Federal Register

9–21–04 Tuesday
Vol. 69 No. 182 Sept. 21, 2004

United States Government Printing Office
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U.S. Government Printing Office
(ISSN 0097–6326)

Federal Register

9–21–04 Tuesday
Vol. 69 No. 182 Sept. 21, 2004

Pages 56345–56664

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Contents

Federal Register

Vol. 69, No. 182

Tuesday, September 21, 2004

Separate Parts In This Issue

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
7816.....56661
7817.....56663

7 CFR
635.....56345

14 CFR
23.....56348
39 (2 documents).....56480
Proposed Rules:
39.....56375

26 CFR
Proposed Rules:
301.....56377

33 CFR
Proposed Rules:
117.....56379

37 CFR
1.....56482
5.....56482
10.....56482
41.....56482
104.....56482

40 CFR
52 (2 documents).....56351, 56355
261.....56357
281.....56363
Proposed Rules:
52.....56381
136.....56480
261.....56382
312.....56382

44 CFR
Proposed Rules:
67.....56383

45 CFR
61.....56364

50 CFR
17.....56367
648.....56373
Proposed Rules:
660.....56550
679.....56384

Rules and Regulations

Federal Register
Vol. 69, No. 182
Tuesday, September 21, 2004

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 635

RIN 0578–AA16

NRCS Procedures for Granting Equitable Relief

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues its final rule implementing the equitable relief authority and the procedures set forth at Section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), relating to relief for participants for covered programs administered by NRCS. The relief applies to cases where the applicant for relief took action to the applicant's detriment based on action or advice from departmental officials. This rule also addresses situations where the participant simply, but in good faith, failed to fully comply with program requirements. The rule implements Section 1613 as it applies to NRCS administered conservation programs.

DATES: Effective October 21, 2004.

ADDRESSES: This final rule can be accessed via the internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Beth A. Schuler, Conservation Planning and Technical Assistance Division, Room 6103A–S, 1400 Independence Ave, SW. 103, Washington, DC 20250. Telephone: (202) 720–8851. e-mail: *beth.schuler@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:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Accordingly, these regulations are issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also affected.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and NRCS has concluded that promulgation of this rule is categorically excluded from NEPA's requirement from an environmental impact analysis under the Department of Agriculture regulations, 7 CFR 1b.3(a)(1). Actions implemented under this rule fall in the category of policy development, planning and implementation which relates to routine activities and similar administrative functions and no circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor NRCS are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) further requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to make the regulation effective in less than 60 days. Since this regulation is neither major nor significant, it is therefore not subject to the SBREFA 60-day requirement. Accordingly, this rule is effective 30 days after publication in the **Federal Register**.

Paperwork Reduction Act

Section 2702 of the 2002 Act requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act as well as continued pursuit of providing all services electronically when practicable. This rule requires that a program participant must make a written request for equitable relief for a program administered by NRCS. In part, this rule lends itself to electronic request and submission. To that end, NRCS and the Farm Services Agency (FSA) are jointly pursuing the development an application that will allow program participants to apply for equitable relief online. It will also enable both FSA and NRCS to manage the requests and reporting aspects electronically.

Discussion of the Rule

Part 635—Equitable Relief From Ineligibility

Section 635.1 Definitions and Abbreviations

This section sets forth the statutory definitions provided in Section 1613(a). Specifically, section 635.2 defines "agricultural commodity" as any agricultural commodity, food, feed, fiber, or livestock that is subject to a "covered program." The rule defines "participant" as a participant in a "covered program". A "covered program" is defined as: (1) A program administered by the Secretary of Agriculture (Secretary) under which price or income support, or production or market loss assistance, is provided to producers of "agricultural commodities;" and (2) a conservation program administered by the Secretary. However, this section of the rule also provides, as does the statutory authority, that "covered programs" do not include: (1) An agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); or (2) the crop insurance program carried out under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Section 635.2 Applicability

Section 1613 of the 2002 Act authorizes relief when a participant in a covered conservation program is determined to be not in compliance with the requirements of the covered program and, therefore, would be ineligible for a loan, payment, or other benefit under the covered program, and it is further determined that the participant acted in good faith and in reliance on the action or advice of an agency employee to the detriment of the participant or failed to fully comply with the requirements of the covered program but made a good faith effort to comply with the requirements. Section 635.2 sets forth the general applicability of relief to be provided under this regulation.

This section also provides, at 635.2(b), that the provisions of this rule will only be implemented prospectively; that is, it applies only to actions for which relief is sought that occurred after the implementation date of the authorizing statute, May 13, 2003. This is because the statute does not provide for retroactive application.

Section 635.3 Reliance on Incorrect Actions or Information

The Secretary at 7 CFR 2.61 has delegated her authority to provide equitable relief and to track such relief to the Chief of NRCS. Accordingly, section 635.3 provides that the Chief may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant acted in good faith and relied on the action or advice of the Secretary, or an authorized representative, to the detriment of the participant.

Section 635.4 Failure To Fully Comply

This section implements Section 1613(b)(2) of the statute and provides that the Chief may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, when the participant failed to comply fully with the requirements of the covered program but made a good faith effort to do so.

Section 635.5 Forms of Relief

This section sets forth the forms of relief that the deciding official (the Chief or the State Conservationist, as appropriate) may grant, including permitting a participant to: (1) Retain loans, payments, or other benefits received under the covered program; (2) continue to receive loans, payments, and other benefits under the covered program; (3) continue to participate, in whole or in part, under any contract executed under the covered program; (4) re-enroll all or part of the land covered by the applicable conservation program; and (5) receive such other equitable relief as the Chief determines appropriate. Section 1613(d) of the statute also specifies that the Secretary may condition the approval of relief under this section on the participant agreeing to remedy their failure to meet the program requirements. Section 635.6(b) implements this statutory provision.

Section 635.6 Equitable Relief by State Conservationists

In addition, the statute provides authority for FSA State Directors and NRCS State Conservationists to grant equitable relief. In general, section 1613(e) provides that the State Director and the State Conservationist, in the case of programs administered by their respective offices, may grant relief to a participant (subject to certain limitations) if: (1) The amount of loans, payments, and benefits for which relief will be provided to the participant under this authority is less than $20,000; (2) the total amount of loans, payments, and benefits for which relief has been previously provided to the participant under this authority is not more than $5,000; and (3) the total amount of loans, payments, and benefits for which relief is provided to similarly situated participants is not more than $1,000,000, as determined by the Secretary. This rule addresses only programs administered through NRCS and, hence, through State Conservationists. Another rule at 7 CFR Part 718, Subpart D, Equitable Relief from Ineligibility, has been promulgated by FSA which addresses the equitable relief authority provided under Section 1613 for programs administered by FSA.

Further, the rule at section 635.6 provides that State Conservationist grants of relief: (1) Shall not require prior approval by the Chief of the Department of Agriculture's Natural Resources Conservation Service, or any other officer or employee of the Service; (2) shall be made only after consultation with, and the approval of, the Office of General Counsel of the Department of Agriculture; and (3) are subject to reversal only by the Secretary (who may not delegate the reversal authority). This rule also specifies that the State Conservationist's authority to grant relief applies only to eligibility under covered conservation programs and does not apply to the administration of: (1) Payment limitations under (i) Sections 1001 through 1001F of the Food Security Act of 1985 (7 U.S.C. 1308 *et seq.*), or (ii) a conservation program administered by the Secretary; or to (2) highly erodible land and wetland conservation requirements under subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.* A discretionary decision by the Secretary, the State Director, or the State Conservationist under Section

1613 to grant relief is final, and is not subject to judicial review under chapter 7 of title 5, United States Code.

Section 635.6(e) of this regulation implements Section 1613(e)(4) of the statute by providing that the authority set forth in this section is in addition to any other authority provided in that or any other Act.

As previously stated, the statute sets forth certain dollar limits when the State Conservationist is granting equitable relief. The agency has interpreted these dollars limits to be aggregate limits provided NRCS-wide over a fiscal year period per participant. The Section 1613(e)(1) dollar limits are not tied to a particular time period or official. However, given the normal yearly orientation of agricultural commodity and conservation programs (as is reflected in the reporting requirements of the statute), it makes sense to provide yearly limits in the rule upon which such dollar computations may be made. Otherwise, the monetary limitation set forth in the statute would be difficult to compute. Equitable relief granted by NRCS to a particular participant must be included in the computation regarding the specific dollar limitations for any request for equitable relief by such participant in the same fiscal year.

Given the Department's past experience in providing equitable relief, the agency anticipates that the dollar amounts involved in granting relief will be small in most cases, both for individual participants and in aggregate among States.

Section 635.7 Procedures for Granting Equitable Relief

In this section, NRCS sets forth the procedure by which a participant in a covered conservation program must follow to apply for equitable relief under this part.

List of Subjects in 7 CFR Part 635

Administrative practice and procedure, Agriculture, Conservation programs, Equitable relief.

■ Accordingly, for the reasons set forth in the preamble, 7 CFR Part 635 is added to read as follows:

PART 635—EQUITABLE RELIEF FROM INELIGIBILITY

Sec.

Authority: 7 U.S.C. 7996.

§ 635.1 Definitions and abbreviations.

The following terms apply to this part:

Covered program means a natural resource conservation program specified in § 635.3.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

FSA means the Farm Service Agency of the United States Department of Agriculture.

NRCS means the Natural Resources Conservation Service of the United States Department of Agriculture.

OGC means the Office of the General Counsel of the United States Department of Agriculture.

Secretary means the Secretary of the U.S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin area, or the State Conservationist's designee.

§ 635.2 Applicability.

