclosure accommodations currently available to small business issuers under Regulation S-B be made available to all microcap companies, as we have recommended that term be defined in "Part II. Scaling Securities Regulation for Smaller Companies" above. In this recommendation, we recommend that the primary financial statement accommodations currently afforded to small business issuers under Regulation S-B be made available to all "smaller public companies" as we have recommended that term be defined above. Adopting this recommendation would mean that both microcap companies and smallcap companies, as we would have the Commission define those terms, would be entitled to take

advantage of financial statement accommodations now available only to small business issuers.

The primary financial statement accommodation now afforded to small business issuers is provided under Item 310 of Regulation S-B. That provision permits small business issuers to file two years of audited income statements, cash flows, and changes in stockholders equity and one year of audited balance sheet data in annual reports and registration statements. Larger public companies are required to file three years of audited income statement and other data and two years of audited balance sheet data under Regulation S-X.¹²¹ We recommend that smaller public companies be required to file only two years of audited income statements, cash flows, and changes in stockholders equity but two years of audited balance sheet data in annual reports and registration statements.

We believe that requiring a second year of audited balance sheet data for smaller public companies provides investors with a basis for comparison with the current period, without substantially increasing audit costs. On the other hand, we believe that eliminating the third year of audited income statement, cash flow and changes in stockholders equity data for smaller public companies will reduce costs and simplify disclosure while not adversely impacting investor protection in any significant way. Third year data and corresponding analysis is generally less relevant to investors than the more current data and third year data is often readily obtainable online.¹²² If the company has been a reporting company for three years, the third year data should be readily accessible through the Commission's EDGAR system and other sources. Investors today have access to numerous years of financial information about any reporting company because of the significant technological advances in obtaining financial information about reporting issuers. We do not believe that investors will be harmed in any significant way if the Commission adopts this recommendation.

¹²¹ 17 CFR 210.1-01 et seq. The financial statement rules applicable to small business issuers appear in Item 310 as part of Regulation S-B, whereas the financial statement rules applicable to larger companies appear in Regulation S-X, an entirely separate regulation. We take no position on whether the financial statement rules that would apply to all smaller public companies under our recommendation should appear in Regulation S-K as a separate set of rules applicable to all smaller public companies, or in Regulation S-X.

¹²² See Internet Availability of Proxy Materials, SEC Release No. 34-52926 (Dec. 15, 2005) [70 FR 74598].

Moreover, we believe that eliminating the third year of income statement, cash flow and stockholders equity data for smaller public companies will reduce costs and simplify disclosure. Eliminating the third year of audited income statement and other data may serve to reduce costs associated with changing audit firms by eliminating certain of the expenses and processes associated with predecessor auditor consent requirements. An issuer's prior auditors must execute consents in order for financial statements previously audited by that firm to be included in SEC reports and registration statements. Adopting this recommendation may make it easier for smaller public companies to change their auditors, thereby increasing competition among auditing firms.

In addition, we believe that the following financial statement accommodations currently provided to small business issuers would be afforded to all smaller public companies if this recommendation is adopted:

- In an initial public offering, small business issuers have a longer period of time in which they do not have to provide updated audited financial statements in their registration statements. For example, for non-small business issuers, if the effective date of the registration statement for the initial public offering falls after 45 days of the end of the issuer's fiscal year, the non-small business issuer must provide audited financial statements in their registration statement for the most recently completed year, with no exceptions. For small business issuers, if the effective date of the registration statement falls after 45 days but within 90 days of the end of the small business issuer's fiscal year, the small business issuer is not required to provide the audited financial statements for such year end, provided that the small business issuer has reported income for at least one of the two previous years and expects to report income for the recently-completed year.¹²³

- Issuers filing a registration statement under the Exchange Act (which is currently filed on Form 10-SB but would be filed on Form 10 if our previous recommendation is adopted) need not audit the financial statements for the previous year if those financial statements have not been audited previously. This also applies to any financial statements of recently acquired businesses or pending acquisitions that are included in an Exchange Act registration statement.

- Small business issuers need not provide financial statements of significant equity investees, as required by Rule 3-09 of Regulation S-X, in any document filed with the SEC.

Small business issuers domiciled in Canada may present their financial statements in accordance with Canadian GAAP and reconcile those financial statements to U.S. GAAP. Any non-small business issuer filing a registration statement on a domestic form, such as Form S-1, S-3 or S-4, must present its financial statements in accordance with U.S. GAAP and provide all disclosures required under U.S. GAAP.

Recommendation IV.P.3

Allow all reporting companies on a national securities exchange, NASDAQ or the OTCBB to be eligible to use Form S-3, if they have been reporting under the Exchange Act for at least one year and are current in their reporting at the time of filing.

Form S-3 is a short-form registration statement under the Securities Act that allows companies eligible to use it maximum use of incorporation by reference to information previously filed with the Commission.¹²⁴ As discussed below, we recommend that the efficiencies associated with the use of Form S-3 be made available to all companies that have been reporting under the Exchange Act for at least one year, and are current in their Exchange Act reporting at the time of filing. Additionally, we recommend elimination of the current condition to the use of Form S-3 that the issuer has timely filed all required reports in the last year.

Current SEC rules allow issuers with over \$75 million in public float to use Form S-3 in primary offerings. Additionally, Form S-3 may be used for secondary offerings for the account of any person other than the issuer if securities of the same class are listed and registered on a national securities exchange or are quoted on NASDAQ. Many smaller public companies are not eligible to use Form S-3 in primary offerings because their public float is below \$75 million; they also cannot use Form S-3 in secondary offerings because their securities are not listed on a national securities exchange or quoted on NASDAQ.

Since 1999, the NASD has required companies traded on its Over-the-

Counter Bulletin Board ("OTCBB")¹²⁵ to file reports under the Exchange Act. Under Exchange Act rules, registrants must file annual and quarterly reports disclosing information about their companies. Registrants also have an obligation to file current reports when certain events occur. All reporting companies have the same disclosure obligations as the largest of public companies. And, in order to take advantage of the Section 404 exemptive relief we are recommending for microcap companies, all those reporting companies included in the Pink Sheets would need to be current in their SEC periodic reporting obligations. Their disclosure should be sufficient to protect investors and inform the marketplace about developments in these companies. As online accessibility to previously filed documents on corporate and other Web sites, including the SEC's EDGAR Web site, increases; smaller public companies should be permitted to take advantage of the efficiency and cost savings of incorporation by reference to information already on file. The Commission has recently taken several steps acknowledging the widespread accessibility over the Internet of documents filed with the SEC. In its recent release concerning Internet delivery of proxy materials,¹²⁶ the Commission noted that recent data indicates that up to 75% of Americans have access to the Internet in their homes, and that this percentage is increasing steadily among all age groups. As a result, we believe that investor protection would not be materially diminished if all reporting companies on a national securities exchange, NASDAQ or the OTCBB were permitted to utilize Form S-3 and the associated benefits of incorporation by reference. Further, the smaller public companies that would be newly entitled to use Form S-3 if this recommendation is adopted would not enjoy the automatic effectiveness of registration statements, as is the case with well known seasoned issuers under the SEC's recent Securities Act Reform rules.¹²⁷ Accordingly, the SEC staff can elect to review the registration statement and documents of smaller public companies

¹²³ The OTCBB is a regulated quotation service that displays real-time quotes, last-sale prices, and volume information in over-the-counter (OTC) equity securities. An OTC equity security generally is any equity security that is not listed or traded on NASDAQ or a national securities exchange.

¹²⁶ See Internet Availability of Proxy Materials, SEC Release No. 34-52926 (Dec. 15, 2005) [70 FR 74598].

¹²⁷ See Securities Offering Reform, SEC Release No. 33-8591 (July 19, 2005) [70 FR 44722].

¹²⁴ Form S-3 can be found at 2 Fed. Sec. L. Rep. (CCH) ¶ 7151. Form S-3 was originally adopted in Revisions of Certain Exemptions from Registration for Transactions Involving Limited Offers and Sales, SEC Release No. 33-6383 (Mar. 3, 1982) [47 FR 11380].

¹²³ See 17 CFR 228.310(g)(2).

incorporated by reference if it chooses to do so. Additionally, the Sarbanes-Oxley Act has required more frequent SEC review of periodic reports as well as enhanced processes, such as disclosure controls and procedures and certifications by the chief executive and chief financial officers, which further enhances investor protection. We believe the adoption of this recommendation will also facilitate capital formation by reducing costs of smaller public companies and providing more rapid access to the capital markets. We further recommend that corresponding changes be made to other forms providing similar streamlined disclosure for S-3 eligible issuers, such as Form S-4.

We acknowledge that some members of the public may believe that recommending Form S-3 eligibility for all reporting companies is contrary to our recommendation seeking relief from Sarbanes-Oxley Act Section 404 but we believe strongly that all reporting companies should have the same efficient access to the market as large reporting companies. Microcap companies have the same reporting obligations as the largest of reporting companies and should not be penalized because of size. The changes in reporting requirements of microcap companies on the OTCBB support this recommendation.

We recommend that the Commission eliminate the requirement that the registrant has filed in a timely manner all reports required to be filed during the preceding 12 calendar months as a condition to the use of Form S-3, if the issuer has been reporting under the Exchange Act for at least 12 months and, at the time of such filing, has filed all required reports. We believe that the risk of SEC enforcement action, delisting notifications and accompanying disclosure, and associated negative market reactions are sufficient and more appropriate deterrents to late filings, and depriving late filers of an efficient means to access the capital markets is unduly burdensome to issuers, both large and small.¹²⁸

General Instructions to Form S-3 limit the use of that form for secondary offerings to securities "listed and registered on a national securities exchange or * * * quoted on the automated quotation system of a national securities association," a restriction that by definition excludes

¹²⁸ To prevent issuers from taking advantage of the system by, for instance, becoming current on day one and filing a Form S-3 on day two, the Commission could require that the issuer be current for at least 30 days before filing a Form S-3.

the securities of OTCBB issuers. As a consequence, OTCBB issuers that undertake private placements with associated registration rights, or that are required to register affiliate or Rule 145 shares, are required to file a registration statement on Form S-1 or Form SB-2 and incur the substantial burden and expense that the continuous updating of those forms require.

When the Commission adopted Form S-3 in 1982, the distinction drawn between OTCBB and exchange and NASDAQ-traded securities was logical. OTCBB issuers were not at the time required to file Exchange Act reports with the SEC. In 1999, however, the NASD promulgated new eligibility rules that required all issuers of securities quoted on the OTCBB to become SEC reporting companies and be current in its Exchange Act filings, making the need for such a distinction less apparent.¹²⁹

We concur with the Commission's original analysis in 1982 that "most secondary offerings are more in the nature of ordinary market transactions than primary offerings by the registrant, and, thus, that Exchange Act reports may be relied upon to provide the marketplace information needed respecting the registrant."¹³⁰ In light of the current requirement that OTCBB issuers also be SEC reporting companies, we believe that extending Form S-3 eligibility for secondary transactions to OTCBB issuers is consistent with the rationale underlying Form S-3 at the time of its adoption. Moreover, allowing such use of Form S-3 would benefit OTCBB issuers by (1) eliminating unnecessary, duplicative disclosure while ensuring that security holders, investors and the marketplace are provided with the necessary information upon which to base an investment decision and (2) substantially reducing the costs associated with undertaking a private financing.

Recommendation IV.P.4

Adopt policies that encourage and promote the dissemination of research on smaller public companies.

The trading markets for public companies are assisted in great measure by the dissemination of quality investment research. Investment research coverage for public companies in general, and for smaller public

companies in particular, has declined dramatically in recent years, however, as economic and regulatory pressures have led the financial industry to dramatically reduce research budgets.¹³¹ The problem is particularly pronounced in the case of smallcap companies, of which less than half receive coverage by even a single analyst, and in the microcap universe, where analyst coverage is virtually non-existent.¹³²

The existing regulatory framework and business environment exacerbates this problem, and commission rates have declined for firms that historically used these revenue streams to fund research. Business models have emerged to create published research in order to fill the resulting void, although their involvement with independent research providers that also participate in the global settlement agreement has until recently been uncertain.¹³³

¹³¹ A recent article notes, for instance, that fewer companies are receiving analyst coverage today than at any time since 1995. *Where's the Coverage?*, CFO Magazine (Jan. 20, 2005), available at http://www.cfo.com/article.cfm/3516678/c_3576955?f=home_todayinfinance.

¹³² Testimony provided to the Committee indicated that approximately 1,200 of the 3,200 NASDAQ-listed companies, and 35% of all public companies, receive no analyst coverage at all. See *Record of Proceedings* 17 (June 17, 2005) (testimony of Ed Knight, Vice President and General Counsel of NASDAQ). Statistics provided by the SEC Office of Economic Analysis indicate that in 2004 approximately 52% of companies with a market capitalization between \$125 million and \$750 million and 83% of companies with a market capitalization less than \$125 million had no analyst coverage.

¹³³ In the course of the Advisory Committee's proceedings, we were made aware of one informal clarification regarding administration of the global settlement agreement in the recent analyst coverage enforcement cases that will likely have a beneficial effect on the availability of independent research. As members of the Commission are aware, one aspect of the global settlement agreement provides that, for a period of five years commencing in 2004, investment banks that are parties to the settlement are required to provide to their U.S. customers independent research reports alongside their own research reports on certain companies that their analysts cover. Entities that provide independent research reports to the settling banks ("independent research providers" or "IRPs") cannot also conduct "paid-for" research, i.e., research done on behalf of, and paid for by, individual companies. Because many IRPs do not want to be excluded from participating in the global settlement, the effect of this prohibition—at least in the view of some—was to limit the number of entities willing to undertake paid-for research on behalf of individual companies.

In October 2005, the five regulators overseeing implementation of the global settlement informed the independent consultants (essentially the persons responsible for procuring the independent research under the settlement) of how the settlement applies to independent research intermediaries that match companies and IRPs on a "blind pool" basis (i.e., a complete wall is maintained between the entity that purchases the research, most likely the company being analyzed, and the selection of an IRP to conduct the research). Although no formal pronouncement was issued,

¹²⁹ Press Release, NASD, *NASD Announces SEC Approval of OTC Bulletin Board Eligibility Rule* (Jan. 6, 1999).

¹³⁰ See Revisions of Certain Exemptions from Registration for Transactions Involving Limited Offers and Sales, SEC Release No. 33-6383, at 10 (Mar. 3, 1982) [47 FR 11380].

A lack of independent analyst coverage has several adverse effects, both for individual companies and for the capital markets as a whole:

- Companies with no independent analyst coverage have a reduced market capitalization in comparison with companies that do have such coverage, and are subject to higher financing costs when compared with their analyst-covered peers;¹³⁴

- A lack of coverage by independent analysts limits shareholders' and prospective shareholders' ability to obtain an informed outsider's perspective on identifying strengths and weaknesses and areas for improvement;

- The lack of coverage lessens the entire "mix of information" made available to investment bankers, fund managers and individual investors, which make markets less efficient; and
- Because analyst reports trigger the buying and selling of shares, the lack of such reports frustrates the formation of a robust trading market.¹³⁵

In order to address the need for more independent research for smaller public companies, we recommend that the Commission:

- Maintain policies that allow company-sponsored research to occur with full disclosure by the research provider as to the nature of the relationship with the company being covered. Entities providing such research should disclose and adhere to a set of ethical standards that ensure quality and transparency and minimize conflicts of interest.¹³⁶

- Continue to permit "soft dollar" payments (*i.e.*, the use of client

regulators responsible for the enforcement of the global settlement told the independent consultants that they have the discretion to decide whether or not to procure independent research from IRPs that also contract with independent research intermediaries, provided that certain conditions are met.

¹³⁴ A recent study on the effects of Regulation FD finds that when smaller companies lost analyst coverage after the regulation was enacted their cost of capital increased significantly. See Armando Gomes *et al.*, *SEC Regulation Fair Disclosure, Information, and the Cost of Capital* (Rodney L. White Center for Fin. Research, Wharton School U. Pa., Working Paper No. 10567) (July 8, 2004).

¹³⁵ Rebecca Buckman, *Tougher Venture: IPO Obstacles Hinder Start-ups*, Wall St. J., Jan. 25, 2006, at C1.

¹³⁶ Section 17(b) of the Securities Act provides: "It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof."

commissions to pay for research services) under the safe harbor provisions of current Exchange Act Section 28(e), as amplified by guidance set forth in SEC Release No. 34-52635.

We acknowledge that these two recommendations do not request significant changes in existing SEC policies, but rather, call for more or less continuation of existing policies. Despite a shared conviction that independent analyst coverage is critical to the success of smaller public companies and to the efficient operation of our capital markets, we were unable to identify specify regulatory impediments that could be modified in a manner that would be consistent with the Commission's investor protection mandate. We nonetheless have included these two recommendations in order to highlight for the Commission the existing problem, to ask that existing policies be maintained and to request that the Commission continue to search for new ways to promote analyst coverage for smaller public companies.

Recommendation IV.P.5

Adopt a new private offering exemption from the registration requirements of the Securities Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Act's registration requirements. Additionally, relax prohibitions against general solicitation and advertising found in Rule 502(c) under the Securities Act to parallel the "test the waters" model of Rule 254 under that Act.

The ban on general solicitation and advertising in connection with exempt private offerings dates back to some of the earliest SEC staff interpretations of the Securities Act.¹³⁷ Although the initial intention of the ban is straightforward, over time its application has become complex. Few bright-line tests exist, and issuers are required to make highly subjective determinations concerning whether their actions might be construed as impermissible. Among the factors the SEC staff has considered in determining if a general solicitation has occurred are: the number of offerees; their suitability as potential investors; how the offerees were contacted; and whether the offerees have a pre-existing business relationship with the issuer.

Beyond the difficulty of determining if particular contact is impermissible, however, the current ban on general solicitation and advertising effectively

prohibits issuers from taking advantage of the tremendous efficiencies and reach of the Internet to communicate with potential investors who do not need all the protections of the Securities Act's registration requirements. In our view, this is a significant impediment to the efficient formation of capital for smaller companies, one that could easily be corrected by modernizing the existing prohibitions on advertising and general solicitation.