(a) This part is applicable to all covered conservation programs administered by the Natural Resources Conservation Service, except for the Highly Erodible Land and Wetland Conservation provisions of Title XII, subtitles B and C of the Food Security Act of 1985, as amended, (16 U.S.C. 3811 *et seq.*). Administration of this part shall be under the supervision of the Chief, except that such authority shall not limit the exercise of authority by State Conservationists of the Natural Resources Conservation Service provided in § 635.6.

(b) The equitable relief available under this part does not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, shall be applied.

(c) This part does not apply to a conservation program administered by the Farm Service Agency of the United States Department of Agriculture.

§ 635.3 Reliance on incorrect actions or information.

(a) The Chief, or designee, may grant relief by extending benefits or payments in accordance with § 635.5 when any participant that has been determined to be not in compliance with the requirements of a covered NRCS program, and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant, acting in good faith, relied upon the action or advice of an NRCS employee or representative of the United States Department of Agriculture, to the detriment of the participant.

(b) This section applies only to a participant who relied upon the action of, or information provided by, an NRCS employee, or representative of USDA, and the participant acted, or failed to act, as a result of that action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

§ 635.4 Failure to fully comply.

(a) When a participant fails to fully comply with the terms and conditions of a covered program, the Chief, or designee, may grant relief in accordance with § 635.5 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the Chief to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

(c) In determining whether a participant acted in good faith and rendered substantial performance under paragraph (b) of this section, the Chief, or designee, shall consider such factors as whether—

(1) Performance of the primary conservation program requirements were completed; or

(2) The actions of the participant resulted in minimal damages or failure that were minor in nature.

§ 635.5 Forms of relief.

(a) The Chief, or designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this part, the participant may be required to remedy their failure to meet the program requirement or mitigate its affects.

§ 635.6 Equitable relief by State Conservationists.

(a) General nature of the authority. Notwithstanding provisions in this part providing supervision and relief authority to other officials, the State Conservationist, without further review by other officials (other than the Secretary), may grant relief as set forth in § 635.5 to a participant under the provisions of § 635.3 and § 635.4 so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the State Conservationist;

(2) The total amount of relief which will be provided to the participant (that is, to the individual or entity that applies for the relief) under this authority for errors during the fiscal year is less than $20,000 (included in that calculation, any loan amount or other benefit of any kind payable for the fiscal year);

(3) The total amount of such relief which has been previously provided to the participant using this authority for errors in a fiscal year, as calculated in paragraph (a)(2) of this section, is not more than $5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by a State Conservationist for errors for a fiscal year under the authority provided in this section, as calculated in paragraph (a)(2), is not more than $1,000,000.

(b) Additional limits on the authority. The authority provided under this section does not extend to the administration of:

(1) Payment limitations under 7 CFR part 1400;

(2) Payment limitations under a conservation program administered by the Secretary; or

(3) The highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*).

(c) Relief shall only be made under this part after consultation with, and the approval of, the Office of the General Counsel.

(d) Secretary's reversal authority. A decision made under this part by the State Conservationist may be reversed only by the Secretary, who may not delegate that authority.

(e) Relation to other authorities. The authority provided under this section is in addition to any other applicable authority that may allow relief.

§ 635.7 Procedures for granting equitable relief.

(a) Application for equitable relief by covered program participants. For the purposes of this part, the following conservation programs administered by NRCS are identified as "covered programs":

(1) Agricultural Management Assistance (AMA);
(2) Conservation Security Program (CSP);
(3) Emergency Watershed Protection, Floodplain Easement Component (EWP-FPE);
(4) Environmental Quality Incentives Program (EQIP);
(5) Farm and Ranch Lands Protection Program (FRPP);
(6) Grassland Reserve Program (GRP);
(7) Resource Conservation and Development Program (RC&D);
(8) Water Bank Program (WBP);
(9) Watershed Protection and Flood Prevention Program, (WPFPP) (long-term contracts only);
(10) Wetlands Reserve Program (WRP);
(11) Wildlife Habitat Incentives Program (WHIP);
(12) Any other conservation program administered by NRCS which subsequently incorporates these procedures within the program regulations or policies.

(b) Participants may request equitable relief from the Chief or the State Conservationist with respect to:

(1) Reliance on the actions or advice of an authorized NRCS representative; or

(2) Failure to fully comply with the program requirements but made a good faith effort to comply.

(c) Only a participant directly affected by the non-compliance with the covered program requirements may seek equitable relief under § 635.6.

(d) Requests for equitable relief must be made in writing, no later than 30 calendar days from the date of receipt of the notification of non-compliance with the requirements of the covered conservation program.

(e) Requests for equitable relief shall include the following information:

(1) The reason why the participant was unable to comply with the requirements of the conservation program;

(2) Details regarding how much of the required action had been completed;

(3) Why the participant did not have sufficient reason to know that the action or information relied upon was improper or erroneous;

(4) Whether the participant did not act in reliance on their own misunderstanding or misinterpretation of the conservation program provisions, notices, or information; and

(5) Any other pertinent facts or supporting documentation.

Signed in Washington, DC, on August 31, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

[FR Doc. 04–20783 Filed 9–20–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE211, Special Condition 23–150–SC]

Special Conditions; Cessna Aircraft Company; EFIS on the Cessna 206H and T206H; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, Model 206H/T206H airplanes. These airplanes, as modified by Cessna Aircraft Company, will have a novel or unusual design feature(s) associated with the installation of a Garmin G1000 electronic flight instrument system (EFIS) and the protection of this system from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 3, 2004. Comments must be received on or before October 21, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE211, Room 506, 901

Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE211. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE211." The postcard will be date stamped and returned to the commenter.

Background

On January 28, 2004, Cessna Aircraft Company; One Cessna Boulevard; Post Office Box 7704; Wichita, KS 67277, made an application to the FAA for an amended type certificate for the Cessna 206H/T206H. The 206H and T206H are currently approved under TC No. A4CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Cessna Aircraft Company must show that the Cessna Model 206H and T206H meet the following provisions or the applicable provisions in effect on the date of application for type certification of the Cessna 206H and T206H.

For the 206H Series:

14 CFR part 23 effective February 1, 1965, as amended by 23–1 through 23–6, except as follows: § 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563 as amended by Amendment 23–7. Sections 23.807 and 23.1524 as amended by Amendment 23–10. Sections 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365 as amended by Amendment 23–14. Section 23.951 as amended by Amendment 23–15. Sections 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322 as amended by Amendment 23–17. Section 23.1301 as amended by Amendment 23–20. Sections 23.1353; and 23.1559 as amended by Amendment 23–21. Sections 23.603; 23.605; 23.613; 23.1329 and 23.1545 as amended by Amendment 23–23. Section 23.441 and 23.1549 as amended by Amendment 23–28. Section 23.1093 as amended by Amendment 23–29. Sections 23.779 and 23.781 as amended by Amendment 23–33. Sections 23.1; 23.51 and 23.561 as amended by Amendment 23–34. Sections 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831 as amended by Amendment 23–42. Sections 23.961; 23.1107(b); 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361. and 23.1385 as amended by Amendment 23–43. Sections 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4 as amended by Amendment 23–44. Sections 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731 as amended by Amendment 23–45. 14 CFR part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–21, additional certification requirements applied to the G1000 system itself, exemptions, if any; and the special conditions adopted by this rulemaking action.

For the T206H series:

14 CFR part 23 effective February 1, 1965, as amended by 23–1 through 23–6, except as follows: Sections 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563 as amended by Amendment 23–7. Sections 23.807 and 23.1524 as amended by Amendment 23–10. Sections 23.507; 23.771; 23.853(a),(b) and (c); and 23.1365 as amended by Amendment 23–14. Section 23.951 as amended by Amendment 23–15. Sections 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322 as amended by Amendment 23–17. Section 23.1301 as amended by Amendment 23–20. Sections 23.1353; and 23.1559 as amended by Amendment 23–21. Sections 23.603; 23.605; 23.613; 23.1329 and 23.1545 as amended by Amendment 23–23. Sections 23.441 and 23.1549 as amended by Amendment 23–28. Sections 23.779 and 23.781 as amended by Amendment 23–33. Sections 23.1; 23.51 and 23.561 as amended by Amendment 23–34. Sections 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831 as amended by Amendment 23–42. Sections 23.961; 23.1093; 23.1107(b); 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385 as amended by Amendment 23–43. Sections 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4 as amended by Amendment 23–44. Sections 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731 as amended by Amendment 23–45. 14 CFR part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–21, additional certification requirements applied to the G1000 system itself, exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of Section 21.101.

Novel or Unusual Design Features

The Cessna Model 206H and Model T206H will incorporate the following novel or unusual design features: A

Garmin G1000 electronic flight instrument system (EFIS) including a primary flight display on the pilot side as well as a multifunction display in the center of the instrument panel.

Protection of Systems From High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or, (2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Cessna 206H and T206H airplanes. Should the Cessna Aircraft Company apply at a later date to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna 206H and T206H airplanes modified by the Cessna

Aircraft Company to add the Garmin G1000 EFIS system.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on September 3, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21138 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–043–080; FRL–7801–8]

Approval and Promulgation of Implementation Plans; State of Nevada; Las Vegas Valley Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action under the Clean Air Act to approve State implementation plan revisions submitted by the State of Nevada to provide for attainment of the carbon monoxide national ambient air quality standards in Las Vegas Valley, including an alternate low enhanced vehicle inspection and maintenance program, State and local wintertime gasoline rules, and motor vehicle emissions budgets for transportation conformity.

DATES: This rule is effective on October 21, 2004.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at EPA's Region IX office. You can inspect copies of the submitted SIP materials at the following locations:

U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Nevada Dept. of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, NV 89155.

Electronic Availability

This document and the Response to Comments Document for this action are also available as electronic files on EPA's Region IX Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region IX, (775) 833–1276, or *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Proposed Action

On January 28, 2003 (68 FR 4141), with the exception of two individual contingency measures that we proposed to disapprove, we proposed to approve the following state implementation plan (SIP) revisions submitted by the State of Nevada to provide for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) under the Clean Air Act, as amended in 1990 (CAA or "Act"), in the "serious" Clark County CO nonattainment area, which is defined as State hydrographic area #212 and referred to as the "Las Vegas Valley":

(1) State of Nevada State Implementation Plan for an Enhanced Program for the Inspection and Maintenance of Motor Vehicles for Las Vegas Valley and Boulder City (March 1996) submitted by the Nevada Division of Environmental Protection (NDEP) on March 20, 1996;

(2) Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada (August 2000) ("2000 CO plan") adopted by the Clark County Board of Commissioners on August 1, 2000, and submitted by NDEP on August 9, 2000, which addresses requirements under the Act for notice and adoption, baseline and projected emissions inventories, the reasonable further progress (RFP) demonstration, the attainment demonstration, vehicle miles traveled (VMT) forecasts, and which also includes updated vehicle inspection and maintenance (I/M) program materials, Clark County's Cleaner Burning Gasoline (CBG) program, an alternative fuel program for government vehicles, voluntary transportation control measures (TCMs), a determination that stationary sources do not contribute significantly to CO levels, contingency measures[1], commitments for further submittals and control measures, as needed, and CO emissions budgets for transportation conformity purposes;

(3) Supplemental CO SIP materials submitted by NDEP on January 30, 2002, including updated State regulations implementing the vehicle I/M program, other updated I/M program materials, and a draft regulation establishing procedures for on-board diagnostics systems testing of newer vehicles; and

(4) Supplemental CO SIP materials submitted by NDEP on June 4, 2002, including updated State statutes governing the I/M program, other updated vehicle I/M program materials, and the State regulation implementing the Reid Vapor Pressure (RVP) specification for wintertime gasoline sold in Clark County.

The proposal contains detailed information on the four SIP submittals listed above and our evaluation of the submittals against applicable CAA provisions and EPA regulations and policies relating to serious area CO SIPs.

In the proposed rule, we indicated that we were proposing approval of certain portions of the SIP submittals based on draft rules and that our final approval would not occur until we had received final adopted rules from the State. As discussed in the following paragraphs, the State has submitted the final adopted rules called for in the proposed rule, and in this action, we are

[1] In this notice, we are not taking final action on the contingency provisions (*i.e.*, contingency measures and related commitments in the 2000 CO plan) in part because we have not yet received the quantitative analysis (using MOBILE6) of CO emissions reductions associated with implementation of standardized On-Board Diagnostics systems (OBD II) testing, which was the one contingency measure that we had proposed to approve. We had anticipated submittal of this information by early 2003. See the related discussion in our proposed rule at 68 FR 4155, column 2. Our decision not to proceed with final action on the contingency provisions in this notice has no immediate practical effect because we are taking final action herein to approve OBD II testing into the SIP, not as a contingency measure, but rather as a part of the vehicle I/M program. In other words, we are finalizing our approval of the vehicle I/M program, which includes OBD II testing, but are not finalizing our determination from the proposal that OBD II testing, while serving as a required element of the vehicle I/M program, also provides for compliance with the contingency provision requirements under section 187(a)(3) of the Act. We will be addressing the contingency provision requirements for Las Vegas Valley under section 187(a)(3) in a separate rulemaking. Please see our response to NEC comment #37 in our Response to Comments document for our rationale and authority for taking final action on the RFP and attainment demonstrations in the 2000 CO plan while deferring action on the contingency measures.

approving them as revisions to the Nevada SIP.

By letters dated September 9 and 24, 2003, NDEP submitted SIP revisions that included Regulation R178–01 adopted by the Nevada Department of Motor Vehicles (DMV) on July 11, 2002 establishing the standardized On-Board Diagnostics systems (also known as "OBD II") test procedures for Nevada's vehicle I/M program and related public notice and hearing materials. The regulatory changes to the Nevada Administrative Code under adopted regulation R178–01 were made effective as of August 21, 2002. (The September 24th SIP submittal included a replacement version of Regulation R178–01 because the September 9th version of that adopted regulation was missing pages that inadvertently had been omitted from the earlier submittal.) In the proposed rule, we indicated that we would not take final action on the vehicle I/M program until we received the final adopted version of regulations establishing test procedures and equipment used for inspecting certified on-board diagnostics systems. See 68 FR 4141, at 4150, column 1 (January 28, 2003). These two SIP submittals contain the necessary final adopted regulations and supporting materials and thereby provide us with the basis to finalize our proposed approval of the vehicle I/M program for Las Vegas Valley and Boulder City. The final adopted regulation is consistent with the draft regulation that provided the basis for our proposed approval of the vehicle I/M program for Las Vegas Valley and Boulder City.

The September 9th SIP submittal also contains State statutes providing for the "alternate low" enhanced vehicle I/M program in Las Vegas Valley and Boulder City. These statutes represent an update to the corresponding statutes that were included as part of the SIP submittal dated March 20, 1996 (listed above), and referred to in the proposed rule as the "1996 vehicle I/M submittal." *See* 68 FR 4141, at 4143, column 1 (January 28, 2003). The updated statutes largely reflect administrative changes in the statutes and are equivalent in all significant respects to those submitted to EPA in 1996 and listed in the proposed rule.

Lastly, by letter dated November 10, 2003, NDEP submitted a SIP revision including the following updated Clark County fuel regulations: section 53 (oxygenated gasoline program) and section 54 (cleaner burning gasoline (CBG): Wintertime program), which had been adopted by the Clark County Board of County Commissioners on May 20, 2003, and made effective June 3, 2003. The revisions to sections 53 and 54 are administrative in nature and reflect the transfer of air pollution control authority in Clark County to the Clark County Board of County Commissioners. This completes a sequence of transfers of authority that began in mid-2001 with the transfer of air pollution control authority in Clark County from the Clark County District Board of Health, which originally adopted these rules and which oversaw the Air Quality Division of the Clark County Health District, to the Clark County Board of County Commissioners sitting as the short-lived "Clark County Air Quality Management Board," and then more recently to the Clark County Board of County Commissioners.

The Clark County Board of County Commissioners oversees the Department of Air Quality Management (DAQM), which took over the responsibilities of the former Air Quality Division of the Clark County Health District as well as the air quality planning responsibilities of the Clark County Department of Comprehensive Planning. We had made submittal of the updated section 54 a condition on our final approval of that rule. *See* 68 FR 4141, at 4152, column 3 (January 28, 2003). The State's November 10th submittal satisfies this condition allowing us to take final action on the rule.

In 1999, we approved section 53 as a revision to the Nevada SIP. *See* 64 FR 29573 (June 2, 1999). Like section 54, the amended version of section 53 submitted to EPA as part of the November 10th SIP submittal simply reflects the change in the applicable administrative agency for air pollution control purposes in Clark County.

We are taking final action on the September 9 and 24, 2003 and November 10, 2003 SIP submittals in this final rule without additional notice and comment because the updated I/M-related statutes and fuel regulations differ in only minor respects from those statutes that were previously listed in the proposal, or in the case of section 53, the updated regulation reflects only administrative changes. In addition, the proposal adequately described and evaluated the provisions requiring on-board diagnostics systems checks based on submitted draft regulations under EPA's "parallel processing" procedure, (*see* 68 FR 4141, at 4143, column 3 (January 28, 2003)), and the approval of the CBG rule was conditioned upon submittal of the updated rule (*see* 68 FR 4141, at 4151, column 2 (January 28, 2003)).

II. Public Comments

EPA's proposed action provided for a 30-day public comment period. During this period, we received comments from the following parties:

(1) Peter Krueger, Nevada Emission Testers Council, letter dated February 19, 2003, providing comments related to possible Legislative action to reduce the frequency of testing under the vehicle I/M program;

(2) Edward C. Barry, Chemical Lime Company, letter dated February 24, 2003, providing comments related to the CO emissions estimate in the 2000 CO plan for its facility;

(3) Fredrick R. Slater, Kerr-McGee Chemical, LLC, letter dated February 26, 2003, providing comments related to an alternative approach (*i.e.*, to finalizing the action as proposed) involving redesignation and working with the County to develop a maintenance plan; and

(4) Robert W. Hall, Nevada Environmental Coalition, Inc., letter dated February 27, 2003, providing comments related to virtually all aspects of the CO SIP revision submittals and EPA's related proposed approval, including statutory and regulatory authority, CO emissions inventory and projections, ambient CO monitoring network, notice and public hearing, use of EPA guidance in evaluating SIP submittals, the vehicle I/M program, EPA's parallel processing procedure, evaluation of non-fuel measure alternatives, the attainment demonstration, the status of the (stationary source) new source review program, the forecasts of vehicle miles traveled (VMT), contingency measures, transportation conformity, and EPA enforcement of SIP rules.

Responses to all comments can be found in our Response to Comments Document that accompanies this final action. A copy of the Response to Comments Document can be downloaded from our website or obtained by calling or writing the contact person listed above. The comments led us to look more carefully at certain aspects of the plan and certain aspects of our proposed approval; however, with the exception of the contingency provisions (for which we are not taking final action in this notice), we have not changed our conclusions that the various SIP revisions submitted for the Las Vegas Valley CO nonattainment area comply with CAA CO nonattainment planning requirements.