Traditionally, both federal and state private offering exemptions have been conditioned on the absence of "advertising or general solicitation." These concepts and SEC interpretations have not provided bright-line objective criteria for issuers and their advisers. Nevertheless, when it comes to exempt transactions, issuers face draconian risks to the viability of the entire offering for non-compliance with just one of the many required exemption elements. For example, even if all purchasers (A) are accredited investors, (B) have pre-existing business relationships with the issuing company and (C) are contacted in face-to-face meetings, some case law supports the view that the exemption will nevertheless be lost for the entire offering if other issuer activities are found to have involved general solicitation or advertising. This could occur, for example, if the issuer made offers at a social function to 50 prospective purchasers, all of whom were social friends of the issuing company's principals but with whom the company did not enjoy pre-existing business relationships. A similar adverse result could occur if the issuer or an agent of the issuer placed an advertisement on a local cable TV show, Internet web page or newspaper that featured the issuer's capital formation interests. In these examples, the exemption could be lost (and all purchasers could seek a return of their invested funds) even though none of the offerees contacted in an impermissible manner became purchasers. As a result, prudence dictates that the available methods used to contact offerees be very limited. In our view, concerns with avoiding improper general solicitation or advertising have the effect of focusing a disproportionate amount of time and effort on persons who may never purchase securities—rather than on the actual investors and their need for protection under the Securities Act.

Accordingly, we recommend the adoption of a new private offering exemption that would permit sales made only to certain eligible purchasers who do not require the full protections afforded by the securities registration

¹³⁷ See, e.g., SEC Release No. 33-285 (Jan. 24, 1935).

process under the Securities Act because of (1) financial wherewithal, (2) investment sophistication, (3) relationship to the issuer or (4) institutional status. An offering whose purchasers consisted solely of eligible purchasers of these types would qualify for the exemption regardless of the means by which they were contacted—even through advertising or general solicitation activities, subject to the restrictions noted below.

- The class of eligible purchasers would be comprised of several categories of natural persons and legal entities and would be defined in a manner similar to that used in Regulation D under the Securities Act¹³⁸ to define the term "accredited investors."¹³⁹

- Natural persons would qualify as eligible purchasers based on (1) wealth or annual income, (2) investment sophistication,¹⁴⁰ (3) position with or relationship to the issuer (officer, director, key employee, existing significant stockholder, etc.) or (4) pre-existing business relationship with the issuer. Persons closely related to or associated with eligible purchasers would also qualify as eligible purchasers.

- The financial wherewithal standards for natural persons to qualify as eligible purchasers would be substantially higher than those currently in effect for natural person Accredited Investors.¹⁴¹ We suggest \$2 million in joint net worth or \$300,000 in annual income for natural persons and \$400,000 for joint annual income.¹⁴²

- Legal entities would qualify as eligible purchasers if they qualify as accredited investors under Regulation D.

- The SEC should adopt the new exemption amending Regulation D or adopt an entirely new amendment under Section 4(2) of the Securities Act, so that securities sold in reliance on the

new exemption would be "covered securities" within the meaning of Section 18 of the Securities Act and generally exempted from the securities registration requirements of individual state securities laws. This course of action is crucial to the efficacy of the new exemption.

- The new exemption will need a two-way integration or aggregation¹⁴³ safe harbor similar to that included in SEC Rule 701.¹⁴⁴ Under such a safe harbor, offers and sales made in compliance with the new exemption would not be subject to integration or aggregation with offers and sales made under other exemptions or in registered offerings. Similarly, offers and sales made under other exemptions or in registered offerings would not be subject to integration or aggregation with transactions under the new exemption.

- As a means of guarding against potential abuse, we envision that all solicitations made by means of mass media (e.g., newspapers, magazines, mass mailings or the Internet) would be restricted in scope to basic information about the issuer, similar to that found in Securities Act Rule 135c (currently a permissive rather than restrictive provision, and one applicable only to Exchange Act reporting companies).¹⁴⁵ Solicitations made in face-to-face meetings would not be subject to these restrictions.

The proposed exemption would not remove the SEC's authority to regulate offers of securities. All offering activities conducted under the new exemption would continue to be fully subject to the antifraud provisions of the federal securities laws. Moreover, disclosure restrictions modeled after the current safe harbor found in Rule 135c would ensure that issuers could not utilize the Internet, television, radio, newspapers

¹⁴³ As the Commission is aware, "integration" refers to the SEC doctrine by which all offers and sales separated by time or other factors are nevertheless treated as part of a single offering. Offers and sales believed to be part of separate offerings that are integrated into a single offering are required to either comply with a single exemption from registration or be registered. Otherwise, they will violate Section 5 and trigger rescission rights for all purchasers. The SEC integration doctrine underpins much of the existing Securities Act registration exemption framework; without it, evading the Securities Act's registration requirements would be possible by artificially separating an otherwise non-exempt offering into two more distinct transactions and claiming an exemption for each transaction.

¹⁴⁴ 17 CFR 230.701.

¹⁴⁵ 17 CFR 230.135c. A somewhat similar structure has been established by the North American Securities Administrators Association and adopted in 23 states. See, e.g., Texas Administrative Code Rule 139.19, which sets forth the information that can be included in the announcement.

and other mass media to engage in "pump and dump" or other manipulative schemes.

The proposed exemption is not a radical change in the fundamental regulatory rationale regarding exempt private offerings. In all the private offerings since the beginning of regulatory time, no offeree has ever lost any money unless he or she became a purchaser. The new exemption reduces the issuer's obligations regarding non-investors and refocuses on the need (or lack thereof) that *actual purchasers* have for the protections afforded by the securities registration process.

We believe that this suggested change can be viewed as a logical continuation of an established regulatory trend to loosen the restrictions on what can be done with non-purchasers consistent with investor protection. The SEC has relaxed restrictions on offers in other, less bold ways.¹⁴⁶ Almost a decade ago, Linda Quinn, the long-time Director of the Division of Corporation Finance, proposed adopting an exemption substantially similar to that being recommended.¹⁴⁷

¹⁴⁶ Rule 254, 17 U.S.C. 230.254, which is available for use only in Regulation A exempt offerings, allows issuers before approval of the offering by the SEC to "test the waters" with activities that would otherwise be considered improper advertising or general solicitation; because of the extremely infrequent use of Regulation A offerings and an incompatibility with comparable state securities laws, "test the waters" has been of little practical utility to the capital formation process. In addition, the SEC staff has issued interpretive letters advising registered broker-dealers that certain limited generic solicitation activities (including Internet-based solicitation) would not amount to impermissible advertising or general solicitation. See, e.g., Interpretive Letters E.F. Hutton Co. (Dec. 3, 1985), H.B. Shaine & Co., Inc. (May 1, 1987) and IPONet (July 26, 1996). But for these favorable interpretations, the conduct described in the letters might have been interpreted as impermissible advertising and general solicitation. In this regard, the staff has not extended its interpretation to cover conduct by issuers (or other non-broker-dealers) that would allow them to engage in the solicitation activities described in the broker-dealer interpretive letters.

¹⁴⁷ Expressing her views about securities reform when she was leaving the staff of the Division of Corporation Finance, Ms. Quinn endorsed modifications in the Securities Act exemption regime consistent with the proposed exemption. See L. Quinn, *Reforming the Securities Act of 1933: A Conceptual Framework*, 10 Insights 1, 25 (Jan. 1996). Ms. Quinn supported the use of "public offers" in exempt private offerings whose purchasers were limited to "qualified buyers":

In sum, offers would not be a Section 5 event and therefore would not be a source of Section 12(1) liability. * * * Offering communications would and should still be subject to the antifraud laws. * * * This approach could be effected by the Commission defining these communications as outside the scope of offers for purposes of Section 5 of the Securities Act, subject to conditions deemed appropriate. The test-the-waters proposal makes such use of the Commission's definitional authority. * * * *Id.* at 27.

¹³⁸ 17 CFR 230.501-508.

¹³⁹ See Securities Act Rule 501(a) under Regulation D, 17 CFR 230.501(a).

¹⁴⁰ Under Regulation D, investment sophistication is the ability, acting alone or with the assistance of others, to understand the merits and risks of making a particular investment.

¹⁴¹ Under Regulation D as currently in effect, natural person accredited investors must have a net worth of \$1 million (including property held jointly with spouse) or \$200,000 in individual or \$300,000 joint annual income. Rule 501(a)(6).

¹⁴² There was support in the subcommittee for recommending the use of the financial wherewithal standards for natural person Accredited Investor in Regulation D for the eligible purchaser standards. It was our impression from informal discussions with federal and state regulatory officials that an increase in the financial wherewithal standards for natural persons was the *sine qua non* for obtaining regulatory support for this proposal.

As a corollary to our recommendation concerning a lifting of the ban on general solicitation when sales are made to certain eligible purchasers who do not need the full protection of Securities Act registration, we further recommend that the Commission relax prohibitions against general solicitation and advertising found in Rule 502(c) under the Securities Act to parallel the "test the waters" model of Rule 254 under that Act. Whereas the former would generally maintain investor protection by limiting sales of securities to persons that time and experience have demonstrated do not need protections afforded by full registration, this recommendation would do so by limiting the information included in a general solicitation similar to that allowed in a Regulation A "test the waters" solicitation.¹⁴⁸ Both measures would, in our view, significantly ease the difficulties that smaller companies, the largest users of private offering exemptions, encounter in locating suitable investors.

Although we defer to the Commission as to the exact parameters of permissible solicitation, we anticipate that any soliciting materials would be subject to restrictions modeled on those found in current Rule 254.¹⁴⁹ Issuers would be required to include disclosure to the effect that no money or other consideration is being solicited, that an indication of interest by a prospective investor involves no obligation or commitment of any kind, and that no sales of securities will be made until after the suitability of a potential investor for purposes of the applicable Regulation D exemption has been determined. Companies would also be required to include contact information, in order to communicate with those expressing interest and thereafter establish whether they fit within the suitability/accreditation standards for the offering before making a formal offer of securities, and a disclaimer to the effect that the offering itself may only be made to investors that satisfy the standards of the Securities Act exemption upon which the company intends to rely.¹⁵⁰ By restricting

solicitations in this manner, we believe that much benefit, and very little harm, would result from a relaxation of the current advertising/solicitation ban of Rule 502(c).

As with the recommendation immediately above, in order to work effectively the new exemption will need to be implemented by adoption of a new or amended rule under Section 4(2) of the Securities Act, such that securities sold in reliance on the new exemption would be "covered securities" within the meaning of Section 18 of the Securities Act and consequently exempted from state securities registration requirements.

Recommendation IV.P.6

Spearhead a multi-agency effort to create a streamlined NASD registration process for finders, M&A advisors and institutional private placement practitioners.

As detailed in a recent report published in the *Business Lawyer*,¹⁵¹ there exists an unregulated underground "money finding" community that services companies unable to attract the attention of registered broker-dealers, venture capitalists or traditional angel investors.¹⁵² Many smaller companies rely on this community to assist them in raising capital. A separate community of unregistered and therefore unregulated M&A consultants who assist buyers and sellers with services and receive compensation substantially similar to those provided and earned by traditional registered investment bankers also exists. Virtually all of the

in fact, do not sell to their residents, you have not made an illegal offering in that state. The Commission has used the same approach for offerings posted by foreign companies on their web sites. As long as foreign companies indicate they are not offering securities to U.S. citizens, their Internet posting is not an offering in the United States subject to the registration requirements of the federal securities laws. Why then prohibit a private placement as long as (1) it includes a warning that it will not sell to investors who do not meet the definition of an accredited investor and (2) does not, in fact, sell to unsophisticated investors? Who is harmed?" *Speech by Brian J. Lane to the American Bar Association* (Nov. 13, 1999), available at <http://www.sec.gov/news/speech/speecharchive/1999/spch339.htm>.

¹⁵¹ Task Force on Private Placement Broker-Dealers, ABA Section of Business Law, *Report and Recommendations of the Task Force on Private Placement Broker-Dealers*, 60 Bus. Lawyer 959-1028 (May 2005), available at http://www.abanet.org/buslaw/tbl/tblonline/2005_060_03/home.shtml#1. We note that the Texas State Securities Board is also drafting a finder proposal.

¹⁵² Section 15(a)(1) of the Exchange Act defines broker-dealers as persons who "effect any transaction in, or * * * induce or attempt to induce the purchase or sale of, any security" and makes it unlawful to carry on broker-dealer activities in the absence of SEC registration or exemption. Most state securities laws include similarly broad general definitions and prohibitions.

services provided in support of capital formation and M&A activities amount to unregistered broker-dealer activities that violate federal and state broker-dealer registration and regulation law. For the most part, the services provided do not involve holding customers' funds, which is a traditional function of many registered broker-dealers. These unregulated service providers have a great reluctance to register as broker-dealers under the current regulatory framework. The enforcement activity against them seems minimal. The cost and administrative burdens of the current regulatory scheme are daunting to both the money finding and M&A communities. The absence of a workable registration scheme means that issuers cannot currently use broker-dealer registration as an element in differentiating between such providers. The proposal seeks to foster a scheme of registration and regulation, substantially in accordance with the ABA Task Force Proposal outlined in the *Business Lawyer* article referenced above, that will be cost-effective for the unregistered community and support the investor protection goals of securities regulation.

An unregistered money finder will never "come in from the cold" to register if the regulators reserve the right to institute enforcement actions based solely on past failure to register. Accordingly, a workable amnesty program is also crucial to the success of the proposal. Regulatory amnesty should not extend to fraud nor be a defense against private causes of action.

The private placement broker-dealer proposal is not new. It has been "on the table" for a number of years, and indeed, has been a top recommendation of the annual SEC Government-Business Forum on Small Business Capital Formation for nine of the past ten years. This demonstrates that other individuals and groups agree with our view that this proposal is important to improve small business capital formation. To date, however, none of the affected regulatory bodies have taken action. We believe the SEC must provide leadership if this proposal is to succeed. That leadership must come first from the Commission itself, and then the agency must reach out to the NASD and the state regulators.

Corporate Governance, Disclosure and Capital Formation—Secondary Recommendations

In addition to the foregoing primary recommendations in the area of capital formation, corporate governance and disclosure, we also submit for the

¹⁴⁸ 17 CFR 230.254.

¹⁴⁹ Rule 254 was adopted in 1992 and has not been updated. We recommend that the SEC staff review the provisions of Rule 254 and harmonize the recommended changes to take into account the changes in SEC policy and practice since 1992, including the SEC's recently adopted securities offering reforms.

¹⁵⁰ As noted by a former Director of the SEC Division of Corporation Finance, the use of such disclaimers is an accepted practice under existing securities laws: "Almost all 50 states recognize that if you advertise on the Internet but disclaim that you are not selling securities to their residents, and,

Commission's consideration the following secondary recommendations:

Recommendation IV.S.1

Amend SEC Rule 12g5-1 to interpret "held of record" in Exchange Act Sections 12(g) and 15(d) to mean held by actual beneficial holders.¹⁵³

In order for our recommendation that the Commission establish a new system of scaled or proportional securities regulation for smaller public companies to apply uniformly and to adequately protect investors, the rules under which companies are required to enter and allowed to exit the underlying disclosure system must not be subject to manipulation and circumvention. By law, companies must enter the system under Section 12(b) of the Exchange Act when they register a class of securities on a national securities exchange, under Section 12(g) of the Exchange Act when they have 500 equity shareholders of record and \$10 million in assets, and under Section 15(d) of the Exchange Act when they have filed a registration statement under the Securities Act that becomes effective.¹⁵⁴ Companies may be entitled to exit the system when their securities are removed from listing on a national securities exchange and when they have fewer than 300, or sometimes fewer than 500, equity shareholders of record.¹⁵⁵ The rules for entering and exiting the Exchange Act reporting system have come into increasingly sharp focus in recent years, due in part to the increasing costs associated with complying with the reporting and other obligations of reporting companies under the Exchange Act.

We have concluded that, because of the way that SEC rules permit the counting of equity shareholders "of record" under Exchange Act Rule 12g5-1,¹⁵⁶ circumvention and manipulation of the entry and exit rules for the SEC's public company disclosure system is possible and occurs. Rule 12g5-1, which was adopted by the Commission in 1965, interprets the term "security held of record" in Section 12(g) for U.S. companies to include only securities held by persons identified as holders in the issuing company's stock ledger.¹⁵⁷ This excludes securities held in street or nominee name, which is very common

¹⁵³ Although overall this recommendation passed unanimously, Messrs. Schacht and Dennis dissented from the majority vote with respect to that portion of the recommendation specifying that holders of unexercised stock options issued in compliance with Rule 701 not be included as holders for purposes of Rule 12g5-1.

¹⁵⁴ 15 U.S.C. 78l(b), 78l(g) & 78o(d).

¹⁵⁵ 17 CFR 240.12h-3 & 17 CFR 240.12g-4.

¹⁵⁶ 17 CFR 240.12g5-1.

¹⁵⁷ 17 CFR 240.12g5-1.

today, because shares held in street or nominee name are listed in the stock ledger as held in the names of brokers, dealers, banks and nominees. This interpretation originally was adopted to simplify the process of determining whether an issuer is required to report under Section 12(g).

As noted above, Congress added Section 12(g) to the Exchange Act in 1964 to extend the reach of most of the Exchange Act's public company reporting and disclosure provisions to equity securities traded over-the-counter. That provision requires all companies with a class of equity securities held of record by at least 500 persons to register with the Commission.¹⁵⁸ Companies registered with the Commission are required to file annual and quarterly reports with the SEC and to comply with the other rules and regulations applicable to public companies.¹⁵⁹

Exchange Act Rules 12g-4 and 12h-3¹⁶⁰ regulate when an issuer can exit the reporting system under Section 12(g) or Section 15(d). These rules allow an issuer to terminate its Exchange Act reporting with respect to a class of securities held of record by fewer than 300 persons, or fewer than 500 persons where the total assets of the issuer have not exceeded \$10 million on the last day of the three most recent fiscal years.

The Nelson Law Firm, on behalf of a group of institutional investors, recently filed a rulemaking petition with the SEC requesting the Commission to take immediate action to amend Rule 12g5-1 to count all accounts as holders of record.¹⁶¹ This petition highlighted the practice by some issuers of using street or nominee holders as a technique to reduce the number of record holders below 300 and exit the Exchange Act reporting system. The petition cited numerous companies that had fewer than 300 record holders as determined in accordance with Rule 12g5-1, but thousands of beneficial owners and total assets of approximately \$100 million or more. We also received a letter discussing and supporting the

¹⁵⁸ 15 U.S.C. 78l(g). Section 12(g) does not require registration if the company does not have a minimal level of assets. The level was \$1 million in the original statute, but the Commission had raised the threshold to \$10 million by rule by 1996. See Relief from Reporting by Small Issuers, SEC Release No. 34-37157 (May 1, 1996) [61 FR 21354].