III. EPA Action

Pursuant to section 110(k)(3) of the Act, we are finalizing the following

actions on the various SIP submittals for the Las Vegas Valley "serious" CO nonattainment area in Clark County, Nevada. For each action, we indicate the page or pages on which the element is discussed in our proposal.

(1) Approval of procedural requirements, under section 110(a)(1) of the Act—see 68 FR 4144;

(2) Approval of baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the Act and approval of reasonable further progress, under sections 172(c)(2) and 187(a)(7) of the Act—see 68 FR 4144–4146;

(3) Approval of attainment demonstration, under section 187(a)(7) of the Act—68 FR 4146–4147;

(4) Approval of the "alternate low" vehicle I/M program for Las Vegas Valley and Boulder City under section 187(a)(6) of the Act—see 68 FR 4147–4150. Specifically, we approve the statutory and regulatory basis for the program set forth in Nevada Revised Statutes (NRS), title 40, section 445B.210 and sections 445B.700–445B.845, and title 43, sections 481.019–481.087, 482.155–482.290, 482.385, 482.461, 482.565, and 484.644–484.6441, as amended by the State of Nevada through the 2001 Legislative sessions, and Nevada Administrative Code (NAC), chapter 445B, sections 445B.400–445B.735 (excluding sections 445B.576, 445B.577, and 445B.578, which are associated with restrictions on visible emissions and on idling of diesel vehicles not required by EPA I/M program requirements), as amended through March 8, 2002 by the Nevada State Environmental Commission and the Nevada Department of Motor Vehicles, and also Regulation R178–01 as adopted by the Nevada Department of Motor Vehicles on July 11, 2002 (made effective August 21, 2002) establishing on-board diagnostics systems testing procedures for Nevada's vehicle I/M program. Upon the effective date of this final rule, the amended Nevada vehicle I/M program described in this notice will supercede the existing vehicle I/M program approved by EPA in 1981 and 1984 as it relates to Las Vegas Valley and Boulder City;

(5) Approval of the State's low RVP wintertime requirement for gasoline sold in Clark County—see 68 FR 4150–4151. Specifically, we propose to approve Nevada Administrative Code section 590.065 as adopted on October 28, 1998 by the State Board of Agriculture;

(6) Approval of Clark County air quality regulation section 54 (Cleaner Burning Gasoline (CBG): Wintertime Program) under section 211(c)(4)(C) of the Act, as adopted by the Clark County Board of County Commissioners on May 20, 2003 (effective June 3, 2003)—see 68 FR 4151–4152;

(7) Approval of RTC's CAT MATCH commuter incentive program under section 187(b)(2) of the Act and our voluntary mobile source emissions reduction program policy—see 68 FR 4152–4153. Specifically, we approve the CAT MATCH guidelines as set forth in the Clark County Regional Transportation Commission's Resolution No. 177, adopted on June 10, 1999, and the commitments to implement and monitor the program, to prepare annual reports and to remedy, in a timely manner, any shortfall of emissions reductions, as set forth in the Clark County Regional Transportation Commission's Resolution No. 186, adopted on June 8, 2000;

(8) Approval of the Alternative Fuels Program for government vehicles in Clark County—see 68 FR 4153. Specifically, we approve the regulations set forth in Nevada Administrative Code chapter 486A, as amended through April 20, 2000 by the State Environmental Commission;

(9) Approval of a determination that stationary sources do not contribute significantly to ambient CO levels in the Las Vegas CO nonattainment area for the purposes of section 187(c) of the Act—see 68 FR 4153–4154;

(10) Approval of VMT forecasts and the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future, under section 187(a)(2)(A) of the Act—see 68 FR 4154. Specifically, we approve the Clark County Regional Transportation Commission's commitments to prepare VMT estimates, forecasts, and annual VMT tracking reports as set forth in Resolution No. 149, as adopted on July 13, 1995;

(11) Approval of the CO motor vehicle emissions budgets for 2000 (310.2 tons per day), 2010 (329.5 tons per day), and 2020 (457.4 tons per day) as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR 93, subpart A—see 68 FR 4155–4156; and

(12) Approval of amended Clark County SIP rule (section 53—Oxygenated Gasoline Program), adopted by the Clark County Board of County Commissioners on May 20, 2003 (effective June 3, 2003) making administrative changes to substitute the Clark County Board of County Commissioners and Department of Air Quality Management for its corresponding predecessors, the Clark County Board of Health and the Air Quality Division of the Clark County Health District. NDEP submitted this revised SIP rule with a similarly-revised version of Clark County air quality regulation section 54 to EPA as a SIP revision on November 10, 2003. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making our approval of amended Clark County air quality regulation section 53 (Oxygenated Gasoline Program), as adopted on May 20, 2003, final without prior proposal and opportunity for comment because the amended rule merely substitutes the current local administrative agency for its predecessor. Thus, notice and public procedure are unnecessary. Upon the effective date of this final rule, the amended section 53 will supercede the existing SIP section 53, approved by EPA on June 2, 1999 (see 64 FR 29573), in the Nevada SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 23, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraphs (c)(46), (c)(47), (c)(48), (c)(49), (c)(50), (c)(51), and (c)(52) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(46) The following plan revision was submitted on March 20, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) State of Nevada State Implementation Plan for an Enhanced Program for the Inspection and Maintenance of Motor Vehicles for Las Vegas Valley and Boulder City, Nevada, revised March 1996, transmitted by letter dated March 20, 1996, including the cover page through page 15, appendix 1 (only the Nevada attorney general's opinion and memorandum dated November 15, 1993 and June 29, 1994, respectively), and appendices 2 through 9.

(47) The following plan revision was submitted on August 9, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality Management.

(*1*) Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada, August 2000, adopted on August 1, 2000, including the following sections within which certain exceptions are noted but excluding all sections not specifically cited: chapters 1 through 8 (with the exception of chapter 7, subsection 7.2.2, "Contingency Measures"); appendix A, "Emissions Inventory", sections 1 through 7, and section 8—"Annexes" (with the exception of appendix E, "Quality Assurance/Quality Control"); appendix B, "Transportation Documentation", section 1; appendix D, "Regulations, Policies and Public Participation Documentation", section 1—"Cleaner Burning Gasoline (CBG) Regulations and Supporting Documentation" (with the exception of District Board of Health of Clark County Air Pollution Control Regulations section 54 as adopted on April 22, 1999), section 2, section 3, section 4—"Nevada Administrative Code, Chapter 445B: Technician Training and Licensing" (with the exception of NAC 445B.485–445B.487, 445B.489–445B.493, and 445B.495–445B.498), and sections 5 through 9; and appendix E, "Supplemental Technical Support Documentation", sections 1 through 4, and 7.

(48) The following plan revision was submitted on January 30, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) New or amended regulations implementing Nevada's vehicle inspection and maintenance program in Las Vegas Valley and Boulder City: Nevada Administrative Code, chapter 445B, sections 445B.400–445B.774 (*i.e.*, "Emissions from Engines"), including the sections under the subheadings "General Provisions," "Facilities for Inspection and Maintenance," "Inspectors," "Exhaust Gas Analyzers," "Control of Emissions: Generally" [excluding sections 445B.576–445B.578, and excluding section 445B.594 ("Inspections required in Washoe County")], "Restored Vehicles," "Miscellaneous Provisions," but excluding the sections under the subheading "Control of Emissions: Heavy-Duty Motor Vehicles" (*i.e.*, sections 445B.737–445B.774), codification as of February 2002 by the Legislative Counsel Bureau.

(ii) Additional material.

(A) Nevada Division of Environmental Protection.

(*1*) NV2000 Analyzer Electronic Data Transmission Equipment Specifications

(June 15, 2000), revision 5, November 8, 2000.

(49) The following plan revisions were submitted on June 4, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) New or amended statutes related to Nevada's vehicle inspection and maintenance program in Las Vegas Valley and Boulder City, as amended through the 2001 Legislative sessions: Nevada Revised Statutes, title 40, chapter 445B, sections 445B.210, 445B.700, 445B.705, 445B.710, 445B.715, 445B.720, 445B.725, 445B.730, 445B.735, 445B.740, 445B.745, 445B.750, 445B.755, 445B.758, 445B.760, 445B.765, 445B.770, 445B.775–445B.778, 445B.780, 445B.785, 445B.790, 445B.795, 445B.798, 445B.800, 445B.805, 445B.810, 445B.815, 445B.820, 445B.825, 445B.830, 445B.832, 445B.834, 445B.835, 445B.840, and 445B.845, and title 43, chapter 482, section 482.461, transmitted by letter dated June 4, 2002.

(*2*) New regulation establishing the State's low Reid Vapor Pressure wintertime requirement for gasoline sold in Clark County: Nevada Administrative Code, chapter 590, section 590.065 as adopted on October 28, 1998 (made effective December 14, 1998) by the State Board of Agriculture.

(*3*) Regulation R017–02, adopted on March 8, 2002 by the Nevada State Environmental Commission: New or amended rules in Chapter 445B of the Nevada Administrative Code removing the limitation on applicability of, and removing the restrictive trigger for effectuating the implementation of, the on-board diagnostics systems test for Nevada's vehicle inspection and maintenance program.

(ii) Additional material.

(A) Nevada Division of Environmental Protection.

(*1*) Contract between Nevada Department of Motor Vehicles and MD LaserTech for on-road testing services, dated January 15, 2002.

(50) The following plan revision was submitted on September 9, 2003 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) New or amended statutes related to Nevada's vehicle inspection and maintenance program in Las Vegas Valley and Boulder City, as amended through the 2001 Legislative sessions: Nevada Revised Statutes, title 43, chapter 481, sections 481.019, 481.023, 481.027, 481.031, 481.035, 481.043, 481.047, 481.0473, 481.0475, 481.0477, 481.048, 481.0481, 481.051, 481.052, 481.055, 481.057, 481.063, 481.065, 481.079, 481.081, 481.082, 481.083, 481.085, and 481.087; title 43, chapter 482, sections 482.155, 482.160, 482.162, 482.165, 482.170, 482.171, 482.173, 482.175, 482.180, 482.1805, 482.181, 482.183, 482.186–482.188, 482.205, 482.206, 482.208, 482.210, 482.215, 482.216, 482.220, 482.225, 482.230, 482.235, 482.240, 482.245, 482.255, 482.260, 482.265–482.268, 482.270, 482.2703, 482.2705, 482.271, 482.2715, 482.2717, 482.272, 482.274, 482.275, 482.280, 482.2805, 482.2807, 482.281, 482.283, 482.285, 482.290, 482.385, and 482.565; and title 43, chapter 484, sections 484.644 and 484.6441, transmitted by letter dated September 9, 2003.

(51) The following plan revision was submitted on September 24, 2003 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) Regulation R178–01, adopted on July 11, 2002 by the Nevada Department of Motor Vehicles (and made effective August 21, 2002): New or amended rules in Chapter 445B of the Nevada Administrative Code establishing on-board diagnostics systems test procedures for Nevada's vehicle inspection and maintenance program.

(52) The following plan revision was submitted on November 10, 2003 by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality Management.

(*1*) New or amended Section 53—Oxygenated Gasoline Program, and Section 54—Cleaner Burning Gasoline (CBG): Wintertime Program, adopted on May 20, 2003 (made effective June 3, 2003).

* * * * *

[FR Doc. 04–21064 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 307–0466a; FRL–7812–2]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving the rescission from the California SIP of local rules that address Metal Container, Closure and Coil Coating Operations, Magnet Wire Coating Operations, Volatile Organic Compound Emissions from Resin Manufacturing, Surfactant Manufacturing, and the accompanying negative declarations.

DATES: This rule is effective on November 22, 2004 without further notice, unless EPA receives adverse comments by October 21, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, rose.julie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Rescissions Did the State Submit?

Table 1 lists the rule rescissions and negative declarations we are approving with the dates that they were adopted by the Antelope Valley Air Quality Management District (AVAQMD) and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE RESCISSIONS

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1125	Metal Container, Closure and Coil Coating	02/17/04	06/03/04
AVAQMD	1126	Magnet Wire Coating Operations	02/17/04	06/03/04
AVAQMD	1141	Control of Volatile Organic Compound Emissions from Resin Manufacturing.	03/16/04	07/19/04
AVAQMD	1141.2	Surfactant Manufacturing	03/16/04	07/19/04

These rule submittals were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review on June 30, 2004 and August 10, 2004, respectively.

B. Are There Other Versions of These Rules?

There are no previous rescissions or negative declarations for Rules 1125, 1126, 1141, and 1141.2 in the SIP.

C. What Is the Purpose of the Submitted Rule Rescissions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were originally developed as part of the South Coast Air Quality Management District's (SCAQMD) program to control volatile organic compounds (VOC). The SCAQMD rules applied to the portion of Los Angeles County located in the Mojave Desert Air Basin, known as the Antelope Valley. On July 1, 1997 the AVAQMD was formed, pursuant to statute and assumed the duties and powers of the SCAQMD in the Antelope Valley. The AVAQMD remains subject to the RACT requirements. The AVAQMD has rescinded Rules 1125, 1126, 1141, and 1141.2 and submitted negative declarations to certify that there are no sources regulated by these rules within the jurisdiction of the AVAQMD. Therefore, the rules are being rescinded and negative declarations were adopted to fulfil the requirements of section 182(b)(2) of the Act. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule Rescissions?

EPA has evaluated all the appropriate background and submittal documentation and has determined that the rescission of Rules 1125, 1126, 1141, and 1141.2 is approvable. The AVAQMD has certified with Negative Declarations that the sources regulated by these rules are not present in the AVAQMD. Further, the AVAQMD also stated that they do not anticipate these types of sources in the future.

The rule rescissions are consistent with the CAA, EPA regulations and EPA policy.

B. Do the Rule Rescissions Meet the Evaluation Criteria?

We believe these rule rescissions and negative declarations are consistent with the relevant policy and guidance. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 21, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 22, 2004. This will incorporate these rule rescissions into the Federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C: 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 26, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(156)(vii)(B), (189)(i)(A)(*8*), and (215)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(156) * * *

(vii) * * *

(B) Previously approved on January 15, 1987 in paragraph (c)(156)(vii)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District Rule 1141.2.

* * * * *

(189) * * *

(i) * * *

(A) * * *

(*8*) Previously approved on December 20,1993 in paragraph (c)(189)(i)(A)(*3*) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District Rule 1141.

* * * * *

(215) * * *

(i) * * *

(A) * * *

(*7*) Previously approved on June 13, 1995 in paragraph (c)(215)(i)(A)(*1*) of this section and now deleted without replacement for implementation in the Antelope Valley Air Quality Management District Rules 1125 and 1126.

* * * * *

■ 3. Section 52.222 is amended by adding paragraphs (a)(6)(v) and (a)(6)(vi) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(6) * * *

(v) Metal Container, Closure and Coil Coating Operations and Magnet Wire Coating Operations submitted on June 3, 2004 and adopted on February 17, 2004.

(vi) Control of Volatile Compound Emissions from Resin Manufacturing and Surfactant Manufacturing submitted on July 19, 2004 and adopted on March 16, 2004.

* * * * *

[FR Doc. 04–21179 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7816–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by American Chrome & Chemicals L.P. (ACC) to exclude (or delist) a certain solid waste generated by its Corpus Christi, Texas facility from the lists of hazardous wastes. This final rule responds to the petition submitted by ACC to delist K006 dewatered sludge generated from the production of chrome oxide green pigments.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 1,450 cubic yards per year of the dewatered sludge. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill.

DATES: *Effective Date:* September 21, 2004.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is [F–03-TXDEL–ACC]. The public may copy

material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas .

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition. EPA proposed, on November 17, 2003 to exclude the ACC waste from the lists of hazardous waste under §§ 261.31 and 261.32 (see 68 FR 64836). EPA is finalizing the decision to grant ACC's delisting petition to have its dewatered sludge (chromic oxide) excluded, or delisted, generated from its process of manufacturing chromic oxide subject to certain continued verification and monitoring conditions.

B. Why Is EPA Approving This Delisting?

ACC's petition requests a delisting from the K006 waste listings under 40 CFR 260.20 and 260.22. ACC does not believe that the petitioned waste meets the criteria for which EPA listed it. ACC also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4)(hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from ACC's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Corpus Christi, Texas facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the April 2002 petition only if the requirements described in 40 CFR part 261, appendix IX, Table 2 and the conditions contained herein are satisfied.

D. How Will ACC Manage the Waste If It Is Delisted?

The delisted waste stream will be disposed of in a non-hazardous waste landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective September 21, 2004. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 USCA 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 USCA 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

The EPA allows states to impose its own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C.6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If ACC transports the petitioned waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did ACC Petition EPA To Delist?

On April 17, 2002, ACC petitioned EPA to exclude from the lists of hazardous waste contained in § 261.32, dewatered sludge generated from its facility located in Corpus Christi, Texas. The waste falls under the classification of listed waste under § 261.30.

B. How Much Waste Did ACC Propose To Delist?

Specifically, in its petition, ACC requested that EPA grant an exclusion for 1,450 cubic yards per year of the dewatered sludge.

C. What Information Did ACC Present To Support Its Petition To Delist the Waste?

To support its petition, ACC submitted:

(1) Historical information on past waste generation and management practices;

(2) Results from four waste samples of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract;

(4) Results from total oil and grease analyses; and

(5) Multiple pH testing of the petitioned waste.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule

Two comments were received from the general public expressing opposition to the proposed rule.

B. Summary of the Comments and EPA Responses

The first comment opposed EPA's decision to delist this material because it places a "green" name on dangerous sewage sludges.

It is EPA's position that the waste information presented does not indicate that the waste will pose a threat to human health or the environment. The disposal of this material is regulated, just under Subtitle D regulations. The regulations allow a specific facility to demonstrate that the waste should not be regulated as a hazardous waste and ACC has done so.

The second comment opposes EPA's decision because (1) additional constituents warrant the waste remaining hazardous; (2) accurate ground water risks have not been made; (3) the test period should cover four years and not be hurried; and (4) a true environmental organization should be check and test that the information is true.