¹⁵⁹ Section 13(a) of the Exchange Act requires companies registered with the Commission to file annual and quarterly reports with the SEC.

¹⁶⁰ 17 CFR 240.12g-4 and 240.12h-3.

¹⁶¹ See Rulemaking Petition of Nelson Law Firm to SEC (July 3, 2003), available at <http://www.sec.gov/rules/petitions/petr4-483.htm>.

rulemaking petition.¹⁶² We received other letters in support of rulemaking in this area.¹⁶³

The trend of going dark is an area of concern to us. An issuer "goes dark" when holders of record of all classes of securities fall below the 300 holder threshold and it files a Form 15 terminating its reporting obligations under Section 12(g) or suspends its obligations under Section 15(d).¹⁶⁴ This procedure of going dark is contrasted with the going private procedures pursuant to Rule 13e-3.¹⁶⁵ Companies that go private typically buy back securities from shareholders through an offering document using Rule 13e-3, which is filed with the Commission.

When the Commission first adopted Rule 12g5-1 in 1965, approximately 23.7% of securities were held in nominee or street name.¹⁶⁶ In late 2002, it was estimated that over 84% of securities were held in nominee or street name.¹⁶⁷ The Nelson Law Firm and other proponents of such an amendment to Rule 12g5-1 believe that the current definition of "held of record" allows a company to

¹⁶² Letter from Nelson Obus to Committee (Apr. 7, 2005), available at <http://www.sec.gov/rules/other/265-23/26523-1.pdf>.

¹⁶³ Letter from James Brodie to Committee (Apr. 12, 2005), available at <http://www.sec.gov/rules/other/265-23/jobroddie9204.htm>; Letter from Stephen Nelson to Committee (June 8, 2005), available at <http://www.sec.gov/rules/other/265-23/sjnelson060805.pdf>.

¹⁶⁴ See Christian Leuz et al., Why do Firms go Dark? Causes and Economic Consequences of Voluntary SEC Deregistrations, Wharton Fin'l Inst. Center Paper No. 04-19 (Nov. 2004), available at <http://fic.wharton.upenn.edu/fic/papers/04/0419.pdf>; see also Andras Marosi & Nadia Massoud, Why Do Firms Go Dark? (3d ver. Nov. 2004), available at <http://www.unaninotoba.ca/faculties/management/cgafinance/Massoud.pdf#search=Andros%20Marosi%20Why%20firms%20go%20dark%3F>.

¹⁶⁵ 17 CFR 240.13e-3. For a detailed explanation of going private transactions, see Marc Morgenstern & Peter Nealis, Going Private: A Reasoned Response to Sorbanes-Oxley?, (2004), available at <http://www.sec.gov/info/smollbus/pneolis.pdf>.

¹⁶⁶ Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934, at 53-55 (Dec. 3, 1976) (the "Street Name Study").

¹⁶⁷ As of June 23, 2004, the DTCC estimated that approximately 85% of the equity securities listed on the NYSE, and better than 80% of equity securities listed on the NASDAQ and AMEX, are immobilized. See Letter from Jill M. Considine, Chairman and CEO of DTCC, commenting on Securities Transaction Settlements, SEC Release No. 33-8398 (Mar. 18, 2004) [69 FR 12922] (on file in SEC Public Reference Room File No. S7-13-04, available at <http://www.sec.gov/rules/concept/s71304/s71304-26.pdf>). The DTCC immobilization program is aimed at eliminating physical securities certificates and its ultimate objective is to place all equity securities ownership in a direct registration system which is a street name system.

manipulate its number of record holders to circumvent the intent of Section 12(g) of the Exchange Act.

The substantial increase in securities held by nominees or in street name has led to the circumvention of the intention of Section 12(g) by enabling issuers with a significant number of shareholders to avoid registration, or deregister, if their equity holders are aggregated into a smaller number of nominee or record holders.

In light of the above considerations, we recommend that the Commission amend Rule 12g5-1 or its interpretation so that all beneficial owners are counted for purposes of calculating the number of shareholders for purposes of Section 12(g) of the Exchange Act and the rules thereunder. We recommend that the Commission request its Office of Economic Analysis or some other professional organization conduct a study to determine the effects on the number of companies required to register if this recommendation is adopted. The study should also consider whether a standard other than number of shareholders would be a better determinant of when a company should be required to enter or allowed to exit the SEC disclosure system. After the study is completed, the Commission or Congress can decide whether the intent of Section 12(g) would be better served by changing the number of shareholders that triggers Exchange Act reporting from 500 to some other number. We believe that such a study is important because of the possibility of circumvention and manipulation of the SEC's rules for entering and exiting the disclosure system. The significant increase of costs associated with compliance with the registration and ongoing reporting obligations of the Exchange Act make this issue urgent.

We also received testimony¹⁶⁸ suggesting that employee stock options (those issued in compensatory transactions) not be considered a class of equity securities for purposes of triggering the registration requirements under Section 12(g) of the Exchange Act. We support this view. As exemplified by the policy underlying the Rule 701 exemption under the Securities Act, we believe that holders of employee stock options received in compensatory transactions are less likely to require the full protections afforded under the registration requirements of the federal securities laws. Therefore, we believe that such

stock options should not be a factor in determining the point an issuer becomes subject to the burdens of a reporting company under the Exchange Act.

Recommendation IV.S.2

Make public information filed under Rule 15c2-11.

A major problem with the market for over-the-counter securities, where many issuers are not required to file reports with the SEC, is the lack of reliable, publicly available information on issuers.¹⁶⁹ In theory, Exchange Act Rule 15c2-11, which prohibits brokers from publishing quotations on an OTC security unless they have obtained and reviewed current information about the issuer, could operate as a modest disclosure system under which investors could access basic issuer information if the company is not required to become a reporting company under Section 12(g) or 15(d). In practical terms, however, access to 15c2-11 information is extremely limited. Broker-dealers are required to file 15c2-11 information with the NASD only,¹⁷⁰ to retain such information in their files and to provide such information, upon request, to individual investors. Broker-dealers are not required to publish this information in a widely available location or provide it to investors on an ongoing and systematic basis. The result is an over-the-counter market in which the securities of literally thousands of issuers are traded, but about which current public information is uneven and in some cases non-existent. In our view, these conditions create the potential for fraud and manipulative abuse.

In order to address this problem, we recommend that the Commission take action to provide for public availability of Rule 15c2-11 information. Although we defer to the Commission on the exact means by which this information would be made available, we feel that an orderly and reliable disclosure system adopted under the SEC's antifraud authority could place the burden of disclosure on issuers, by requiring that they post a minimal level of documentation on their company web site, and on the NASD, by requiring that it create and maintain an information repository of Form 211s it has received,

¹⁶⁸For statistics concerning over-the-counter issuers not required to file reports with the SEC, see Appendices I and J.

¹⁷⁰See NASD Rule 6740 (Submission of Rule 15c2-11 Information on Non-NASDAQ Securities). To demonstrate compliance with both NASD Rule 6740 and SEC Rule 15c2-11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2-11(a), at least three business days before the quotation is published or displayed.

rather than on brokers and market-makers.

Recommendation IV.S.3

Form a task force, consisting of officials from the SEC and appropriate federal bank regulatory agencies to discuss ways to reduce inefficiencies associated with SEC and other governmental filings, including synchronizing filing requirements involving substantially similar information, such as financial statements, and studying the feasibility of extending incorporation by reference privileges to other governmental filings containing substantially equivalent information.

We received a number of comment letters from banks and banking trade associations expressing concern about what they consider duplicative filing requirements of the SEC and other governmental agencies and the costs and efficiencies that have resulted.¹⁷¹ Additionally, banks have advised us that they are subject to duplicative internal control requirements of various governmental regulators. We believe this recommendation is extremely important. Although we leave it to the Commission's discretion as to how best to implement this recommendation, we further believe that the introduction of XBRL may make this recommendation a more attractive option in today's world. We wish to state that in making this recommendation, we are in no way advocating an expansion of disclosure of personal bank information beyond what is currently permitted.

¹⁷¹See *Record of Proceeding 48* (June 17, 2005) (testimony of William A. Loving, Chairman and CEO of Pendleton County Bank representing the Independent Community Bankers of America); Letter from Independent Community Bankers of America to Committee (Mar. 31, 2005), available at <http://www.sec.gov/info/smallbus/ocspc/icba.pdf>; Letter from Christopher Cole of Independent Community Bankers of America to Committee (Apr. 8, 2005), available at <http://www.sec.gov/rules/other/265-23/ccole040805.pdf>; Letter from Kathryn Burns, Vice President and Director of Finance, Monroe Bank to Committee (May 24, 2005), available at <http://www.sec.gov/rules/other/265-23/kburns052405.pdf>; Letter from Charlotte Bahin, Senior Vice President, America's Community Bankers to Committee (July 19, 2005), available at <http://www.sec.gov/rules/other/265-23/ocbankers071905.pdf>; Letter from Mark A. Schroeder, President and CEO, German American Bankcorp to Committee (August 3, 2005), available at <http://www.sec.gov/rules/other/265-23/moschroeder080305.pdf>; Letter from Charlotte Bahin, Senior Vice President, America's Community Bankers, to Committee (Aug. 9, 2005), available at <http://www.sec.gov/rules/other/265-23/cmbahin080905.pdf>; Letter from David Bochnowski, President and CEO of Northwest Indiana Bancorp to Committee (Aug. 9, 2005), available at <http://www.sec.gov/rules/other/265-23/dbochnowski080905.pdf>.

¹⁶⁹*Record of Proceedings 64* (Sept. 19, 2005) (testimony of Ann Walker, Esq. before the joint meeting of the Committee and the Small Business Forum), available at <http://www.sec.gov/rules/other/265-23/jh-sk-ojm-ayw-gcy091205.pdf>.

Recommendation IV.S.4

Allow companies to compensate market-makers for work performed in connection with the filing of a Form 211, with full disclosure of such compensation arrangements.

The filing of a Form 211, and compliance with the diligence and NASD review and comment process that such a filing entails, generally requires that a market-maker expend substantial time, effort and funds. Current NASD rules, however, prohibit market-makers from recouping any compensation or reimbursement for their outlay.¹⁷² While acknowledging the need for restrictions on payments by issuers to market-makers, we believe that in the limited context of the Form 211 filing process, NASD rules act to discourage market-making activity and impede the creation of a fair and orderly trading market in securities of over-the-counter companies, most of which are smaller public companies. If Rule 15c2-11 is to remain focused on broker-dealer rather than issuer disclosure (see our recommendation immediately above) then we recommend that the Commission encourage the NASD to modify its rules to allow issuers to compensate market-makers for work they perform in connection with the filing of a Form 211 (including diligence costs and costs associated with the NASD review process), if the compensation arrangement is fully disclosed. We believe this approach will encourage dealers to engage in market-making and foster a more efficient and viable market for over-the-counter securities issuers.

Recommendation IV.S.5

Evaluate upgrades or technological alternatives to the EDGAR system so that smaller public companies can make their required SEC filings without the need for third party intervention and associated costs.

Since the SEC's EDGAR system¹⁷³ was inaugurated in 1993, significant technological advances have occurred, including pervasive market deployment of Internet standards and protocols, software interoperability and embedded features. Computers with Internet capability are available in almost all

¹⁷² NASD Rule 2460 (Payments for Market Making) provides: "No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market-maker in a security, or submitting an application in connection therewith."

¹⁷³ EDGAR is an abbreviation for the SEC's Electronic Data Gathering, Analysis, and Retrieval System, which must be used by reporting companies to file their reports with the SEC.

workplaces and most homes and public libraries. The EDGAR system has not been updated to reflect these advances.

Many companies, but especially smaller public companies, find the EDGAR system unnecessarily complex and costly, and usually must engage costly third party vendors to file their reports with the Commission. We believe that the system's complexity and cost serves as an unnecessary burden on capital formation for smaller public companies.

In this regard, we encourage the Commission to pursue the use of Internet standards (e.g., eXtensible Business Reporting Language, or XBRL) and protocols (e.g., web services) in the announced EDGAR modernization project as a method to reduce costs associated with the preparation of registrant filings and the subsequent access and use of filed information by the Commission's staff and the financial community. We believe that the use of highly interoperable business reporting formats will lower information access costs by the analyst and investor community and thereby enhance the analysis and liquidity of the securities of smaller public companies.

Recommendation IV.S.6

Make it easier for microcap companies to exit the Exchange Act reporting system.

As noted elsewhere in this report,¹⁷⁴ we have found that the costs associated with implementing the requirements of the Sarbanes-Oxley Act are borne disproportionately by smaller public companies. For a significant percentage of companies—particularly those at the lower end of the market capitalization spectrum, many of which went public in the pre-Sarbanes-Oxley era—these disproportionate costs are compounded because they enjoy none of the traditional benefits of being public: their stock receives little or no analyst coverage, has a limited trading market, provides limited liquidity for their shareholders, and attracts little institutional investment. They also experience a diminished ability to gain access to investment capital in the public markets, particularly during a market downturn. For such companies, the burdens of public company status may far outweigh the benefits.

At the same time, current SEC regulations require companies that wish to go private to submit to a lengthy SEC review process, in which a company must provide detailed disclosure as to

¹⁷⁴ See discussion under the caption "Part II. Scaling Securities Regulation for Smaller Companies."

the fairness of the transaction. The going private process generally includes the participation of investment banking firms, law firms and accountants, and hence results in substantial transaction costs.

While the significance of the transaction and the possibility for conflicts of interest and insider abuse in a true "going private" transaction (i.e., one in which a controlling group undertakes a corporate transaction in order to acquire the entire equity interest in a corporation) justify this heightened scrutiny, the Committee believes that microcap companies that wish to go dark should be entitled to a simplified SEC review process conditioned on the issuer undertaking to provide the remaining shareholders with periodic financial and other pertinent information, such as unaudited quarterly financial statements, annual GAAP audited financial statements and narrative information about basic corporate governance, executive compensation and related party transactions as long as their shares trade in a public market. This approach would ensure that investors in such companies receive information necessary for operations transparency and protection of their interests.

Recommendation IV.S.7

Increase the disclosure threshold of Securities Act Rule 701(e) from \$5 million to \$20 million.

The SEC adopted Rule 701 in April 1988 to provide an exemption from the registration requirements under the Securities Act for offers and sales of securities by non-reporting companies to their employees. The Commission amended Rule 701 in 1999 to, among other things, replace the fixed aggregate \$5 million offering ceiling contained in the original rule with a more flexible limit that required, among other items, disclosure of financial statement and risk factor information if the aggregate amount of securities sold under Rule 701 exceeded \$5 million in any 12-month period.

Over time, Rule 701 has proved to be an extraordinarily useful exemption for both small businesses and large private companies, and for the most part continues to work well. Nonetheless, the disclosure of financial statement information has been problematic for growing companies in recent years as a result of the recent trend towards longer IPO incubation periods, particularly in a "down" market environment, as well as the increased use of equity awards as an incentive for attracting/retaining employees. For private companies that

hope to maintain the confidentiality of their financial information for competitive reasons, the increasing need for equity compensation presents a dilemma: Disclose such information, and expose yourself to potential competitive harm (particularly relative to other private companies that are not required to disclose such information), or restrict equity awards to a limit below that which business conditions and sound judgment might otherwise dictate.

Based on the foregoing, we believe that an increase in the disclosure threshold of Rule 701(e) to \$20 million represents a more appropriate balance between the informational needs of employee-investors and the confidentiality needs of private company issuers. The \$5 million threshold was actually established in 1988, based upon the Commission's small issue exemptive limit at the time.¹⁷⁵ The Committee's proposed increase would account for the amount of the original threshold that has been diminished due to inflation (as a point of reference, \$5 million in 1988 would equal approximately \$8.35 million today) as well as provide issuers with increased flexibility for granting equity awards without compromising confidentiality.

In the event that the Commission finds such increase in the disclosure threshold to be inadvisable, we recommend as an alternative that the financial statement disclosure requirements be eliminated or modified significantly if (1) options are non-transferable except by law and (2) options may only be exercised on a "net" basis with no employee funds paid to the issuer/employer.

Recommendation IV.S.8

Extend the "access equals delivery" model to a broader range of SEC filings.

Since 1995, the Commission has published guidance regarding the electronic delivery of materials under the federal securities laws.¹⁷⁶ Recent studies indicate that 75% of Americans have access to the Internet in their homes, and that this percentage is

increasing steadily among all age groups.¹⁷⁷

The SEC recently has taken several steps to facilitate electronic delivery of filed documents filed with the Agency. In connection with the recent Securities Offering Reform effort, the Commission adopted Securities Act Rule 172 implementing an "access equals delivery" model in the context of final prospectus delivery. The Commission has also recently proposed a rule facilitating the electronic delivery of proxy materials.¹⁷⁸ In that release, the Commission stated that its members "believe that continuing technological developments and the expanded use of the Internet now merit consideration of alternative methods for the dissemination of proxy materials."¹⁷⁹ In the access equals delivery model investors would be assumed to have access to the Internet thereby allowing delivery to be accomplished solely by an issuer posting a document on the issuer's or third party's Web site. This presumption differs from the current consent model where an investor must affirmatively consent to receiving documents electronically.

We strongly support the proposed amendments to the proxy delivery rules. We believe these changes will reduce the printing and mailing costs associated with furnishing proxy materials to shareholders, while not impairing investor protection, as shareholders desiring paper versions of such documents are able to obtain them at no cost under the proposal. We believe, however, that the Commission should go further and recommend that the Commission extend the access equals delivery model for delivery to all SEC filings, thereby providing the efficiencies and cost savings of electronic delivery to all documents required to be delivered under the federal securities laws. The only exception to our recommendation is delivery of preliminary prospectuses in initial public offerings in Rule 15c2-8.¹⁸⁰

¹⁷⁷ See Internet Availability of Proxy Materials, SEC Release No. 34-52926 (Dec. 8, 2005) [70 FR 74597], citing Three Out of Four Americans Have Access to the Internet, Nielson/NetRatings (Mar. 18, 2004).

¹⁷⁸ *Id.*

¹⁷⁹ See Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports, SEC Release No. 34-46464 (Apr. 8, 2003) [67 FR 58480]; Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports; Correction, SEC Release No. 34-46464A (Sept. 5, 2003) [67 FR 17880].

¹⁸⁰ 17 CFR 240.15c2-8.

Recommendation IV.S.9

Shorten the integration safe harbor from six months to 30 days.¹⁸¹

The concept of integration, discussed above,¹⁸² has been the subject of intense criticism, almost since its inception,¹⁸³ and small business issuers and their legal advisors have long expressed concerns about the absence of clarity in being able to determine the circumstances under which integration does (or does not) apply. Though the SEC attempted to introduce more certainty into the determination by introduction of a five-factor test in 1961,¹⁸⁴ as a practical matter the question of integration remains for smaller companies an area fraught with uncertainty—and therefore risk.¹⁸⁵

Because of the link between integration and the availability of Regulation D and other registration exemptions, and consequently the ability of a smaller company to undertake a private financing, we believe that the SEC should provide smaller companies with clearer guidance concerning the circumstances under which two or more apparently separate offerings will or will not be integrated. After considering the difficulties of modifying the five-factor test in order to encompass the entire range of potential offering scenarios, we concluded that shortcomings of the existing framework can most easily be addressed by shortening the six-month safe harbor of Regulation D and applying the shortened safe harbor across the entire universe of private offering exemptions.

The Regulation D safe harbor provides generally that offers and sales made more than six months before the start of

¹⁸¹ Although the Committee is recommending a 30-day period, we are flexible in this regard.

¹⁸² See text accompanying note 208.

¹⁸³ See Stanley Keller, *Basic Securities Act Concepts Revisited*, Insights (May 1995).

¹⁸⁴ See, e.g., Perry E. Wallace, Jr., *Integration of Securities Offerings: Obstacles to Capital Formation Remain for Small Business*, 45 Wash. & Lee L. Rev. 935, 937, 972-975 (1988) (integration doctrine "frustrates issuers engaged in the capital formation process, engulfing them in a sea of ambiguity, uncertainty and potential liability" and "of the various sources of angst facing the small issuer, none has proved more frustrating and elusive than the doctrine of integration of securities offerings"). Faced with these difficulties, academics and practitioners have long argued for change to the existing system, with some even arguing that the very concept of integration should be abolished. In our view, however, this goes too far, as issuers could then split their offerings among several different exemptions, thus vitiating the registration process upon which the Securities Act is premised.

¹⁸⁵ The confusion over making an integration determination is made more difficult because the SEC staff does not currently render advice or provide no-action relief concerning integration questions.

a Regulation D offering or more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering.¹⁸⁶ The safe harbor is particularly significant for smaller companies, who rely heavily on Regulation D exemptions. Although it provides certainty, however, the safe harbor does so at the expense of flexibility, as it requires that as much as a full year elapse between offerings. For smaller companies, whose financing needs are often erratic and unpredictable, the duration of the safe harbor period is often problematic; even a well meaning issuer that needs access to capital, because of changed circumstances or greater than anticipated need for funding, may be unable to access such funds without running afoul of Section 5.

Inasmuch as the alternative to the safe harbor is the inherent uncertainty of the five-factor test, the practical effect of the waiting period between Regulation D offerings is to undermine issuers' flexibility and impede them from obtaining financing at a time that business goals, and good judgment, would otherwise dictate.

In short, we believe that the dual six-month safe harbor period represents an unnecessary restriction on companies that may very well be subject to changing financial circumstances, and weighs too heavily in favor of investor protection, at the expense of facilitating capital formation. We believe that a shorter safe harbor period between offerings of 30 days strikes a more appropriate balance between the financing needs of smaller companies and investor protection, while preserving both investor protection and the integrity of the existing registration/exemption framework.

Recommendation IV.S.10

Clarify the Sarbanes-Oxley Act Section 402 loan prohibition.

Section 402, of the Sarbanes-Oxley Act, which added Section 13(k)¹⁸⁷ to the Exchange Act, prohibits public companies from extending personal loans to directors or executive

officers.¹⁸⁸ The prohibition was enacted following abuses associated with company loans in several well-publicized corporate scandals. To date, the SEC's Division of Corporation Finance has not provided interpretive guidance with respect to Section 13(k). We believe that confusion exists among public companies and their attorneys concerning the applicability of the loan prohibition to a number of transactions that could be construed as loans.

We strongly support the loan prohibition contained in Section 13(k) of the Exchange Act. We recommend that the SEC staff seek to provide clarifying guidance as to the types of transactions that fall outside the prohibition.

In particular, we recommend that the SEC's Division of Corporation Finance clarify whether Section 13(k) prohibits the cashless exercise of stock options, indemnity advances, relocation accommodations to new hires and split dollar life insurance policies. We believe that these transactions, if approved by independent directors, are unlikely to lead to the abuses envisioned under Section 402 of the Sarbanes-Oxley Act.

Recommendation IV.S.11

Increase uniformity and cooperation between federal and state regulatory systems by defining the term "qualified investor" in the Securities Act and making the NASDAQ Capital Market and OTCBB stocks "covered securities" under NSMIA.

In fulfillment of our basic mandate—to identify methods of minimizing costs and maximizing benefits—we believe it is important to increase uniformity and cooperation between federal and state securities regulatory systems by eliminating unnecessary and duplicative regulations.

In our view, this can be accomplished by both (1) defining "qualified purchaser" as permitted by the National Securities Markets Improvement Act of 1996,¹⁸⁹ or NSMIA, allowing transactions to involve "covered securities" and (2) making NASDAQ Capital Market and OTCBB stocks "covered securities," thereby preempting most state securities registration provisions.

In connection with its passage of NSMIA, Congress authorized the SEC to define the term "qualified purchaser" under Securities Act Section 18 to include, among others, "sophisticated investors, capable of protecting themselves in a manner that renders regulation by state authorities

unnecessary." Section 18 also provides that sales to "qualified purchasers" are by definition "covered securities." The effect of defining "qualified purchasers," therefore, would be to exempt offers and sales to persons included in the definition from unnecessary state registration requirements.

The Commission in 2001 issued a release in which it proposed to define "qualified purchaser" to have the same meaning as the term "accredited investor" under Rule 501(a) of Regulation D.¹⁹⁰ Although the Commission solicited comment from interested parties, it took no further action on the proposal, in part because of the opposition of state securities regulators.¹⁹¹

The Committee applauds the SEC's initiative in issuing the qualified purchaser release, and recommends that the ideas expressed in the release, principally, that all "accredited investors" be deemed "qualified purchasers," be adopted substantially as proposed. The release states, and we agree, that defining "qualified purchaser" to mean "accredited investor" would strike the appropriate balance between the need for investor protection and meaningful regulatory relief from duplicative state regulation for issuers offering securities, in particular small businesses.¹⁹² Investor protection would be maintained, as accredited investors have long been deemed not to require the full protection of Securities Act registration and have sufficient bargaining power to gain access to information with which to make informed investment decisions.

As the Commission is aware, in 1996 NSMIA realigned the relationship between federal and state regulation of the nation's securities markets in order to eliminate duplicative costs and improve market efficiency, while maintaining necessary investor protections. Although NSMIA greatly benefited large businesses, it had a more limited effect on small businesses, the securities of many of which trade on the NASDAQ Capital Market and the OTCBB and consequently do not qualify for the favorable exemptive treatment accorded "covered securities." For these smaller public companies, the added

¹⁹⁰ Defining the Term "Qualified Purchaser" Under the Securities Act, SEC Release No. 33-8041 (Dec. 19, 2001) [66 FR 66839].

¹⁹¹ See, e.g., Letter from Joseph P. Borg, NASAA President and Director, Alabama Securities Commission, on behalf of the North American Securities Administrators Association to Committee (Mar. 4, 2002), available at <http://www.sec.gov/rules/proposed/s72301.shtml>.

¹⁹² *Supra* note 190, at 4.

¹⁸⁶ Rule 502(a) provides in pertinent part: "Offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Regulation D, other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 under the Act, 17 CFR 230.405."

¹⁸⁷ 15 U.S.C. 78m(k).

¹⁸⁸ 17 CFR 230.405.

¹⁸⁹ Pub. L. 107-04, § 402, 166 Stat. 745 (2002).

¹⁹⁰ Pub. L. No. 104-290, 110 Stat. 3416 (1996).

burden, complexity and transaction costs that result from a need to comply with numerous sets of laws and regulations, rather than just one, places them at a distinct disadvantage in comparison with their larger counterparts.

In our view, the two-tiered regulatory structure to which the NASDAQ Capital Market and OTCBB-traded securities are subject represents an unnecessary and duplicative level of regulation that impedes the free flow of capital, while adding little in terms of investor protection. All companies traded in both markets are required to be Exchange Act reporting companies. Therefore, we recommend that the Securities Act Section 18(b) definition of "covered securities" be expanded to include the shares of all NASDAQ Capital Market and OTCBB issuers, provided that such companies (1) are current in their Exchange Act filings and (2) adhere to the corporate governance standards, detailed in Part III of this Committee report, that companies would be required to observe in order to get relief from certain requirements of Sarbanes-Oxley Act Section 404. We believe that this action would be consistent with the sentiment expressed in Securities Act Section 19(d), which mandates greater federal and state cooperation in securities matters in order to provide both maximum uniformity in federal and state regulatory standards and to minimize interference with capital formation. Further, investor protection would be preserved, as states would retain their anti-fraud authority and the SEC would maintain its supervisory role through review of issuer registration statements and Exchange Act filings.

A final word should be said concerning the manner in which this recommendation is implemented. Although not entirely clear, it appears that the express language of Section 18 may not provide the Commission with the authority to expand the definition of "covered securities" to encompass NASDAQ Capital Market and OTCBB securities without further Congressional action. In such event, we recommend that the Commission petition Congress to enact legislative changes to Section 18 in order to effect such changes.

Recommendation IV.S.12

Clarify the interpretation of or amend the language of the Rule 152 integration safe harbor to permit a registered initial public offering to commence immediately after the completion of an otherwise valid private offering the stated purpose of which was to raise

capital with which to fund the IPO process.

Rule 152 provides an integration safe harbor that protects against integration of a private offering followed closely by a registered public offering. By its terms, the language of Rule 152 appears to require that an issuer "decide" to file for the public offering after the private offering.¹⁹³ In other words, the safe harbor protection from integration would not appear to be available to an issuer that contemporaneously plans a private placement (for among other reasons, to raise funds necessary to sustain it through the IPO process) and a subsequent registered offering. Moreover, Rule 152 does not apply to private offerings undertaken pursuant to Rules 504 or 505, which are exempt pursuant to Securities Act Section 3(b), not Section 4(2) as set forth in the rule. Although the staff of the Division of Corporation Finance has indicated that it does not interpret Rule 152 literally, and will extend safe harbor treatment even in cases where an issuer concurrently plans a private placement and registered offering,¹⁹⁴ we believe that it is time to clarify or amend the language of the rule appropriately.

Part V. Accounting Standards

We devoted a considerable amount of time and effort surveying the current state of U.S. GAAP that apply to smaller public companies and certain of the processes related to the audits of their financial statements. In general, we believe that current regulations and processes in these areas serve smaller public companies and their investors very well. We did, however, identify several concerns in this area which, we acknowledge, are not all unique to smaller public companies. In decreasing order of concern, these areas are:

- Complexity of current accounting standards;
- Diminished use and acceptance of professional judgment because of fears of being second-guessed by regulators and the plaintiffs bar;
- Perception of lack of choice in selection of an audit firm;
- Lack of judgment concerning application of auditor independence rules; and
- Lack of professional education requirements covering SEC reporting

¹⁹³ Rule 152 provides as follows: "The phrase 'transactions by an issuer not involving any public offering' in Section 4(2) shall be deemed to apply to transactions not involving any public offering at the time of said transaction although subsequently thereto the issuer decides to make a public offering and/or files a registration statement." 17 CFR 230.152.

¹⁹⁴ See, e.g., SEC No Action Letter, Verticom, Inc. (Feb. 12, 1986).

matters for auditors of public companies.

Accounting Standards—Primary Recommendations

We recommend that the Commission and other bodies, as applicable, effectuate the following:

Recommendation V.P.1

Develop a "safe-harbor" protocol for accounting for transactions that would protect well-intentioned preparers from regulatory or legal action when the process is appropriately followed.

This recommendation represents an attempt by us to address the diminished use of professional judgment caused in part by fears of second-guessing by regulators and the plaintiff's bar. This is a very serious issue for smaller public companies. Testimony taken by us, as well as written communications we received, strongly supported this view.

Accounting standards for public companies vary in nature, ranging from standards containing principles and implementation guidance on broad accounting topics to those containing guidance pertaining to specific business transactions or industry events. Even with the broad spectrum of existing accounting standards, transactions or other business events frequently arise in practice for which there is no explicit guidance. In these situations, public companies and their auditors consider other relevant accounting standards and evaluate whether it would be appropriate to apply the guidance in those standards by analogy. Preparers often find it difficult to make these determinations, particularly in new or emerging areas. Even when accounting guidance is applied by analogy, questions frequently arise as to whether the analogy is appropriate based on a company's particular facts and circumstances. The result is that companies frequently end up adopting an approach dictated by their auditors, which the companies believe is caused by their auditors' concerns about regulators questioning their judgments, or for other reasons.

In view of this situation, we are recommending that a "safe-harbor" protocol be developed that would protect well-intentioned preparers from regulatory or legal action when a prescribed process is appropriately followed and results in an accounting conclusion that has a reasonable basis. A possible outline for the protocol for the preparer to follow would be as follows:

- Identify all relevant facts.
- Determine if there is appropriate "on-point" accounting guidance.

- If no on-point guidance exists, develop and timely document the preparer's conceptual basis for their conclusion as to the appropriate accounting treatment.
- Determine and timely document how the proposed accounting treatment reflects the economic realities of the transaction.
- Disclose in the financial statements and in Management's Discussion & Analysis the nature of the transaction, the possible alternative accounting treatments, and the rationale for the approach adopted.

We believe that a "safe harbor" approach is suitable for dealing with this problem. In general, a safe harbor provision in a law serves to excuse liability if an attempt to comply in good faith can be demonstrated. Safe harbor provisions are used in many areas of the federal securities laws. One well-known safe-harbor that may serve as a model for crafting a safe-harbor for accounting transactions is the safe-harbor for forward-looking statements under the Private Securities Litigation Reform Act of 1995. The PSRLA provides a safe harbor from liability in private claims under the Securities Act and Exchange Act to a reporting company, its officers, directors and employees, as well as underwriters, for projections and other forward-looking information that later prove to be inaccurate, if certain conditions are met. The PSRLA's safe-harbor was based on aspects of SEC Rule 175 under the Securities Act and Rule 3b-6 under the Exchange Act.¹⁹⁵ Both of these rules, adopted in 1979, provide a safe-harbor for certain forward-looking statements published in documents filed with the SEC, provided the filer had a reasonable basis to make the statement and was acting in good faith. By combining aspects of, but not eliminating, Rules 175 and 3b-6 with the judicially created "bespeaks caution" doctrine, Congress created a statutory safe-harbor based on the belief that the existing SEC rule-based and judicial safe-harbor protections did not provide adequate protections to reporting companies from abusive private securities litigation.¹⁹⁶

¹⁹⁵ 17 CFR 230.175, 240.3b-6.

¹⁹⁶ The PSRLA provides a safe-harbor from liability under the Securities Act and Exchange Act to the reporting company, its officers, directors, employees and underwriters, if the forward-looking statements later prove to be inaccurate, if:

1. The forward-looking statement is identified as such and is accompanied with meaningful cautionary statements identifying important factors that could cause actual results to differ materially;

or

2. The forward-looking statement is immaterial;

or

We believe that implementation of this recommendation has the potential to assist smaller public companies when working with their audit firms and other parties involved in the financial reporting system. This, in turn, should reduce excessive and unnecessary regulatory burdens on smaller public companies.

We do not believe that implementation of our recommendation would fully address the diminished use of professional judgment due to fears of being second-guessed. This is a deep seated problem related to the excessive litigiousness of our society.¹⁹⁷ Accordingly, we urge the Commission, other regulators and federal and state legislators to continue to search for appropriate and effective ways to lessen this problem and reduce unnecessary regulatory burdens on smaller companies.

Recommendation V.P.2

In implementing new accounting standards, the FASB should permit microcap companies to apply the same extended effective dates that it provides for private companies.

New accounting standards typically introduce new accounting requirements or change existing requirements. In order to allow sufficient time for companies to gather information required by the new accounting standards, the FASB does not require new standards to be effective immediately upon issuance. Instead, the FASB establishes a date in the future when the accounting standards should be adopted, or become effective. The amount of time allowed by the FASB between the issuance of a new standard and its effective date varies and depends on the nature of the accounting requirements and the number of companies impacted. In addition, the FASB may establish different effective dates for private companies and public companies.¹⁹⁸

3. The plaintiff fails to prove the statement was made with actual knowledge that it was materially false or misleading.

See Jay B. Kasner, *The Safe Harbor for Forward-Looking Statements Under the Private Securities Litigation Reform Act of 1995*, Practising Law Institute (Sept. 2000); See also Stephen J. Schulte and Alan R. Glickman, *Safe Harbors for Forward-Looking Statements: An Overview for the Practitioner*, Practising Law Institute (Nov. 1997).

¹⁹⁷ See *Record of Proceedings* 95-100 (June 16, 2006) (statements of George Batavick, Adv. Comm. Observer, and Mark Jensen, Adv. Comm. Member, on the importance of tort reform to reduce litigation costs and facilitate a return to principles-based accounting).

¹⁹⁸ FASB standards that distinguish between private and public companies usually define those terms. For examples where the FASB has deferred the effective dates for non-public entities, as

In some cases, a company will need to gather and analyze a significant amount of information in order to adopt an accounting standard. Smaller public companies oftentimes may not have the resources of larger companies to assist with this effort.¹⁹⁹ For example, companies may not have sufficient information technology or valuation specialists on staff and would need to consider hiring external parties. In addition, as business transactions have become more complex in recent years, accounting standards also have become more complex, requiring greater study and expertise by the preparers and auditors' of financial statements.²⁰⁰

We note that some of the more complicated accounting standards recently issued by the FASB permit private companies an extended period of time in which to adopt the new standard.²⁰¹ We believe that allowing microcap companies more time to implement new accounting standards is appropriate. We are recommending that microcap companies be allowed to apply the same effective dates that the FASB provides for private companies in implementing new accounting standards. The Committee considered and rejected the notion that smallcap companies, in addition to microcap companies, also should be allowed extended effective dates. We believe that, in general, smallcap companies have more resources than microcap companies and should be able to adopt new accounting standards on the same time line as larger public companies.