It is EPA's position that there are no additional constituents present in the sludge that warrant retaining the sludge as hazardous waste. A totals analysis for all the constituents in 40 CFR part 264, appendix IX was presented as part of the sampling and analysis event and none of the constituents present pose a threat to human health and the environment. The ground water risks were modeled and these conservative results fell within the acceptable range of protection of human health and the environment. ACC will be required to continuously evaluate the sludge prior to disposal as long as this exclusion is in place. The companies typically evaluate years of historical data before approaching EPA with a petition to delist. Finally, any interested outside organization can review and check the data of any petition. That information is available to the public.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written

statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

X. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. National Technology Transfer and Advancement Act

Under Section 12(d) if the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XII. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 9, 2004.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
American Chrome & Chemical	Corpus Christi, Texas	Dewatered sludge (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1450 cubic yards per calendar year after September 21, 2004 and disposed in a Subtitle D landfill. ACC must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels (mg/l). The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate. Dewatered wastewater sludge: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. (2) Waste Holding and Handling: (A) ACC is a 90 day facility and does not have a RCRA permit, therefore, ACC must store the dewatered sludge following the requirements specified in 40 CFR 262.34, or continue to dispose of as hazardous all dewatered sludge generated, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous dewatered sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), ACC must retreat the batches of waste used to generate the representative sample until it meets the levels. ACC must repeat the analyses of the treated waste. (D) If the facility does not treat the waste or retreat it until it meets the delisting levels in Paragraph (1), ACC must manage and dispose the waste generated under Subtitle C of RCRA. (E) The dewatered sludge must pass paint filter test as described in SW 846, Method 9095 or another appropriate method found in a reliable source before it is allowed to leave the facility. ACC must maintain a record of the actual volume of the dewatered sludge to be disposed of-site according to the requirements in Paragraph (5). (3) Verification Testing Requirements: ACC must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution. ACC must conduct verification testing each time it decides to evacuate the tank contents. Four (4) representative composite samples shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) and submit the analytical results to EPA within 10 days of receiving the analytical results. If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. The EPA will notify ACC the decision in writing within two weeks of receiving this information. (4) Changes in Operating Conditions: If ACC significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA. (5) Data Submittals: ACC must submit the information described below. If ACC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. ACC must:

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Submit the data obtained through Paragraph 3 to the Section Chief, Corrective Action and Waste Minimization Section, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when the EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, anytime after disposal of the delisted waste, ACC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the verification testing of the waste does not meet the delisting requirements in Paragraph 1, ACC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If ACC fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require Agency action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) Notification Requirements: ACC must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ACC transports the excluded waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility. (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the exclusion.

* * * * * * *

[FR Doc. 04–21185 Filed 9–20–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7816–1]

Missouri: Final Approval of Missouri Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final determination on application of State of Missouri for final approval.

SUMMARY: Missouri has applied to EPA for final approval of its Underground Storage Tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Missouri application and has made a final determination that Missouri's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Missouri to operate its program.

DATES: Final approval for Missouri shall be effective October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Garwood, EPA Region 7, ARTD/STOP, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7268, or by e-mail at *garwood.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving state programs in lieu of the Federal program. EPA promulgated state program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the state program is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.

II. Missouri UST Program

The Missouri Department of Natural Resources (MDNR) is the lead implementing agency for the UST program in Missouri. MDNR has broad statutory authority to regulate UST releases under Sections 260.500 through 260.550 of the Revised Statutes of Missouri (RSMo.) and more specific authority to regulate the installation, operation, maintenance, and closure of USTs under sections 319.100 through 319.139, RSMo., the Missouri UST Law. Additional authorities, in particular the appeals process through the Missouri Clean Water Commission, are found at Chapter 644, RSMo., the Missouri Clean Water Law.

The State of Missouri submitted a state program approval application to EPA by letter dated July 28, 2003. EPA evaluated the information provided and determined the application package met all requirements for a complete program application. On December 11, 2003, EPA notified Missouri that the application package was complete.

Included in the state's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the state's statutory and regulatory authority and details concerning areas where the state program is broader in scope or more stringent than the Federal program. Also included was a transmittal letter from the Governor of Missouri requesting program approval, a description of the Missouri UST program, a demonstration of Missouri's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of EPA and the Missouri Department of Natural Resources, and copies of all applicable state statutes and regulations.

Specifically, the Missouri UST program has requirements that are no less stringent than the Federal requirements at 40 CFR 281.30 New UST system design, construction, installation, and notification; 40 CFR 281.31 Upgrading existing UST systems; 40 CFR 281.32 General operating requirements; 40 CFR 281.33 Release detection; 40 CFR 281.34 Release reporting, investigation, and confirmation; 40 CFR 281.35 Release response and corrective action; 40 CFR 281.36 Out-of-service UST systems and closure; 40 CFR 281.37 Financial responsibility for UST systems

containing petroleum; and 40 CFR 281.39 Lender Liability.

Additionally, the Missouri UST program has adequate enforcement of compliance, as described at 40 CFR 281.40 Requirements for compliance monitoring program and authority; 40 CFR 281.41 Requirements for enforcement authority; 40 CFR 281.42 Requirements for public participation; and 40 CFR 281.43 Sharing of information.

On May 5, 2004 (69 FR 25053), EPA published a tentative decision announcing its intent to grant Missouri final approval. Further background on the tentative decision to grant approval is available by contacting Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas, 66101, (913) 551–7268, or by e-mail at *garwood.linda@epa.gov*.

Along with the tentative determination, EPA announced the opportunity for public comment. All comments needed to be received at EPA by June 4, 2004. Also, EPA provided notice that a public hearing would be provided but only if significant public interest on substantive issues was shown. EPA did not receive any significant comments and no public hearing was held.

III. Decision

EPA concludes that the State of Missouri's application for final approval meets all the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Missouri is granted final approval to operate its UST program. The State of Missouri now has responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program, except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Missouri also has primary enforcement responsibility, for the USTs it regulates, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Statutory and Executive Order Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. 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 authorizes State requirements for the purpose of RCRA 9004 and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This action 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 authorizes State requirements as part of the State underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Under RCRA 9004, EPA grants approval of a State's program as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State program application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 13, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–21183 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0991–AB31

Health Care Fraud and Abuse Data Collection Program: Technical Revisions to Healthcare Integrity and Protection Data Bank Data Collection Activities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: The rule finalizes technical changes to the Healthcare Integrity and Protection Data Bank (HIPDB) data collection reporting requirements by clarifying the types of personal numeric identifiers that may be reported to the data bank in connection with adverse actions. The rule clarifies that in lieu of a Social Security Number (SSN), an individual taxpayer identification number (ITIN) may be reported to the data bank when, in those limited

situations, an individual does not have an SSN.

DATES: The regulations amending 45 CFR part 61 became effective on July 19, 2004.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Healthcare Integrity and Protection Data Bank (HIPDB)

Section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–91, required the Department, acting through the Office of Inspector General, to establish a health care fraud and abuse control program to combat health care fraud and abuse (section 1128C of the Social Security Act (the Act)). Among the major steps in this program has been the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners, as required by section 1128E of the Act, in accordance with section 221(a) of HIPAA. The data bank, known as the Healthcare Integrity and Protection Data Bank (HIPDB), is designed to collect and disseminate the following types of information regarding final adverse actions: (1) Civil judgments against health care providers, suppliers, or practitioners in Federal or State court that are related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) final adverse actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulation.

1. Data Elements To Be Reported to the HIPDB

Section 1128E(b)(2) of the Act cited a number of required elements or types of data that must be reported to the HIPDB. These elements include: (1) The name of the individual or entity; (2) a taxpayer identification number; (3) the name of any affiliated or associated health care entity; (4) the nature of the final adverse action and whether the action is on appeal; (5) a description of the acts or omissions, or injuries, upon which a final adverse action is based; and (6) any other additional information deemed appropriate by the Secretary. With respect to this last element, we have exercised this discretion to add additional reportable data elements reflecting much of the information that is already routinely collected by the Federal and State reporting agencies.

Final regulations implementing the HIPDB were published in the **Federal Register** on October 26, 1999 (64 FR 57740). In those final regulations, for an individual (1) who is the subject of a civil judgment or criminal conviction related to the delivery of a health care item or service; or (2) who is the subject of a licensure action taken by Federal or State licensing and certification agencies, an adjudicated action or decision, or an individual excluded from participation in a Federal or State health care program, the current HIPDB systems of records contain, among other things, the individual's full name, other names used (if known), and his or her SSN. We specifically indicated that use of personal identifiers, such as SSNs and Federal Employer Identification Numbers (FEINs), in the collection and reporting to the HIPDB:

- Provides explicit matching of specific adverse action reports to and from the data bank;
- Provides a greater confidence level in the system's matching algorithm and maximizes the system's ability to prevent the erroneous reporting and disclosure of health care providers, suppliers and practitioners; and
- Strengthens States' ability to detect individuals who move from State to State without disclosure or discovery of previous damaging performance.

However, in addressing the list of "mandatory" data elements that must be reported to the data bank in connection with adverse actions, the final regulations inadvertently omitted reference to the reporting of an ITIN to the data bank when, in those limited situations, an individual does not have an SSN.

2. Tax Identification Numbers as Defined by the Internal Revenue Code

As indicated above, HIPAA requires "the name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code (IRC) of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action" to be reported to the data bank. Section 7701(a)(41) of the IRC does not specifically define TIN, but instead refers to section 6109 of the Code. Section 6109(d) states that an individual's SSN is the tax identifying number for an individual, except as otherwise specified in regulations by the Secretary of the Treasury. In turn, the Department of the Treasury regulations set forth at 26 CFR 301.6109–1(a)(ii)(B) provide for the issuance of an ITIN for individuals who are not eligible for an SSN.

C. Technical Revisions to 45 CFR Part 61

The HIPDB regulations at 45 CFR part 61 required the SSN on reports of adverse actions on individuals. Although the SSN meets the statutory requirement of a TIN, we believed that the inclusion of the ITIN, which is also a TIN, is consistent with the statutory requirements of HIPAA. Most reportable final adverse actions are taken against individual health care practitioners who are permitted to work in the United States. Non-citizens in the United States with permission to work are eligible for SSNs. However, we had become aware that there are non-citizens who do not have permission to work in the United States, but who do have ITINs assigned by the Internal Revenue Service (IRS) for tax purposes [1] and hold valid State health care licenses. One example would be a foreign physician who does not practice in the United States, but desires to have a State license as a qualification of his or her ability to practice medicine. We believed that there may be very limited incidences where reportable adverse actions, particularly licensing actions, may be taken against these health care practitioners, such as an adverse licensing action taken by a medical licensing authority in a foreign country that is then reported to a State medical licensing board which then revokes the State medical license of the foreign physician. However, if the physician does not have a SSN, the State medical licensing authority is currently unable to report the action. We believed that the revision of the HIPDB regulations to include the collection of the ITIN for individuals who do not have SSNs, but have been assigned an ITIN, would enable the data bank to receive reports that it could not receive.