While making this recommendation, we do not propose to establish different accounting standards for smaller and larger public companies. Primarily through our Accounting Standards Subcommittee, we considered the so-called Big GAAP versus Little GAAP debate. This debate involves the advisability of adopting two different accounting standards for smaller and larger public companies, and whether U.S. GAAP should be made scalable for smaller public companies. The

defined therein, see FASB Statement of Financial Accounting Standards No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity* ¶ 29 (May 2003) and FASB Staff Position 150-3 (Nov. 2003).

¹⁹⁹ See Letter from Ernst & Young LLP to Committee (May 31, 2005); Letter from American Bankers Association to Committee (Aug. 31, 2005).

²⁰⁰ See Letter from BDO Seidman, LLP to Committee (May 31, 2005).

²⁰¹ See Statement 150, paragraph 29. See also FASB Statement of Financial Accounting Standards No. 123, *Share-Based Payment* § 69, B248 (revised 2004) (permitting small business issuers, as defined, to defer adoption of the standard on the basis that those companies may have fewer resources to devote to implementing new accounting standards and thus may need additional time to do so).

Committee considered whether the needs of users of smaller public company financial statements are different from the needs of users of larger public company financial statements, whether smaller public companies incur disproportionate costs to provide certain financial information, and whether such information is actually used. The Committee discussed whether smaller public companies should have accounting standards with recognition, measurement and/or disclosure requirements that are different from those of larger public companies, and whether unintended adverse consequences would result from having two sets of GAAP.

We have determined that different accounting standards should not be created for smaller and larger public companies. We believe such an approach would confuse investors and that, in many cases, the financial community would require smaller public companies to follow the more stringent accounting standards applicable to larger companies. We believe that if a two-tiered system of accounting standards existed, many smaller public companies would voluntarily follow the more stringent standards, so as not to be perceived as less sophisticated. We also believe that two different accounting standards for public companies would add significant costs to the financial reporting system and could potentially increase the cost of capital to smaller public companies, as risk premiums could attach to what might be perceived as less stringent accounting standards.²⁰² Finally, we did not see evidence of any overwhelming support for a two-tiered system of accounting standards in the written and oral submissions we received.²⁰³

Recommendation V.P.3

Consider additional guidance for all public companies with respect to

²⁰² See, e.g., Letter from Council of Institutional Investors to Committee (Aug. 26, 2005).

²⁰³ See *Record of Proceedings* 24–26, 42 (Oct. 14, 2005) (testimony of Jane Adams, Maverick Capital Ltd., New York, New York, stating that companies by virtue of size should not be able to choose among multiple GAAPs to structure transactions and keep relevant information from investors, and if different standards are permitted, whether GAAP or internal controls, any financial statements and filings prepared under this light version should warn investors that this information did not come with the full package of protections and controls). See also Letter from PricewaterhouseCoopers LLP to Committee (Sept. 2, 2005); Letter from Grace & White, Inc. to Committee (Oct. 6, 2005); Letter from Glass Lewis & Co. to Committee (Sept. 14, 2005). See also responses to Questions 16 and 21 of Request for Public Input by Advisory Committee on Smaller Public Companies, SEC Release No. 33–8599 (Aug. 5, 2005) available at <http://www.sec.gov/rules/other/265-23survey.shtml>.

materiality related to previously issued financial statements.

We heard testimony related to a recent increase in financial statement restatements for previously undetected accounting errors.²⁰⁴ The Committee is concerned that these restatements are occurring where the impact of the error is not likely to be meaningful to a reasonable investor. The determination as to whether an event or transaction is material to the financial statements can be highly subjective and judgmental. One source of information for public companies to consider when making this determination is SEC Staff Accounting Bulletin No. 99, *Materiality* (SAB 99). SAB 99 expresses the staff's views regarding reliance on certain quantitative benchmarks to assess materiality in preparing financial statements and performing audits of those financial statements. One issue that is not addressed in SAB 99 relates to the assessment of materiality in quarterly reporting periods, including quarterly reporting periods of previously reported annual periods. We discussed whether one reason for these restatements might be the lack of guidance pertaining to assessing materiality in quarterly periods.

We recommend that the SEC consider providing additional guidance for all public companies with respect to materiality related to previously issued financial statements, to ensure that investor confidence in the U.S. capital markets is not being adversely impacted by restatements that may be

²⁰⁴ *Record of Proceedings* 30–31 (Sept. 19, 2005) (testimony of Lynn E. Turner, Managing Director of Research, Glass Lewis & Co., noting that Huron Consulting Group reported that 75% of the restatements over the last five years have come from small companies); *Record of Proceedings* 105 (Sept. 19, 2005) (testimony of Michael McConnell, Managing Director, Shamrock Capital Advisors, Burbank, Calif., citing several studies that show half to three quarters of the restatements of public companies in the last several years have been by companies with either revenues under a half billion or market cap under \$100 million). But see *Record of Proceedings* 108 (Sept. 19, 2005) (statement of Robert E. Robotti, Adv. Comm. Member, noting that the amount of restatements by smaller companies is proportionate to that of larger companies, since microcap companies represent 50% of all public companies). Institutional investor advisory firm Glass, Lewis & Co. estimates that a record 1,200 of the total 15,000 public companies will have announced accounting restatements by the time annual reports are filed for 2005. This compares with 619 restatements in 2004, 514 in 2003, 330 in 2002 and 270 in 2001, the year before the Sarbanes-Oxley Act was passed. The threat of criminal penalties for executives and the focus on internal controls by the Sarbanes-Oxley Act has created an environment of second-guessing by auditors, where minor accounting errors can now result in a full investigation of a company's accounting procedures. *Excavations in Accounting: To Monitor Internal Controls, Firms Dig Ever Deeper Into Their Books*, Wash. Post, Jan. 30, 2006, at D1.

unwarranted. Two specific fact patterns should be considered in developing additional guidance:

- The effect of the previously undetected error is not material to any prior annual or quarterly financial statements, the effect of correcting the cumulative error is not expected to be material to the current annual period, but the impact of correcting the cumulative error is material to the current quarter's financial statements. In this circumstance, we recommend the SEC consider whether the appropriate treatment would be to correct the cumulative error in the current period financial statements, with full and clear disclosure of the item and its impact on the current quarter, with no restatement of prior year or quarterly financial statements. We believe this treatment is consistent with the guidance in paragraph 29 of Accounting Principles Board Opinion No. 28, *Interim Financial Reporting*.²⁰⁵

- The effect of a previously undetected error is not material to the financial statements for a prior annual period, but is material to one or more of the quarters within that year. In addition, the impact of correcting the cumulative error in the current quarter's financial statement would be material to the current quarter, but is not expected to be material to the current annual period. In this circumstance, we recommend the SEC consider whether the appropriate treatment would be the same as described above since the impact on the previously issued annual financial statements is not material. In this event, full disclosure in the current quarter financial statements should be required.

Recommendation V.P.4

Implement a *de minimis* exception in the application of the SEC's auditor independence rules.

The Commission's rules on the independence of public company auditors include a general standard of auditor independence.²⁰⁶ In determining whether a relationship or provision of a service not specifically prohibited by the rules impairs the auditor's independence, four principles must be considered.²⁰⁷ The

²⁰⁵ The Accounting Principles Board (APB) was the predecessor entity to the FASB.

²⁰⁶ The most recent revision to the auditor independence rules occurred in Jan. 2003. See Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33–8183 (Jan. 28, 2003) (68 FR 6006).

²⁰⁷ See Remarks by Edmund W. Bailey, Senior Associate Chief Accountant, U.S. Securities and Exchange Commission, Before the 2005 AICPA National Conference on Current SEC and PCAOB

Continued

Commission's rules also set forth specific prohibitions on financial, employment, and business relationships between an auditor and an audit client, as well as prohibitions on an auditor providing certain non-audit services to an audit client, and augment the general standard and related principles.²⁰⁸ One of the principles is that an auditor cannot audit his or her own work. The Committee considered whether the current auditor independence rules should be modified for smaller public companies to make it clear that an auditor may provide some assistance.

In May 2005, the Commission issued a statement related to internal control reporting requirements that also discussed this issue.²⁰⁹ The Commission stated that as long as management makes the final determination regarding the accounting to be used for a transaction and does not rely on the auditor to design or implement internal controls related to that accounting, it did not believe that the auditor's providing advice or assistance, in itself, constitutes a violation of the independence rules. The Committee considered whether this guidance would enable an auditor to provide assistance to smaller public company related to new and/or complicated accounting standards or with unusual/complicated transactions.

Ultimately, we concluded that no modification to the Commission's independence rules is warranted with respect to auditors providing assistance to smaller public companies. In making this recommendation, we noted the principle that auditors should not audit their own work and believe this basic premise is critical to ensuring auditor independence and the resulting confidence of investors in the financial statements of all companies, including smaller public companies. The Committee concluded that a separate set of auditor independence rules for larger and smaller publicly-held companies would be inappropriate. We believe that our recommendation to apply the same extended effective dates for microcap companies that the FASB provides for private companies will help serve to alleviate the pressure and costs to microcap companies in implementing new accounting standards and reduce

Developments ("Bailey 2005 AICPA Remarks") (discussing principles regarding auditor independence).

²⁰⁸ See Preliminary Note to Rule 2-01 of Regulation S-X and Item 201(c)(4) of Regulation S-X, 17 CFR 210.2-01(c)(4); Exchange Act Section 10A(g).

²⁰⁹ See Commission Statement on Implementation of Internal Control Reporting Requirements, May 16, 2005.

their need for significant assistance from their auditors.

As a separate matter, we acknowledged that the current auditor independence rules do not provide relief for violations of the rules based on materiality considerations. As a result, we believe that a seemingly insignificant violation of the auditor independence rules could have significant consequences.²¹⁰ These consequences could require a company to immediately change audit firms, to declare its previous filings invalid and to engage an audit firm to re-audit its prior financial statements, creating significant cost and disruption to the company and its stockholders. The Committee therefore recommends that the SEC examine its independence rules and consider establishing a rule provision that provides relief for certain types of violations that are *de minimis* in nature as long as these are discussed with and approved by the company's audit committee.²¹¹

Accounting Standards—Secondary Recommendations

In addition to the foregoing primary accounting standards recommendations, we also submit for the Commission's consideration the following secondary recommendations:

Recommendation V.S.1

Together with the PCAOB and the FASB, promote competition and reduce the perception of the lack of choice in selecting audit firms by using their influence to include non-Big Four firms in committees, public forums, and other venues that would increase the awareness of these firms in the marketplace.

This recommendation represents our best attempt to deal with the very serious problem of the lack of competition in the auditing industry, stemming in large part from market concentration. Smaller companies are seriously harmed by this state of

²¹⁰ One witness testified that audit firms are somewhat paranoid about violating these independent rules and rightfully so. The SEC and PCAOB need to go further to provide very clear guidelines for audit firms as to what they can do and cannot do. In order to facilitate audit firms assist smaller public companies with their SEC reporting, some degree of proportionality in limiting the amount of the penalty for an inadvertent violation of the auditor independence rules should be used. *Record of Proceedings* 14 (Aug. 9, 2005) (testimony of Mark Schroeder, Chief Executive Officer, German American Bancorp).

²¹¹ See Bailey 2005 AICPA Remarks (discussing some of the information considered by the SEC Office of the Chief Accountant when making assessments regarding the impact of an independence rules violation).

affairs.²¹² A large concentration of both large and small public companies is audited by the Big Four audit firms.²¹³ Notwithstanding that the Big Four audit firms have earned a well-deserved reputation of expertise in auditing public companies, we heard testimony from several non-Big Four audit firms that indicated that they too are capable of serving smaller public companies.²¹⁴

²¹² One witness testified that smaller public companies are having trouble timely filing their annual and quarterly reports with the SEC, because the Big Four audit firms are dropping them as clients, generally because they fall outside the Big Four's profiles for acceptable risk. *Record of Proceedings* 12 (June 17, 2006) (testimony of Edward S. Knight, Executive Vice President and General Counsel, NASDAQ Stock Market, Inc.). Another witness testified that, due to changes in the accounting industry resulting from the Sarbanes-Oxley Act and consequent pressure from institutional and retail investors, increasing importance has been placed on using a Big Four firm. As a result, smaller public companies, who are the least prepared to negotiate, are increasingly facing oligopolies, resulting in a disruption in the normally balanced relationship between a company and its accounting firm. Young smaller public companies are now in constant fear that their auditors will either increase their audit fees or abandon them because of the pressure on the auditing firm to obtain more profitable business from larger companies. He recommended that emphasis be placed on the acceptability of more regional accounting firms for use by smaller public companies, as well as the establishment or encouragement of a fifth or sixth Big Four audit firm to restore a more appropriate balance between accounting firms and their client companies in order to contain costs and at the same time provide an alternative audit firm that is generally accepted by the investment community. *Record of Proceedings* 32-33, 37-38 (June 17, 2005) (testimony of Alan Patricof, Co-Founder, Apax Partners). See also Remarks by Christopher Cox, Chairman, U.S. Securities and Exchange Commission, Before the 2005 AICPA National Conference on Current SEC and PCAOB Developments (Dec. 5, 2005) (stating that competition is essential for the proper functioning of any market, and a broader and more competitive market for audit services should be encouraged).

²¹³ See United States General Accounting Office, Report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services, *Public Accounting Firms, Mondotest Study on Consolidation and Competition* (GAO-03-864) (July 2003).

²¹⁴ *Record of Proceedings* 19 (Sept. 19, 2005) (testimony of Richard Ueltsch, Executive, Crowe Chizek and Company, LLC) ("[S]maller public companies, virtually all of them could be served adequately by more than the Big Four, certainly the eight largest firms that are subject to annual review by the PCAOB. And, in fact, many of those smaller public companies could also be effectively served by the dozens of qualified regional C.P.A. firms."); *Record of Proceedings* 129, 130-133 (Aug. 9, 2005) (testimony of Bill Travis, Managing Partner, McGladrey & Pullen LLP, commenting that his firm, as well as many other second-tier non-Big Four audit firms, have a level of expertise and resource capabilities that can certainly serve the needs of very large mid-market companies with global facilities around the world, as well as a much greater percentage of small and mid-size publicly-traded companies). See also *Record of Proceedings* 92 (Oct. 14, 2005) (testimony of Gerald I. White, Grace & White, Inc., New York, New York) ("I don't see any evidence that the large firms do any better job than the small ones.").

The PCAOB has registered and oversees over 900 U.S. public audit firms. The experience of some of our members, as well as submissions made to us, confirms a trend for smaller public companies to consider options other than the Big Four audit firms.²¹⁵ More encouragement should be given to audit committees and underwriters to seriously consider engaging a non-Big Four audit firm. We believe that market forces ultimately will determine which firms will audit public companies. We recognize the Commission's, the PCAOB's and the FASB's limited authority to affect concentration in the auditing industry. We also recognize that some of our recommendations concerning internal control may increase the concentration of smaller public companies with revenues over \$250 million who are audited by the Big Four.²¹⁶

²¹⁵ One witness testified that, although the bottom line is whether audit committees and investment banks are willing to advise choosing a non-Big Four firm, current market conditions are fortunately driving some changes in the industry out of necessity. Big Four firms have limited resources and are allocating their resources to wherever the best use of those resources may be used by their major clients. Non-Big Four firms are benefiting from this market development in that very high quality public companies have to go find other non-Big Four firms to do their audits. Accordingly, he indicated that firms like his are receiving many inquiries as to whether they are capable of doing the work, and are in fact winning the work, including such firms as Grant Thornton, LLP and BDO Seidman, LLP. Accordingly, he believes that market conditions are doing a lot more to win work for the non-Big Four audit firms than any marketing communications could have done. See *Record of Proceedings* 130-131 (Aug. 9, 2005) (testimony of Bill Travis, Managing Partner, McGladrey & Pullen LLP). See also *Record of Proceedings* 19 (Sept. 19, 2005) (testimony of Richard Ueltsch, Executive, Crowe Chizek and Company, LLC) ("We are seeing today many companies at * * * the smaller end of the large company classification, as this group's defined it, that are now choosing to look outside the Big Four for their audit services. And they're doing so largely because of an attempt to introduce a bit of market competition into the pricing for the service. * * * [T]here's a fair amount of activity in terms of auditor change, there's real price competition being introduced into that process."); *Record of Proceedings* 92 (Oct. 14, 2005) (testimony of Gerald I. White, Grace & White, Inc., New York, New York) ("[S]maller firms seem to be clearly gravitating away from the largest auditors to smaller auditors. And I suspect that not just audit costs, but 404 costs are driving that process.").

²¹⁶ See Letter from Crowe Chizek and Company LLC to Committee (Feb. 20, 2006), available at <http://www.sec.gov/rules/other/265-23/mhildebrand022006.pdf> ("Removing the auditor involvement requirement for Smallcap companies will cause firms other than the Big Four to have very few internal control audit clients * * * This will create a large, unintended competitive advantage to the Big Four and foster further consolidation in the audit profession.") and Letter from McGladrey and Pullen LLP to Committee (Feb. 21, 2006), available at <http://www.sec.gov/rules/other/265-23/travis022106.pdf> (supporting the efforts of the Advisory Committee but expressing concern that the Committee's Section 404

We nevertheless believe that efforts to promote competition in the auditing industry and educate registrants in the choice of selecting audit firms is essential to maintain pricing discipline and to address the perceived lack of competition in the auditing industry. We are therefore recommending that the SEC, the PCAOB promote competition among audit firms and that the FASB further this effort by ensuring that non-Big Four firms are included in committees, public forums, and other venues that would increase the awareness of these firms in the marketplace.²¹⁷

Recommendation V.S.2

Formally encourage the FASB to continue to pursue objectives-based accounting standards.²¹⁸ In addition, simplicity and the ease of application should be important considerations when new accounting standards are established.

This recommendation is an attempt to deal with the issue of excessive complexity in accounting standards.²¹⁹

recommendations will further concentrate audit services of public companies with the Big 4 audit firms and suggesting that the SEC take further measures to ensure that there is no further audit concentration of audit services in the United States).

²¹⁷ See, e.g., *Record of Proceedings* 84 (June 17, 2005) (testimony of Wayne A. Kolins, National Director of Assurance and Chairman of the Board, BDO Seidman, LLP, encouraging the use of symposiums, whereby the CEO's and CFO's of smaller public companies meet to discuss their experiences using non-Big Four audit firms); *Record of Proceedings* 130 (Aug. 9, 2005) (testimony of Bill Travis, Managing Partner, McGladrey & Pullen LLP, encouraging non-Big Four audit firms to become more active with regulatory organizations like the PCAOB and SEC and others to build awareness of the capabilities of the non-Big Four audit firms); *Record of Proceedings* 63-64, 82-83 (June 17, 2005) (testimony of Alan Patricof, Co-Founder, Apax Partners, recommending that regulatory bodies use the bully pulpit and moral suasion to increase awareness and acceptance of the good quality of regional non-Big Four auditing firms, including encouraging investment banking firms to rely upon these non-Big Four firms).

²¹⁸ See SEC Staff's Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System, released in July 2003 ("Principles-Based Accounting System Staff Study") ("objectives-oriented" standards are distinguished from "principles-based" or "rules-based" standards).

²¹⁹ See Remarks by Robert H. Herz, Chairman, Financial Accounting Standards Board, Before the 2005 AICPA National Conference on Current SEC and PCAOB Developments (Dec. 6, 2005) (discussing the complexity in financial reporting). See also Remarks by Christopher Cox, Chairman, U.S. Securities and Exchange Commission, Before the 2005 AICPA National Conference on Current SEC and PCAOB Developments (Dec. 5, 2005); Remarks by Scott A. Taub, Acting Chief Accountant, U.S. Securities and Exchange Commission, Before the 2005 AICPA National Conference on Current SEC and PCAOB Developments (Dec. 5, 2005).

This complexity disproportionately impacts smaller public companies due to their lack of resources. Complexity is created because of:

- An unfriendly legal and enforcement environment that diminishes the use and acceptance of professional judgment in today's financial reporting system because of fears of second-guessing by regulators and the plaintiff's bar.²²⁰
- Development of complex business arrangements and accounting-motivated transactions.²²¹
- Constituent concerns about earnings volatility and desire for industry-specific guidance and exceptions.²²²
- Frequent requests by preparers and auditors for detailed accounting guidance to limit potential inconsistencies in the application of accounting standards and second-guessing by the legal community and enforcement authorities.²²³

Certain accounting standards create complexity because:

²²⁰ One witness encouraged a move towards more of a principles-based and a judgment-based approach to accounting so that competent people on the audit committees, in management and in the audit firms can work together to use their respective intellect, judgment and knowledge of the business to determine where best to spend their time each year, in such areas, for example, as internal control compliance with Section 404 of the Sarbanes-Oxley Act. He commented that all the guidance provided so far by the SEC and the PCAOB on the use of professional judgment is tempered, however, by the current uncertainty as to what will be the expectations of company management, the audit committee and the auditor once there is a major failure due to an unintended mistake reported in the system. Until we see the results of such a mistake, he believes there will continue to be conservatism in the practice of audit firms, management teams and audit committees. *Record of Proceedings* 117-118 (Aug. 9, 2005) (testimony of Bill Travis, Managing Partner, McGladrey & Pullen LLP).

²²¹ The SEC Staff's report entitled *Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 On Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers* ("Off-Balance Sheet Staff Study"), released in June 2005, refers to an accounting-motivated structured transaction as a transaction structured in an attempt to achieve reporting results that are not consistent with the economics of the transaction. As an example, the report cites to the restructuring of lease arrangements to avoid the recognition of liabilities on the balance sheet following the issuance of the FASB's Statement No. 13, *Accounting for Leases*, released in 1976.

²²² See Principles-Based Accounting System Staff Study (listing three of the more commonly-accepted shortcomings of rules-based standards, such as numerous bright-line tests, exceptions to principles underlying the accounting standards, and complexity in and uncertainty about the application of a standard reflected in the demand for detailed implementation guidance).

²²³ *Id.* See also FASB Staff Position No. 123(R)-2, *Practical Accommodation to the Application of Grant Date as Defined in FASB Statement No. 123(R)* (Oct. 18, 2005).

• The lack of a fully developed conceptual framework leads to inconsistent concepts and principles being applied across accounting standards.²²⁴

• Scopes in standards are at times unclear and may contain exceptions.²²⁵

• The standards have different measurement attributes (such as historical cost versus fair value) and treatment alternatives.²²⁶

• Rules and bright-line standards provide opportunities for accounting-motivated transactions that are not necessarily driven by economics.²²⁷

• The standards themselves have become extremely lengthy and difficult to read.²²⁸

Additional complexity in accounting standards also comes about because:

• In prior years, multiple parties set standards, such as the SEC, the FASB, the AICPA, the Accounting Principles Board (APB), and the Emerging Issues Task Force (EITF).

• Differing views exist on the application of fair value measurement techniques and models.²²⁹

• Phased projects produce only interim changes.²³⁰

We believe that the current financial reporting environment could be modified to reduce the reporting burden

on smaller public companies, as well as larger public companies, while improving the quality of financial reporting.

We commend the efforts of the SEC and FASB to pursue "objectives-based accounting standards," as this should help to reduce complexity.²³¹ The Committee recognizes that success will require preparers, financial advisors and auditors to apply the intent of the rules to specific transactions rather than using "bright-line" interpretations to achieve a more desirable accounting treatment. The Committee also believes that simplicity and the ease of application of accounting standards should be important considerations when new, conceptually-sound accounting standards are established. Success will also require regulators and the courts to accept good faith judgments in the application of objectives-based accounting standards. We believe these goals will only be accomplished by long-term changes in culture versus short-term changes in regulations. This will allow for greater consistency and comparability between financial statements.

Accordingly, we offer the following suggestions aimed at simplifying future accounting standards:

• There should be fewer (or no) exceptions for special interests.

• Industry and other considerations that do not necessarily apply to a broad array of companies should be addressed by FASB staff positions rather than in FASB statements.

• FASB statements should attempt to reduce or eliminate "bright-line tests" in accounting standards, and in cases where the standard-setter intends that a "bright-line" test be applied make that clear in the guidance.

The Committee is making this recommendation in lieu of recommending modifications to certain existing accounting standards for smaller public companies. Primarily through our Accounting Standards Subcommittee, we identified certain accounting standards where modifications might be considered in the future for smaller public companies. The Committee recognized that smaller public companies, as well as larger public companies, struggle with the application of certain accounting standards, such as FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*. The Committee also looked for

certain common themes in those standards that could be used to develop recommendations regarding accounting pronouncements.

In reviewing existing accounting standards, we considered the effect of their measurement and disclosure requirements on smaller public companies. The Committee also considered possible screening criteria that could be used to determine whether an accounting standard should be modified for smaller public companies. The objective of our efforts was to determine whether for certain accounting standards, the information is very costly for a small business to prepare and yet the information is not being utilized by its investors or other users of its financial statements.

After deliberating these questions, we unanimously concluded that, since we believe it is inappropriate to create different standards of accounting for smaller public companies (*i.e.*, Big GAAP versus Little GAAP), we should not propose recommendations to modify existing accounting standards for smaller public companies.

In sum, we agreed that the current financial reporting environment could be improved to reduce the reporting burden on both smaller public companies, as well as for larger public companies, while improving the quality of financial reporting. In this light, we formulated the above recommendation to have the SEC formally encourage the FASB to continue to pursue objectives-based accounting standards. The Committee also recommended that simplicity and the ease of application should be key considerations when establishing new conceptually-sound accounting standards.

Recommendation V.S.3

Require the PCAOB to consider minimum annual continuing professional education requirements covering topics specific to SEC matters for firms that wish to practice before the SEC.

Of the 939 U.S. audit firms registered with the PCAOB, we noted that approximately 82% of them audit five or fewer public companies. We believe that continuing professional education pertaining to SEC-related topics would be useful to the professional personnel of registered firms, especially for those firms that do not audit many public companies and for which this training would improve their ability to serve public companies. While several different groups and governmental bodies, such as the individual state licensing boards, establish continuing professional education requirements for

²²⁴ For example, related to the accounting for revenue transactions, FASB Statement of Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, states that revenues are not recognized until earned. FASB Statement of Concepts No. 6, *Elements of Financial Statements*, defines revenues as inflows or other enhancements of assets or liabilities. The FASB currently has a revenue recognition project on its agenda designed in part to eliminate this inconsistency. The FASB also has on its agenda a joint project with the International Accounting Standards Board to develop a common conceptual framework that is complete and internally consistent.

²²⁵ For example, FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, clarifies the scope of FASB Statement No. 5, *Accounting for Contingencies*. This interpretation excludes certain guarantees from its scope and also excludes other guarantees from the initial recognition and measurement provisions of the interpretation.

²²⁶ See, e.g., FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (providing classification alternatives for investments in debt and equity securities, resulting in different measurement alternatives).

²²⁷ See Off-Balance Sheet Staff Study.

²²⁸ See, e.g., FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998) (exceeding 800 pages of authoritative guidance and over 180 implementation and interpretive issues).

²²⁹ The FASB currently has a project on its agenda to provide guidance regarding the application of the fair value measurement objective in generally accepted accounting principles.

²³⁰ For example, FASB Statement No. 150 is part of the FASB's broad project on financial instruments that was added to the FASB's agenda in 1986.

²³¹ See, e.g., SEC Staff Study, *The Principles-Based Accounting System*. See also FASB Response to SEC Study on the Adoption of a Principles-Based Accounting System (June 2004).

accountants, the PCAOB does not currently have any minimum annual training standards for registered firms' partners and employees who serve public companies. The Committee suggests, therefore, that minimum annual SEC training requirements be established for applicable partners and employees of audit firms registered with the PCAOB.

Recommendation V.S.4

Monitor the state of interactions between auditors and their clients in evaluating internal controls over financial reporting and take further action to improve the situation if warranted.

The recent implementation of Sarbanes-Oxley Act Section 404 by certain public companies has raised many questions and issues. One issue that has been identified pertains to the adverse impact Section 404 has had on the relationship between audit firms and the management of smaller public companies and the nature and extent of their communications on accounting and financial reporting matters.²³² We noted the substantial amount of testimony on this issue.²³³ We also

²³² The SEC Staff's *Statement on Management's Report on Internal Control Over Financial Reporting*, released in May 2005, stated that feedback from both auditors and registrants revealed that one potential unintended consequence of implementing Section 404 and Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements*, has been a chilling effect in the level and extent of communications between auditors and management regarding accounting and financial reporting issues.

²³³ One witness commented that audit firms are too fearful to provide guidance and advice to any inquiry by a public client, as such inquiry could be interpreted as an admission of an internal control weakness by the company in that area. Although he recognizes that auditing firms cannot provide non-audit services to their clients, he believes that they should be able to point their clients in the right direction so that the client can do the work. He indicated that audit firms are unclear as to where the line of auditor independence is drawn. As a result, when in doubt, audit firms take the safe route and do nothing out of fear that if they cross the line, they will put the entire audit firm at risk. *Record of Proceedings* 24 (Aug. 9, 2005) (testimony of Mark Schroeder, Chief Executive Officer, German American Bancorp.). Similarly, another witness testified that auditors and audit committees are too fearful of lawsuits to rely upon their judgment in implementing Section 404 internal controls. He believes explicit common sense standards applied universally to all companies of a given size need to be developed by the regulators to indicate clearly what the auditors need to cover, and what the materiality levels are. *Record of Proceedings* 189 (Aug. 9, 2005) (testimony of James P. Hickey, Principal, Co-Head of Technology Group, William Blair & Co.). See also *Record of Proceedings* 126-127, 139 (August 9, 2005) (testimony of Bill Travis, Managing Partner, McGladrey & Pullen LLP, commenting that once there is greater consistency and clarification on what is expected by the PCAOB and its inspectors with regard to Auditing Standard No. 2, the time, effort and costs incurred by the

noted that the PCAOB and the SEC had issued guidance in May 2005 regarding

auditors will be reduced and the willingness of auditors to use their professional judgment will increase); *Record of Proceedings* 9-18, 56 (Oct. 14, 2005) (testimony of Thomas A. Russo, Russo & Gardner, Lancaster, Penn., describing a very stark tension growing between companies and their auditors, due to the lack of PCAOB Section 404 guidelines which has resulted in a zero percent sort of materiality test as auditors are unwilling to exercise judgment, but rather go to the end of the earth to confirm the integrity of control systems); *Record of Proceedings* 57, 61 (Sept. 19, 2005) (testimony of Kenneth Hahn, Senior Vice President, Chief Financial Officer, Borland Software Corp., Cupertino, Calif., commenting that the dynamics of risk make it virtually impossible for the control portion of Section 404 to be cost effective for small and mid-size companies, as both auditors and boards will make the decision to over-engineer the testing of a company's internal control systems); *Record of Proceedings* 100 (June 17, 2005) (testimony of Prof. William J. Carney, Emory University School of Law, referring to a study indicating that auditing fees have increased by as much as 58%, due to the increased costs associated with the new requirements of the Sarbanes-Oxley Act). But see *Record of Proceedings* 33-34 and 41 (Sept. 19, 2005) (testimony of Lynn E. Turner, Managing Director of Research, Glass Lewis & Co., predicting the costs of Section 404 internal controls to come down after the first year of implementation, and commenting that both in-house accountants and external auditors are working together to make the implementation of Section 404 internal controls for smaller companies much more difficult than warranted); *Record of Proceedings* 18-19 (Sept. 19, 2005) (testimony of Richard Ueltsch, Executive, Crowe Chizek and Company, LLC, anticipating costs to implement Section 404 internal controls for the second year to fall, and noting that auditors are now willing to provide fixed fee quotes both for smaller public companies in their second year of 404 implementation, as well as for new accelerated filers undertaking their first year of 404 implementation); *Record of Proceedings* 106 (Sept. 19, 2005) (testimony of Michael McConnell, Managing Director, Shamrock Capital Advisors, Burbank, Calif., indicating that most investors, including both direct investors and institutional capital, do not have a problem with the costs of Section 404, as opposed to the capital raising agency community, such as the lawyers, bankers and managers, that are uncomfortable in general with any heightened standards of accountability). One witness testified that several public equity offerings in which he was involved experienced unprecedented delays due to the inability or unwillingness of the auditors to provide timely responses during the registration process with the SEC. He believes that auditors can no longer be looked to for advice on how to handle various issues, as it seems that almost every issue now needs to be "run through the national office" of the auditor. He notes that as auditor responses may now take weeks longer to be produced than was the case a couple of years ago, he believes such delays leave potential issuers subject to additional market risk that did not exist in the past. *Record of Proceedings* 176 (Aug. 9, 2005) (testimony of James P. Hickey, Principal, Co-Head of Technology Group, William Blair & Company). See also *Record of Proceedings* 33 (June 17, 2005) (testimony of Alan Patricof, Co-Founder, Apex Partners, explaining that an unnatural relationship has developed between companies and their auditors as accountants have become more gun shy about taking a risk-focused approach to their audit and express concerns about the pressure to comply with PCAOB requirements which has caused the relationship between auditors and companies to go from one of cooperation and consultation to that of an adversarial nature).

the implementation of Section 404 and the interaction between an auditor and its client.²³⁴

It appears that audit firms are starting to become more comfortable with the idea that it is acceptable to advise their clients with respect to new accounting standards and/or complicated transactions, consistent with the guidance issued by the PCAOB and SEC, while remaining fully cognizant of the need for company management to take full responsibility for its financial statements and the underlying decisions on the application of accounting principles. We recommend that the SEC and the PCAOB remain vigilant in monitoring the impact of its guidance through the Spring of 2006 reporting season. If the guidance is being appropriately applied, no further action with respect to the interaction of the auditor and its clients would be required, except for implementation of our recommendation on implementing a *de minimis* exception for certain immaterial violations of the SEC's independence rules.

Part VI. Epilogue

[Content of Part VI To Be Included in Final Report.]

Part VII. Separate Statement of Mr. Jensen

Introduction

I am dissenting to recommendations III.P.1, III.P.2 and III.P.3 contained in the Final Report of the Advisory Committee. Since the time of the original vote on the recommendations, I have become aware that certain investor groups are concerned with the removal of Section 404 of the Sarbanes-Oxley Act of 2002 requirements for a large number of public companies. While no one knows the exact extent of investor opposition, I believe this group is too important to the health of our capital markets to ignore their point of view. Specifically, I believe that providing a permanent exemption for smaller public companies from these requirements may ultimately harm investors of those companies. In addition, I disagree with the adoption of a weakened auditing standard for Section 404 compliance by certain companies.

The fact that the Advisory Committee heard so many different points of view on these critical issues supports the fact that we do not yet have sufficient experience with implementation of Section 404 to know with certainty that a permanent exemption is a better

²³⁴ See *SEC Statement on Implementation of Internal Control Reporting Requirements*, May 16, 2005.

answer, or whether any change in auditing standards is warranted. In light of these factors, my recommendation calls for additional temporary deferrals coupled with a study of key implementation elements and a definitive timetable for resolution.

Dissenting Views and Rationale

I agree with the rationale in the Final Report describing the need to scale securities regulation for smaller companies. As a member of the Advisory Committee I heard testimony from many on the potentially damaging impact of the costs of Section 404 on the growth potential of smaller public companies. Additionally, many parties provided written comment on the disproportionate burden of Section 404 related costs on smaller public companies. The Final Report includes a number of examples and anecdotes on the reasons for this disproportionate burden including constraints caused by limited internal and external resources, lack of guidance tailored to smaller companies and less revenue with which to offset implementation and ongoing compliance costs. I acknowledge that this cost issue necessitates a significant and substantial effort to develop an appropriate application of Auditing Standard No. 2 in the small public company environment.

I am also cognizant of testimony and written comments the Committee received on the significant benefits of Section 404. Many reminded the Advisory Committee of the corporate failures that resulted in Congress enacting the Sarbanes-Oxley Act of 2002. Other investors gave testimony on the benefits of Section 404 both to themselves and to the companies in which they invest and the increased confidence instilled in the investor community as a result of the additional checks and balances required by the Act. A smaller public company, as information provided to the Advisory Committee indicates, is more likely to suffer control deficiencies than a larger company. This fact logically means that investors will consider their investment in smaller public companies a higher risk. It seems, therefore, that smaller public companies could benefit from a process that improves investor confidence in their financial reporting thereby helping them achieve a wider and more diverse investor base. If such benefits for both companies and investors can be derived from Section 404, then it seems to me that eliminating the requirement for these companies is unwarranted. Rather, more effort should be expended to scale the approach to smaller public companies.