II. Summary of Provisions of the Interim Final Rule With Comment Period

In order to allow for the collection and dissemination of all appropriate information to and from the data bank, on June 17, 2004, we published in the **Federal Register** (69 FR 33866) an interim final rule with comment period that revised §§ 61.7, 61.8, and 61.10 of

[1] These individuals can use previously IRS assigned ITINs, although they cannot qualify for an ITIN solely for licensing purposes.

the HIPDB regulations at 45 CFR part 61 to indicate that for the reporting of (1) licensure actions taken by Federal and State licensing and certification agencies, (2) Federal or State criminal convictions related to the delivery of a health care item or service, or (3) exclusions from participation in Federal or State health care programs:

- If the subject is an individual, entities must report either the SSN or ITIN;
- If the subject is an organization, entities must report the FEIN, or SSN or ITIN when used by the subject as a TIN; and
- If the subject is an organization, entities should report, if known, any FEINs, SSNs or ITINs used.

These revisions in the interim final rule also allowed the reporting of ITINs, by reference, to the reports required in §§ 61.9 and 61.11.

In addition, the interim final rule noted that while the inclusion of a SSN or ITIN was a necessary reporting element in reporting adverse actions to the HIPDB, the Social Security Administration and the Internal Revenue Service are not required to assign a SSN or an ITIN, respectively, to those individuals who do not otherwise qualify for such identification numbers.

III. Analysis of and Responses to Public Comments

We received no public comments in response to the June 17, 2004 interim final rule.

IV. Provisions of the Final Regulations

The provisions of this final rule are identical to the provisions of the June 17, 2004 interim final rule.

V. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impacts of this technical rule revision as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2), and it is not economically significant since this technical revision will not have a significant effect on program expenditures and there will be no additional substantive cost through codification of this change. Specifically, the revisions to 45 CFR part 61 set forth in this rule are technical in nature and are designed to further clarify statutory requirements. The economic effect of these revisions will impact only those limited few individuals or organizations that are that subject of an adverse action reportable to the data bank. As such, we believe that the aggregate economic impact of this technical revision to the regulations will be minimal and have no appreciable effect on the economy or on Federal or State expenditures.

2. Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered to be small entities by having revenues of $6 million to $29 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered to be small entities. In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA.

We anticipate that the number of individuals who do not have permission to work in the United States but who have ITINs, who hold valid State health care licenses, and who will be the subject of a report to the HIPDB will be minimal. Even in those very limited incidences where reportable adverse actions, such as licensing actions, may be taken against a health care practitioner, we believe that the aggregate economic impact of this technical revision will be minimal since it is the nature of the conduct and not the size or type of the entity that would result in the violation and the need to report the adverse action to the HIPDB. As a result, we have concluded that this technical rule should not have a significant impact on the operations of a substantial number of small or rural providers, and that a regulatory flexibility analysis is not required for this rulemaking.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As indicated, these technical revisions comport with statutory intent and clarify the legal authorities for reporting information to the data bank against those who have acted improperly against the Federal and State health care programs. As a result, we believe that there are no significant costs associated with these revisions that would impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this rule will not significantly affect the rights, roles, and responsibilities of State or local governments.

B. Paperwork Reduction Act

The provisions of this rulemaking impose no express new reporting or recordkeeping requirements on reporting entities. As indicated, this additional reportable data element reflects information that is already routinely collected by the Federal and State reporting agencies on health care providers, suppliers and practitioners, and imposes no new reporting burden beyond the data element fields already approved by OMB.

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

■ Accordingly, the interim final rule with comment period amending 45 CFR part 61, which was published on June 17, 2004 in the **Federal Register** at 69 FR 33866–33869 is adopted as a final rule without change.

Dated: August 23, 2004.

Lewis Morris,

Chief Counsel to the Inspector General.

Approved: September 15, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–21204 Filed 9–20–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI14

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Tinian Monarch From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq*), we, the U.S. Fish and Wildlife Service, remove the Tinian monarch (*Monarcha takatsukasae*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on thorough review of all available information, which indicates that this species has increased in number or is stable, and that the primary listing factor, loss of habitat, has been ameliorated.

The Tinian monarch (monarch) is a forest bird endemic to the island of Tinian in the Mariana archipelago in the western Pacific Ocean. The monarch was listed as endangered on June 2, 1970 (35 FR 8491), because its population was thought to be critically low due to the destruction of native forests by pre-World War II (WW II) agricultural practices, and by military activities during WWII. We conducted forest bird surveys on Tinian in 1982, which resulted in a population estimate of 39,338 monarchs. Based on the results of this survey, the monarch was downlisted to threatened on April 6, 1987 (52 FR 10890). A study of monarch breeding biology in 1994 and 1995 resulted in a population estimate of approximately 52,904 birds. In 1996, a replication of the 1982 surveys yielded a population estimate of 55,721 birds. The 1996 survey also found a significant increase in forest density since 1982, indicating an improvement in monarch habitat quality. This final rule removes the Tinian monarch from the Federal List of Endangered and Threatened Wildlife, thereby removing all protections provided by the Act.

DATES: This rule is effective September 21, 2004.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Eric VanderWert, Pacific Islands Fish and Wildlife Office, at the above address (telephone 808/792–9400; facsimile 808/792–9581).

SUPPLEMENTARY INFORMATION:

Background

Tinian is a small [101 square kilometers (38 square miles)] island in the Commonwealth of the Northern Mariana Islands (CNMI), and is located three islands to the north of Guam. The human population of Tinian was estimated at 3,540 during a census in 2000. The majority of residents live in the island's only town of San Jose at the southwestern edge of the island. The northern 71 percent of the island is leased to the U.S. Department of Defense (USDOD) for defense purposes. The remaining 29 percent of the island is divided between leased public property (67 percent), privately owned property (26 percent), and other public property (7 percent) (Deborah Fleming, CNMI Division of Public Lands, pers. comm. 1999). Approximately 10 percent of the island is devoted to agriculture, while another 30 to 50 percent is used for cattle grazing (Engbring *et al.* 1986; Belt-Collins 1994).

The monarch, or Chuchurican Tinian in Chamorro, was described by Takatsukasa and Yamashina (1931). It is a small (15 centimeters [6 inches]) forest bird in the monarch flycatcher family (Monarchidae), and has light rufous underparts, olive-brown upperparts, dark brown wings and tail, white wing bars, and a white rump and undertail coverts (Baker 1951). The monarch currently is found only on the island of Tinian, but examination of museum specimens by Peters (1996) suggested a now extirpated population may have occurred on the island of Saipan, just north of Tinian. The monarch also was reported from the tiny island of Agiguan just south of Tinian in the early 1950's, but some authorities discount this report as an error (Engbring *et al.* 1986).

Heavy disturbance of Tinian's native forests began in the 18th century when the Spaniards used Tinian as a supply island for Guam, and maintained large herds of cattle and other ungulates on the island (Fosberg 1960). In 1926, a Japanese company leased the entire island and cleared additional forested lands for sugarcane production (Belt-Collins 1994). During WW II, the sugarcane plantations and most remaining native vegetation were destroyed by military campaigns and military construction (Baker 1946). After the war, the USDOD may have seeded the island with tangantangan (*Leucaena leucocephala*), a rapidly growing tree that is not native to the Marianas, to slow erosion (U.S. Fish and Wildlife Service [USFWS] 1995; 1996). Currently, the vegetation on Tinian is highly disturbed, with tangantangan thickets being the most abundant habitat type (Fosberg 1960; Engbring *et al.* 1986; Falanruw *et al.* 1989). Engbring *et al.* (1986) estimated that 38 percent of Tinian was dominated by tangantangan, while Falanruw *et al.* (1989) estimated that 54 percent of the island was covered in secondary vegetation, which included tangantangan thickets. Only 5 to 7 percent of the island is estimated to support native forest, which is restricted to steep limestone escarpments (Engbring *et al.* 1986; Falanruw *et al.* 1989).

The monarch inhabits a variety of forest types on Tinian, including native limestone forest dominated by figs (*Ficus* species [spp.]) *Elaeocarpus joga, Mammea odorata, Guamia mariannae, Cynometra ramiflora, Aglaia mariannensis, Premna obtusifolia, Pisonia grandis, Ochrosia mariannensis, Neisosperma oppositifolia, Intsia bijuga, Melanolepis multiglandulosa, Eugenia* spp., *Pandanus* spp., *Artocarpus* spp., and *Hernandia* spp.; secondary vegetation consisting primarily of the non-natives *Acacia confusa, Albizia lebbeck, Casuarina equisetifolia, Cocos nucifera,* and *Delonix regia,* with some native species mixed in; and nearly pure stands of introduced tangantangan (Engbring *et al.* 1986; USFWS 1996).