The key is to balance the needs of the users of financial statements with the costs to companies in supplying the required information. Balancing what preparers of financial statements can reasonably provide and what users of financial statements can reasonably expect to receive is a basic principle of our financial reporting and regulatory systems. The current debate around Section 404 demonstrates clearly that this required balance does not exist at smaller public companies today. Many smaller public companies have indicated that the solution to this problem is to eliminate their compliance with Section 404. However, simply eliminating the requirement will tip the scales and investors, who will not receive the information and assurances intended to be provided under the Act, will likely believe that the system is out of balance to their detriment. I believe that through additional implementation experience, guidance and tools, Section 404 reporting can become more efficient and cost-effective for smaller public companies.

I disagree with the adoption of an alternative auditing standard. A lesser standard may prove not to be in the interest of the smaller public company as it creates a two tier system. The existence of a two tiered system could reduce investor confidence in the smaller public companies' financial reporting process and would thereby eliminate all of the benefits of Section 404 which, as discussed above, may be an important benefit that could be derived by smaller public companies. I believe that effective Section 404 compliance in the smaller public company will continue to improve investor confidence and I also strongly believe that compliance can be achieved in a cost effective manner.

Further Consideration

Accordingly, in lieu of permanent exemptions, I recommend an additional temporary deferral of the Section 404 reporting for non-accelerated filers that have not yet reported under Section 404, coupled with a definitive action plan led by the SEC as outlined below. This plan includes participation by smaller public companies, the auditing profession and the PCAOB. Given the cost concerns provided to the Advisory Committee on smaller public companies, such an additional temporary deferral could include an optional, temporary suspension of certain of the requirements for smaller public companies that recently implemented the Section 404 requirements and meet the market

capitalization and revenue criteria in recommendations III.P.1 and 2. On this latter point, the SEC would have to weigh the implications of this proposal with the likelihood that many of the companies already complying would nonetheless choose to continue to comply.

The steps that I would propose would be subject to a defined timeline and a set of actions to definitively resolve the scope of Section 404 implementation for smaller public companies prior to the 2008 year-end. For example, these actions could include:

- Reconsideration of the end product in the ongoing process to tailor the COSO requirements for smaller businesses. This project has been underway for some time. It is essential that the final document succeed in being truly useful to smaller companies. It is vitally important that the final document be replete with guidance, examples and tools, which permit the efficient implementation and testing of COSO requirements for smaller businesses. A definitive guide for performing management's assessment of internal control effectiveness for smaller public companies would be the single most useful element of this effort.

- The conduct of an SEC-led pilot program for a prescribed number of micro-cap and smaller public companies during 2006 that would serve as a field test and lead to the development of guidance on application of AS2 in that environment for auditors, as well as the development of internal control and Section 404 compliance tools for management of micro-cap and smaller public companies.

- An in-depth study of the companies that have two years of experience in complying with Section 404, perhaps by focusing on the smaller of the complying companies in order to gain an in depth understanding of the costs and benefits. The criticality of reliable, not anecdotal, cost-benefit information is a fundamental predicate to finalizing the important regulatory and public policy decisions that the SEC needs to make.

The basic timeline for this action plan could be: Pilot program and study in 2006, develop and field test guidance and rules in 2007, and implement in 2008.

Should this recommendation be adopted, my firm would be willing dedicate resources to participate in any efforts to gather evidence, field test new guidance, or develop tools for management and auditors that will further support this process. We would look forward to working with others in the accounting profession, vendors of

technology solutions, and companies in the program and other public and private-sector organizations to achieve success in this endeavor.

It is important to note that this timeline includes only one additional annual deferral of the Section 404 requirements for non-accelerated filers; however, it should also include specific, defined steps during this period, to significantly improve guidance and tools, and increase the cost effectiveness of implementation for smaller public companies.

This recommendation is made with our mutual public interest goals in mind. It reflects my opinion that after only two years of implementation for accelerated filers, market participants and regulators do not have sufficient information to make final decisions regarding the long-term application of these important internal control requirements for smaller public companies. I recommend that a process be developed to gather empirical, field-driven information to resolve this important question, and that an additional deferral be granted until this can be accomplished.

Part VIII. Separate Statement of Mr. Schacht

This Separate Statement to the Final Report of The Advisory Committee on Smaller Public Companies (the "Report") is submitted for the purpose of dissenting on several of the primary recommendations of the Advisory Committee. These relate to the work of the sub-committee on Internal Controls Over Financial Reporting (the "Sub-Committee"). As a member of the Sub-Committee and consistent with our dissenting opinion of December 14, 2005, a copy of which is attached, we remain opposed to key portions of the Report.

Observers and committee participants agree that the most substantive recommendations in the Report relate to the application of Section 404 of Sarbanes-Oxley ("Section 404") to smaller public companies. As a Committee, we reviewed several issues impacting smaller public companies. It is clear however, that the impacts of Section 404, particularly the resource demands and costs of implementing 404, have proven to be the most challenging. During our deliberations, the Sub-Committee discussed dozens of ways and options for reducing costs, while maintaining investor protections.

Cost-Benefit Analysis

The Advisory Committee members generally agree that the costs of Sarbanes-Oxley ("SOX") are the real

issue. While minimization of regulatory costs is always a desirable goal, the Report confirms what we knew coming into this Committee process, that the costs have exceeded all estimates, and have significantly impacted small companies. There have been numerous cost studies and other anecdotal comments on whether these costs are, or will be, coming down in subsequent years. The evidence will only be clear once we have actual data in the coming months. For many companies that have yet to go through the process, the initial costs will be high. But the analysis must not end there. It suggests that whatever the benefits of Section 404 might be, they are surely far outweighed by these more obvious cost figures. The Report states that the benefits are of less certain value and moves on to other matters.

The Advisory Committee, by and large, agrees that internal controls over financial reporting at public companies are important. More specifically, we assert they are an important feature for accurate financial reporting, investor protection, and market integrity. But is there a measurable benefit? It is impossible to measure the value of a financial/accounting fraud avoided. In 2005, there were approximately 1300 restatements and weaknesses in financial reporting revealed and fixed by a Section 404 inspired process, more than double the number in 2004. This dramatic increase will have an inestimable and far-reaching impact on financial reporting reform. Some argue this is a reflection of deferred maintenance on an internal controls process that has been neglected and that SOX represents a renaissance for proper internal control process and environments. Whatever the reason, these are benefits that are significant and certain. Moreover, they are benefits which, we believe, balance the cost of a properly scaled and verified internal control structure.

Section 404 Exemption vs. Improved Section 404 Implementation

The Sub-Committee set about its work with the focus of adjusting the main cost driver of Section 404, the level to which internal controls need to be documented, verified and tested by management and outside auditors. The original objectives were to reduce the cost burdens but maintain the investor protections associated with Section 404. The Sub-Committee focused on a variety of ways to meet the objectives but narrowed its attention to two. The first is creating a more tailored and cost-efficient internal control structure and verification process for small companies, *i.e.*, reducing the cost and

resource drain of Section 404 through better implementation. The second is providing small companies with an exemption from the main requirements of Section 404.

The objectives of cost control and investor protection need not be mutually exclusive. However, the Report's primary recommendations make them so. Our strongest objection is that the Report recommends a flat-out exemption from all auditor 404 involvement in reviewing and confirming internal controls. This is not for just a few, but for what will effectively be more than 70 to 80 percent of the public companies in this country.

One could cite any number of flaws in this approach, but several in particular stand out:

- First, the entire premise of SOX was to bolster investor confidence by requiring meaningful corporate governance and financial reporting reforms. Likewise, maintaining investor protections is a primary tenet of the Committee Charter. Properly designed and functioning internal controls over financial reporting were and are a cornerstone of this legislation. Proper structuring and implementation of 404 requirements are very different from eliminating these completely for a broad segment of U.S. companies. That approach works against the statute's legislative intent and the directive that we heard from both Chairman Donaldson and Chairman Cox.

- Second, it is unclear to many whether the broad exempting recommendations of this subcommittee are even within the commission's legal authority. Comprehensive, sweeping exemptions from Section 404 may not be possible under the current legislation, which specifically excluded Section 404 from the Securities and Exchange Act of 1934. As the full Commission works toward final recommendations, it would be well served to resolve that potential legal uncertainty so as to avoid further litigation delays in addressing Section 404 concerns.

- Third, with regard to MicroCaps as defined, the Report recommends exemptive relief from not only auditor involvement in reviewing internal controls but also exempts the managers of these firms from having to do their own internal assessment of such controls. Essentially, no one has to check the design, implementation and effectiveness of internal controls over financial reporting at these companies. The reason for this complete 404 exemption according to the Report is that there is no specific directions/

guidance available to such small company managers to know how to create an appropriate internal control structure. We wonder about two things in this context. First, how have these firms been able to meet the on going legal requirements for maintaining an effective system of internal controls (actually mentioned as part of the recommendation) and more importantly, if such guidance is missing for micro caps, how does it suddenly become clear for managers of small companies above \$125 million in market cap? In the event any of these exemptive recommendations are adopted by the SEC, we believe logic dictates that managers in all public firms be required to complete an annual Section 404 assessment of internal controls.

- Fourth and maybe most important, small public companies need checks and balances over financial reporting. This includes the Section 404 checks and balances in our view. The Report indicates that: Small cap firms have less need for internal controls; requiring external verification of internal controls is a waste of corporate resources; and, that better corporate governance is a substitute for such verification. It further suggests that investors in these companies don't particularly care about internal control protections and that these companies represent an inconsequential bottom 6% of total U.S. market capitalization, rendering even an Enron-like blowup a minor event. At the same time, the Report characterizes such small companies as a critical link in economic growth and competitiveness and that Section 404 is the regulatory tipping point and barrier to accessing public markets. Parsing through these contrasting views of inconsequential vs. critical seems to suggest incorrectly that venture capital exit strategies are more important to protect than public investors providing risk capital. A number of experts we heard from feel that properly structured and verified internal controls are probably more important for the riskier, smaller firms and that additional corporate governance provisions are in no way a substitute for properly working internal controls. For example, these small firms consistently have more misstatements and restatements of financial information, nearly twice the rate of large firms, according to one report. Alarming, these small firms also make up the bulk of accounting fraud cases under review by regulators and the courts (one study puts it at 75 percent of the cases from 1998-2003).

- Finally, we note that as part of each of the recommendations for Section 404

exemption, the Report suggests these companies be reminded of pre-SOX legal requirements to have an effective system of internal controls in place. This legal reminder simply points out how ineffective the rules were pre-SOX and how they are no substitute for having some level of external verification of controls as prescribed by Section 404.

Better Implementation of Section 404 & SOX "LIGHT"

A more balanced approach to fixing the cost concerns of Section 404 is to continue requiring manager assertions and auditor attestation of internal controls, but direct the appropriate regulatory and de facto standard-setting bodies (the Committee of Sponsoring Organizations of the Treadway Commission (COSO), the Public Company Accounting Oversight Board) and the SEC to develop specific guidance for small companies. This approach has been referred to as a "404 Light" or "SOX Light" approach. However, the term has become confusing over the course of the Committee debate.

Much of the outline for this approach appeared in preliminary recommendations of the Sub-Committee. We encourage the Committee to be clear on the options for better implementation and for the Commission to consider a broad range of approaches. These may include: (1) Reviewing/refining the existing AS-2 standards; (2) possible development of an alternative auditing standard (the Report references AS-X) that provides for a meaningful, but more cost effective audit; and (3) development of specific directives from COSO and PCAOB on how to "right-size" for small issuers, the control structure, the requirements for managers assessment and the scope of an internal controls audit.

This "Better Implementation" approach appears in the Report, but comes only as a fall-back alternative to the exemptive recommendations. To ensure continued investor confidence in our markets, we support the approach that preserves the investor protection aspects of 404 while lowering costs to implement and verify proper internal controls over financial reporting.

Investors Support Section 404

It is clear that we need to do something for small companies. Investors in these companies, more than anyone, have a significant stake in making sure we balance the regulatory burden with the need to grow and access capital markets. Investors and the

economy are ill-served by a system that neglects either.

We heard commentary from several professional investors and institutional managers in support of Section 404 requirements. The weight of such testimony has been questioned since many do not invest directly in micro cap firms. Moreover, the lack of specific individual testimony from micro cap and small cap investors along with the observation that people still invest in these firms without Section 404 protections, both in U.S. and foreign markets, has been suggested as evidence that investors do not care about section 404 protections.

While we encourage more of these small company investors to come forward and participate in the next comment period, we believe the investor base involved in these firms is very fragmented. These companies represent somewhere between 70 and 80 percent of public companies and collectively have millions of individual retail and private shareholders. It is unlikely this group will magically coalesce and speak with a collective voice on this or any other regulatory or financial reporting issue affecting the companies in which they invest. That silence should not be misinterpreted. These are precisely the investors that need the formal and self-regulatory "system" to provide the necessary protections, transparency and honesty that ensures a fair game. It is what continues to make U.S. markets the gold standard.

We appreciate the opportunity to serve on the Advisory Committee and to serve as a representative for investor views. We encourage investors to provide timely commentary to this Report. As with any regulation, it is important to reach the proper balance between cost burden on the issuer and investor protection. We firmly support realignment and better implementation, not elimination of Section 404, as the proper balance.

Statement of Mr. Schacht Dated December 14, 2005

I appreciate the opportunity to address the entire committee on the work of the 404 subcommittee and want to acknowledge all of my colleagues' hard work. It was a pleasure working with them.

As a committee, we have reviewed several issues affecting smaller public companies. It is clear however, that the impacts of Section 404 of Sarbanes-Oxley, particularly the implementation costs, have proven to be by far the most challenging. While I do not agree with several subcommittee

recommendations, Section 404 is one of the key issues to focus on. Solutions to its overly burdensome cost, particularly on small issuers, are not simple.

Notwithstanding that I am the lone dissenting vote on the subcommittee, I do want to acknowledge that this group has examined this topic closely. They fully considered my concerns and those of others who commented on the proper ways to "fix" 404. We discussed dozens of ways and options for reducing costs, while maintaining investor protections.

We all agree that the costs of SOX are the real issue. They have been too high, exceeding all estimates, and they hit small companies much more significantly. There have been numerous cost studies and other anecdotal comments on whether these costs are or will be coming down in subsequent years. I think the evidence will only be clear once we have actual data in the coming months, because this is clearly not yet at a point of equilibrium. For many companies that have yet to go through the process, the initial costs will be high. There is no question about this.

Also, we all agree that internal controls at public companies are important. They are an important feature for accurate financial reporting, investor protection, and market integrity. Some argue that internal controls have been somewhat neglected, and SOX has tried to bring about some assurance that adequate controls are in place and working as desired. How the markets get that assurance—that is, the level to which these internal controls need to be verified and tested by management and outside auditors—is the rub.

The subcommittee goal was to reduce the cost burdens but maintain the investor protections associated with Section 404. These need not be mutually exclusive. My concern, and the basis for my dissent, is that the panel's recommendations make them mutually exclusive. We seem to say you can't have meaningful cost reductions unless you eliminate 404, including the investor protections.

Our biggest concern is that the main recommendations give a flat-out exemption from all auditor 404 involvement in reviewing and confirming internal controls. This is not for just a few, but for what will effectively be more than 80 percent of the public companies in this country.

One could cite any number of flaws in this approach, but three in particular stand out:

- First, the entire premise of SOX was to bolster investor confidence by requiring meaningful corporate

governance and financial reporting reforms. Properly designed and functioning internal controls over financial reporting were and are a cornerstone of this legislation. Proper structuring and implementation of 404 requirements are very different from eliminating these completely for a broad segment of U.S. companies. That approach works against the statute's legislative intent and the directive that we heard from both Chairman Donaldson and Chairman Cox.

- Second, it is unclear to many whether the broad exemptive recommendations of this subcommittee are even within the commission's legal authority. Comprehensive, sweeping exemptions from Section 404 may not be possible under the current legislation, which specifically excluded Section 404 from the Securities and Exchange Act of 1934. As the full committee works toward final recommendations, it would be well served to resolve that issue, as I expect there will be legal challenges of this authority.

- Finally, and maybe most importantly, small public companies need checks and balances over financial reporting. They consistently have more misstatements and restatements of financial information, nearly twice the rate of large firms, according to one report. Alarming, they also make up the bulk of accounting fraud cases under review by regulators and the courts (one study puts it at 75 percent of the cases from 1998–2003).

A more balanced approach to fixing SOX 404 is to continue requiring manager assertions and auditor attestation of internal controls, but direct the appropriate regulatory and defacto standard-setting bodies (the Committee of Sponsoring Organizations of the Treadway Commission (COSO), the Public Company Accounting Oversight Board) and the SEC to develop specific guidance for small companies. These would specifically outline appropriate control structures and the auditing scope for small companies under 404—a SOX 'light' approach.

Much of the outline for this approach appears in Recommendation 3 of the subcommittee's report. However, it comes only as a fall-back alternative to the exemptive recommendations. To ensure continued investor confidence in our markets, we deserve an approach that preserves the investor protection aspects of 404 while lowering costs to implement and verify proper internal controls over financial reporting.

It is clear that we need to do something for small companies. But

giving them a pass on any verification and oversight of internal controls will come back to haunt us.

The subcommittee's recommendations will now attract a fuller public debate on some very important public policy issues. I would offer this challenge to investors and, indeed, all participants in the financial reporting process to get involved in commenting on these recommendations. It is important to reach the proper balance between cost and investor protection. Realignment not elimination of Section 404 is needed to accomplish that.

Part IX. Separate Statement of Mr. Veihmeyer

Section 404 of Sarbanes-Oxley has contributed significantly to the improvement of financial reporting, oversight of internal controls, and audit quality. The public interest and the capital markets have been well served by this legislation. At the same time, compliance with the provisions of Section 404 has placed important responsibilities on issuers and auditors that are both expensive and time consuming. Clearly, the important goals of Section 404 must be achieved in the most cost-effective and least burdensome manner, to ensure that the costs of Section 404 do not outweigh the benefits. This is particularly challenging with respect to smaller public companies. The Advisory Committee on Smaller Public Companies has worked very hard to determine where to strike the appropriate balance between the benefits to investors and the burdens on issuers. The Final Report of the Advisory Committee is the result of that work. While I respect the Committee's efforts to find the best possible solutions to these difficult problems, I differ with the majority over one fundamental principle. In my judgment, sound public policy dictates that the protections provided by Section 404 should be available to investors in all public companies, regardless of size. Accordingly, our focus at this time should not be on exempting companies from Section 404, but on developing implementation guidance for assessing and auditing internal control over financial reporting for smaller public companies that recognizes the characteristics and needs of those companies. This guidance should be jointly developed by regulators, issuers and the accounting profession and should be field-tested for effectiveness, including appropriate cost analysis, before implementation.

The Final Report provides extensive root-cause analysis of the costs of

compliance with Section 404, but fails to address the reality that economies of scale do influence the relative cost of regulatory compliance and professional services, including audits of financial statements. Therefore, there is need for additional steps to be taken to further improve the execution of Section 404 compliance relative to smaller companies, as described below.

I also believe that PCAOB Auditing Standard No. 2 is fundamentally sound and scalable, and it is not prudent to consider amending the Standard at this time. The first year of integrating the financial statement audit with the requirements of Auditing Standard No. 2 was a difficult process due to a number of environmental issues that have been well-documented. Simply stated, the full integration of the financial statement and internal control audit did not occur in year one. However, my firm's experience is that the additional year of experience, coupled with the May 2005 guidance from the SEC and the PCAOB, and the efforts of issuers and auditors to improve their respective approaches, has resulted in further integration of the financial statement and internal control audit and is reducing the total cost of compliance. I believe that issuers and auditors should be allowed the opportunity to introduce incremental effectiveness and efficiency into the compliance process—a migration that will occur naturally as issuers and auditors move forward on the learning curve associated with reporting on internal control over financial reporting.

Because I believe that compliance with the provisions of Section 404 provides needed protection to investors in all public companies, regardless of size, I do not support recommendations III.P.1, III.P.2, and III.P.3 in the Final Report, as each would serve to dilute this protection.

Specifically, Recommendation III.P.3 referencing a standard providing for an audit of the design and implementation of internal control, but not the testing by the auditor of the operating effectiveness, is in my view not advisable. While clear disclosure that a company has not undergone an audit of internal control over financial reporting is understandable to users, those same users cannot be expected to assess the relative gradations of assurance provided by this proposed distinction in reporting on internal control. An alternative providing for an auditor's report only on design and implementation of internal controls, at a time when much attention has been directed toward reporting on the effective operation of internal controls,

will result in users' misunderstanding the level of assurance provided by the auditor. It is important to note that a well-designed system of internal control, while vital, does not equate to the generation of reliable financial information in the absence of effective operation of internal control. Accordingly, I believe that Recommendation III.P.3 would serve to widen an already existing expectation gap with respect to audit services at a time when emphasis should be directed toward reducing that gap.

I do not support Recommendations III.P.1 and III.P.2 based on my belief that Section 404 of Sarbanes-Oxley has made and will continue to make significant contributions to improving financial reporting, oversight of internal controls, and audit quality. In my judgment, sound public policy dictates that the protections derived from these contributions should be available to investors in all public companies, regardless of size.

I believe that compliance with the provisions of Section 404 by issuers, and application of the principles of Auditing Standard No. 2 by auditors, represent evolutionary skills that will become more effective and efficient with more experience. As noted above, the effectiveness and cost-efficiencies of Section 404 execution have improved over the first two years. However, additional efficiencies and experience with Auditing Standard No. 2 are not likely to fully address the concerns of certain-sized smaller public companies. Accordingly, I recommend that regulators, issuers and the accounting profession work expeditiously to develop specific guidance, focused on the characteristics of these smaller companies and their internal control structures, which will further improve the execution of Section 404 compliance. I will commit resources of my firm to participate in and support this effort. Additional implementation guidance specifically tailored to the application of internal control concepts in a smaller company environment should, at a minimum, address the following: significance of monitoring controls, risk of management override, lack of segregation of duties, extent and formality of company documentation and assessment, and evaluation of the competency of a smaller company's accounting and financial reporting function. This guidance should address both the assessment to be made by management and the auditor's performance requirements relevant to such assessment, as well as the execution of auditing procedures pursuant to the provisions of Auditing

Standard No. 2. In addition, I believe that field testing the effectiveness of this additional guidance, including appropriate cost analyses, should be performed to facilitate well-informed decisions regarding the reasonable application of the provisions of Section 404 in a smaller public company environment. It may become evident, as a result of field testing and meaningful cost analyses, that an audit of internal control over financial reporting may not be justified for certain very small public companies that evidence certain characteristics. For those smaller public companies, an exemption from the provisions of Section 404 may be warranted, but such an exemption should be considered only after careful analysis of the data derived from the field tests. In short, we simply do not have sufficient implementation guidance, experience, or information available at this time to make a permanent reduction in the protections provided by Section 404.

It is essential that the additional implementation guidance, specifically tailored to the application of internal control concepts in a smaller public company environment, be developed and tested expeditiously, given the importance of this issue to smaller public companies and investors. While this guidance is being developed and field tested, I recommend the continued deferral of the Section 404 requirements for all smaller public companies that have not already been required to implement Section 404. However, I would envision that such deferral would not extend more than a year beyond the current implementation date for non-accelerated filers.

It should be noted that this separate statement focuses solely on the recommendations to which I dissent, and not to any specific statements or opinions contained in the Final Report which are inconsistent with my own views.

The work of the Advisory Committee and our Final Report has raised important issues relative to application of the provisions of Section 404. To address those issues, I propose additional guidance for smaller public companies, and the field testing of that guidance, relative to reporting on internal control over financial reporting as well as the continued deferral for non-accelerated filers for an additional year if these activities cannot be completed within one year. I believe these proposals are consistent with our Charter to further the SEC's investor protection mandate, and to consider whether the costs imposed by the current regulatory system for small

companies are proportionate to the benefits, to identify methods of minimizing costs and maximizing benefits, and to facilitate capital formation by smaller companies.

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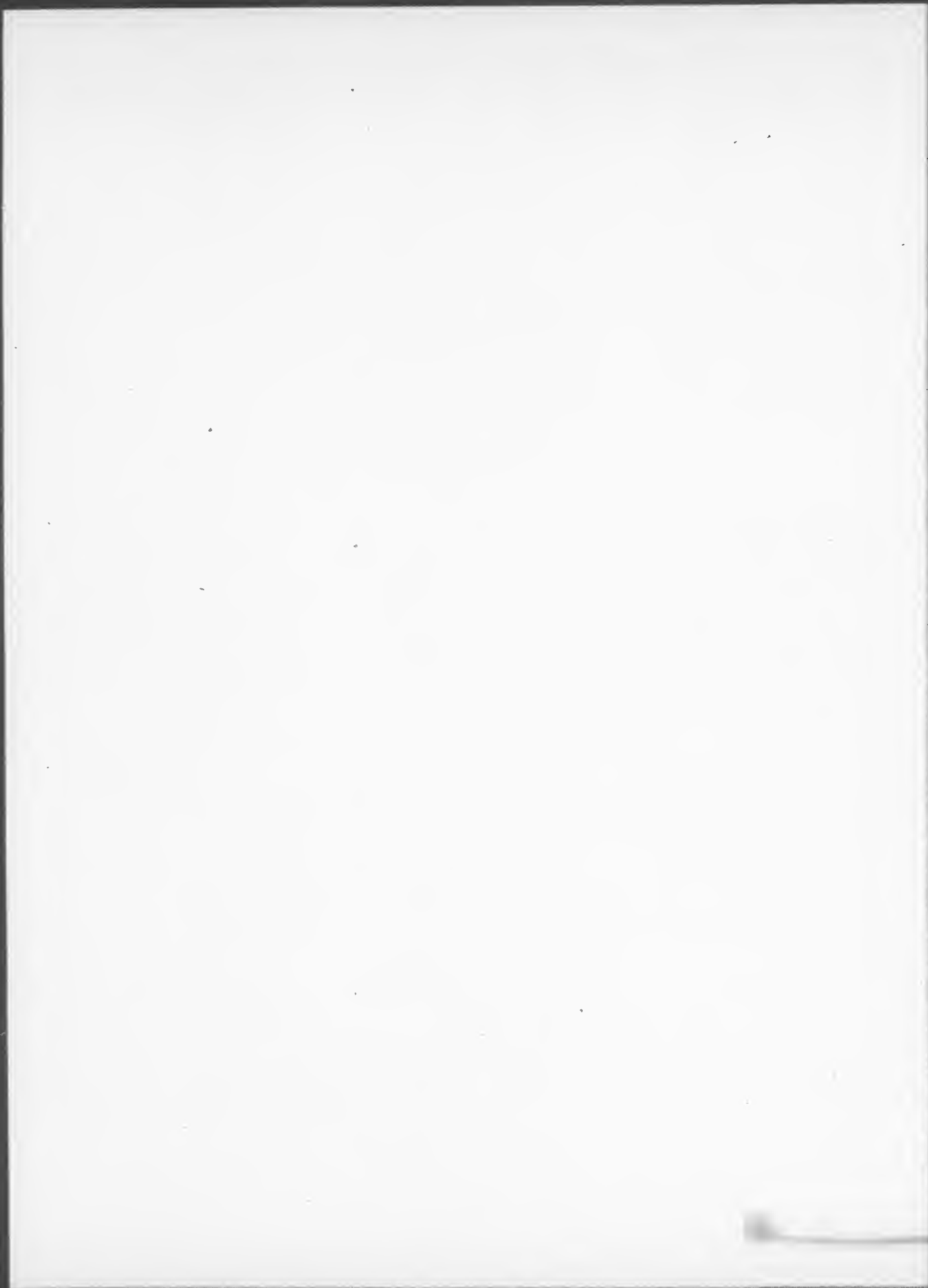
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Dated: February 28, 2006.

Nancy M. Morris,
Committee Management Officer.
[FR Doc. 06-1992 Filed 3-2-06; 8:45 am]
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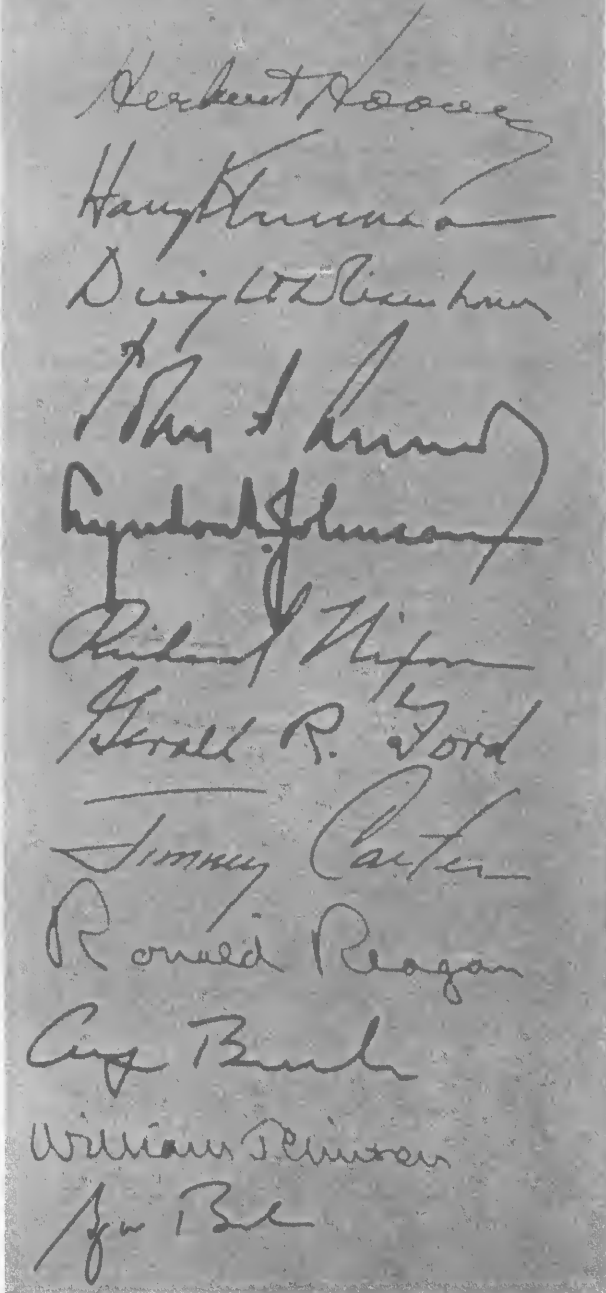
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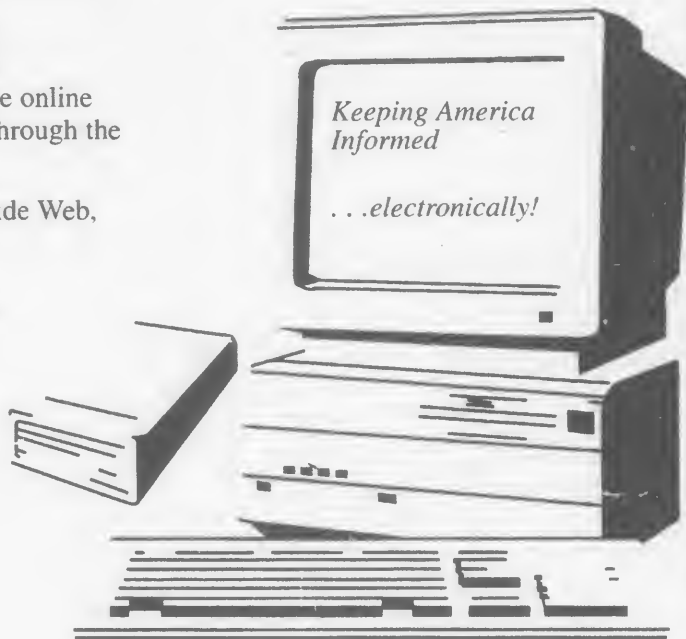
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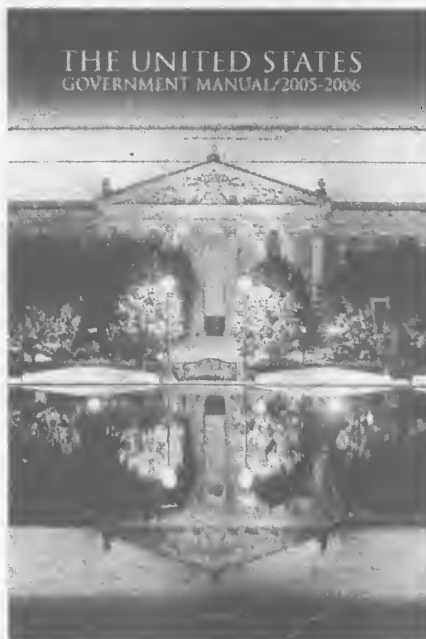
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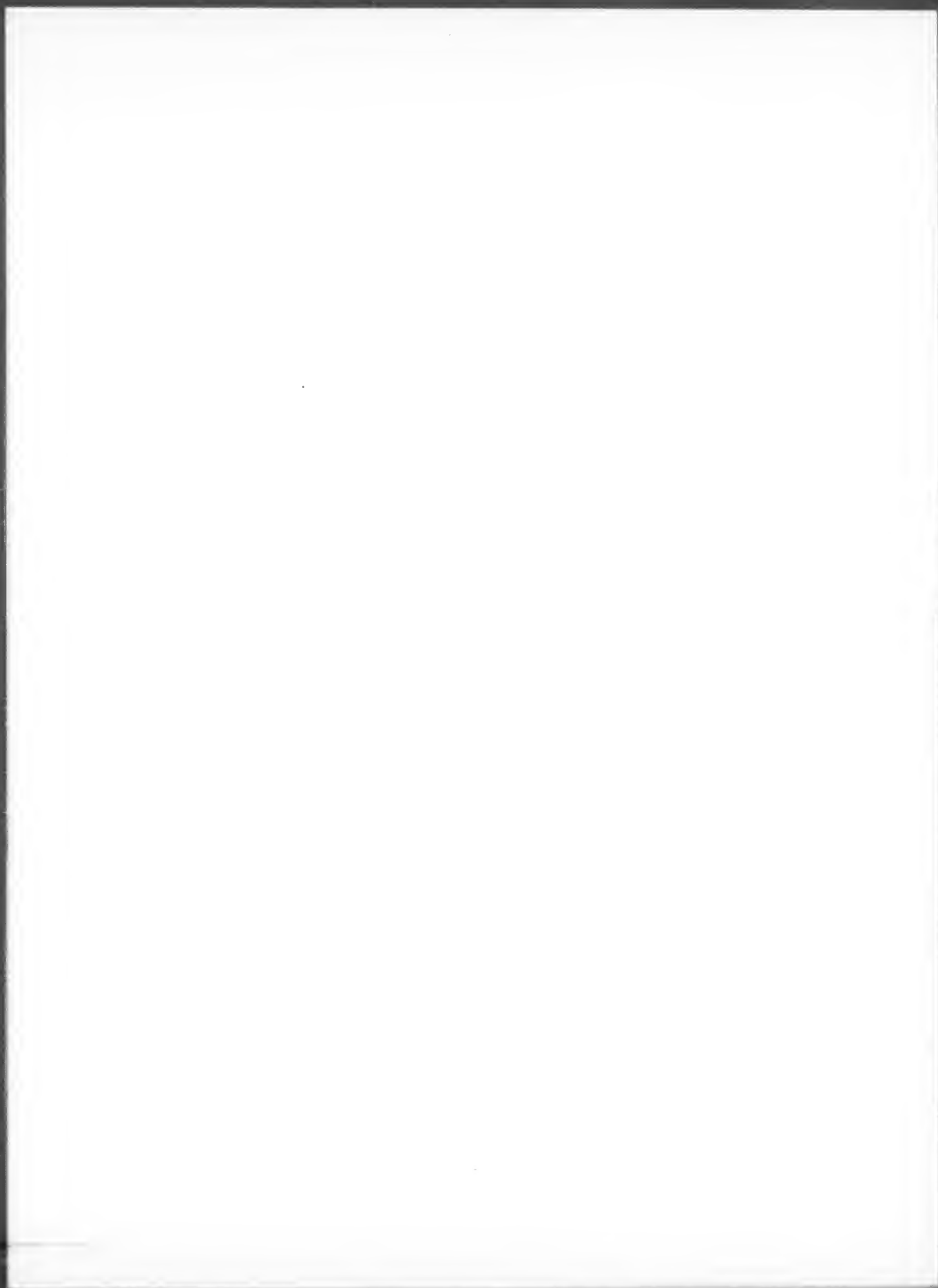
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