The monarch was listed as endangered in 1970 (35 FR 8491) under the authority of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc). The monarch's status remained as endangered under the Act. The decision to list the monarch as

endangered was based on a report by Gleize (1945) of 40 to 50 monarchs on Tinian after WW II (52 FR 10890), but it is not clear if this report represented the number of birds seen, or an estimate of the total population on the entire island. Pratt *et al.* (1979) suggested that this estimate represented only the number of birds Gleize observed in a specific, small part of the island. Downs (1946) reported that monarchs were restricted in distribution to distinct locations on the island, while Marshall (1949) considered the monarch to be abundant. In the late 1970's, Pratt *et al.* (1979) estimated monarchs to number in the tens of thousands and to prefer tangantangan thickets. In May 1982, we conducted forest bird surveys of the Mariana islands, during which the monarch was found to be the second most abundant bird species on Tinian, with a population estimated at 39,338 birds and distributed throughout the island in all forest types (Engbring *et al.* 1986). Engbring *et al.* (1986) recommended reassessment of the monarch's endangered status, which led to the reclassification of the monarch from endangered to threatened in 1987 (52 FR 10890).

We conducted a life history study of the monarch in 1994 and 1995 (USFWS 1996). This study showed that monarchs forage and nest in native limestone forest, secondary forest, and tangantangan forest, but found some evidence indicating native limestone forest may be higher quality habitat for monarchs than secondary and tangantangan forests. Monarch home ranges were four to five times smaller in native limestone forest [1,221 square meters (1,460 square yards)] than in secondary forest [5,126 square meters (5,608 square yards)] and tangantangan forests [6,385 square meters (7,636 square yards)], and population densities were higher in native limestone forest [30.7 birds per hectare (12.4 birds per acre)] than in secondary forest [7.7 birds per hectare (3.1 birds per acre)] or tangantangan forest [6.0 birds per hectare (2.4 birds per acre)]. Native tree species may have been preferred for nesting, and nesting success may have been higher in native limestone forest than in secondary and tangantangan forests, but additional information is required to confirm these patterns. Based on the results of that study, the island wide monarch population was estimated to be approximately 52,904 birds, and a recommendation was made to reassess the threatened status of the monarch (USFWS 1996).

We conducted a second survey of the avifauna on Tinian in August and September 1996. The 1996 survey estimated the monarch population at 55,721 birds (Lusk *et al.* 2000), which was significantly higher than the estimate of 39,338 birds found by Engbring *et al.* (1986). The 1996 survey also found that vegetation density had increased significantly in all forest types since 1982, which may have been related to a decrease in grazing pressure (Lusk *et al.* 2000). Lusk *et al.* (2000) hypothesized that the increase in the monarch's population was related to increases in density of vegetation in both native and introduced forest habitats.

Previous Federal Actions

The monarch was listed as endangered in 1970 (35 FR 8491) under the authority of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc). The monarch's status remained as endangered under the Act. The primary reasons for listing the monarch were presumed small population size (52 FR 10890) and the removal or destruction of forest by agricultural practices and military activities before and during WW II (50 FR 45632). However, no actual surveys of the monarch's status had been conducted at the time of listing. Subsequently, in 1982, we conducted a survey on Tinian and found an apparent increase both in monarch numbers and extent of suitable forest habitat since estimates made in the 1940s (Engbring *et al.* 1986). On November 1, 1985, we published in the **Federal Register** a proposed rule to delist the monarch (50 FR 45632). Comments received on the 1985 proposed delisting rule were mainly concerned with two potential threats that may impact the species: (1) The accidental introduction of a psyllid insect that was defoliating one of the major shrub components of monarch habitat; and, (2) the possibility of brown tree snakes becoming established on Tinian. Therefore, based on the information in the comments received, we instead chose to downlist the monarch, and a final rule reclassifying the monarch from endangered to threatened was published in the **Federal Register** on April 6, 1987 (52 FR 10890). In that final rule we also determined that it was not prudent to designate critical habitat for the monarch at that time. There is no recovery plan specifying delisting criteria for the monarch.

We received a petition dated February 3, 1997, from the National Wilderness Institute (NWI) to delist the monarch pursuant to the Act. We also received a similar petition dated December 6, 1997, from Juan C. Tenorio & Associates, Inc. (Tenorio). As explained in our 1996 Petition Management Guidance (Service 1996), subsequent petitions are treated separately only when they are greater in scope or broaden the area of review of the first petition. The Tenorio petition provided no additional or new information than what was already provided in the NWI petition and will, therefore, be treated as a comment on the first petition received.

On February 22, 1999, we published in the **Federal Register** a notice of petition finding and a proposed rule to remove the monarch from the Federal List of Endangered and Threatened Wildlife (64 FR 8533). That proposal was based primarily on information from recent population surveys and demographic research, which showed increases in monarch numbers and habitat quality. The proposed rule addressed the information provided in the petitions and, therefore, constituted the 12-month finding for both the NWI and Tenorio petitions.

Summary of Comments and Recommendations

In the proposed rule published on February 22, 1999 (64 FR 8533), we requested interested parties to submit comments or factual reports or information relevant to delisting the monarch. We contacted Federal and Commonwealth government agencies, scientific organizations, and other interested parties and requested their comments. We published newspaper notices in the Marianas Variety (Saipan, CNMI) and the Pacific Daily News (Guam), inviting general public comment. No public hearings were requested and none were held. The public comment period closed on April 23, 1999.

Also, in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited peer review of the proposed rule from three appropriate and independent experts on the taxonomy, population, ecology, and conservation of the monarch. We received one response, and the reviewer supported the delisting proposal.

We received two letters of comment during the comment period, one of which was from a scientific peer reviewer. Both letters supported delisting the monarch, but they also raised four issues regarding the proposed delisting. These issues and our responses to them are presented below. Although CNMI government agencies were contacted, they did not comment directly on the proposed rule. However, we know that CNMI concurs with our decision to delist the monarch

because, in 2002, the Northern Marianas Commonwealth Legislature adopted a Joint House Resolution requesting that the Service finalize the proposed rule to delist the Tinian monarch.

Issue 1: One letter expressed concern that, although the decision to delist the monarch is biologically sound and appropriate, the decision was based on a single report on the life history of the monarch that has not been published in a peer-reviewed scientific journal.

Our Response: The delisting decision is based on two life history studies, both of which are described in the proposed rule and are considered in our five-factor analysis. Since publication of the proposed rule, the results of one study have been published in the peer-reviewed scientific journal *Micronesica,* which is published by the University of Guam (Lusk *et al.* 2000). This study was an island wide survey of forest birds and evaluation of forest density on Tinian, and produced a population estimate of 55,721 monarchs. The second study, to which the comment letter referred, was our unpublished report that investigated habitat use and nesting biology of the monarch, and which provided a population estimate as a secondary finding (USFWS 1996).

Issue 2: The surveys in 1982 and 1996 were conducted during different seasons, and the apparent increase in monarch numbers could have been caused by this difference in survey methods.

Our Response: It is possible that differences in the timing of surveys affected the resulting population estimates, and that the increase in monarch numbers may not be as large as it appeared. However, all evidence indicates that since 1982 the monarch population has been at least stable, if not increasing, and that the population is relatively large. After consideration of the possible error introduced by the difference in survey methods, we maintain that the decision to delist the monarch is biologically sound.

Issue 3: Accidental introduction of the brown tree snake (*Boiga irregularis*) to Tinian is a continual potential threat to the monarch, and if an incipient population of brown tree snakes is discovered on Tinian, then the monarch and all other birds on Tinian would again be in clear danger of extinction.

Our Response: We fully agree that establishment of the brown tree snake on Tinian would threaten the monarch and other species on Tinian. The brown tree snake climbs exceptionally well and forages opportunistically on a wide variety of vertebrates, including birds and their eggs, reptiles, and mammals (Rodda *et al.* 1999a). On Guam, predation by the brown tree snake decimated the avifauna, causing the local extirpation or complete extinction of 10 of the 13 native forest bird species on the island (Savidge 1987; Conry 1988; Rodda *et al.* 1999a). It has few competitors and no known predators in the Marianas, and can reach population densities of up to 80 to 120 snakes per hectare (32 to 48 snakes per acre) (Rodda *et al.* 1999b). Declines in bird populations on Guam occurred extremely rapidly once the brown tree snake became established (Savidge 1987, Wiles *et al.* 2003).

While there have been reports of possible brown tree snakes on Tinian, the brown tree snake is not known to be established on Tinian, and the monarch is not known to be affected by brown tree snake predation. Nevertheless, we recognize that effective methods for interdiction, monitoring, and control of incipient populations of brown tree snakes must be implemented on all islands in the Marianas, including Tinian. Moreover, implementation of brown tree snake interdiction is not dependent on the listing status of the Tinian monarch.

On Tinian, where there are no native snakes, there have been at least seven reports of snakes some of which probably were brown tree snakes (Hawley 2002; Haldre Rogers pers. comm. 2003). Brown tree snakes potentially could reach Tinian from Guam, where the snake is established, or from Saipan, which is now thought to have an incipient population of brown tree snakes (Hawley 2002). Several measures have been taken on Guam, Saipan, and Tinian in an attempt to decrease the possibility of brown tree snakes spreading among the Mariana Islands. The U.S. Department of the Interior Office of Insular Affairs (OIA), U.S. Department of Defense (DOD), U.S. Department of Agriculture Wildlife Services (USDA), the Service, the Government of Guam, the CNMI, and the State of Hawaii are working together regionally to control brown tree snakes, particularly around transport centers (OIA 1999). The OIA and DOD have and continue to actively fund research into methods of controlling snakes on Guam, in part to reduce the threat of introduction to other Pacific islands (OIA 1999). Both the CNMI Division of Fish and Wildlife (DFW) and Guam Department of Aquatic and Wildlife Resources conduct brown tree snake public awareness educational campaigns consisting of school presentations, news releases, workshops, and poster/pamphlet distribution (Perry *et al.* 1996), and the CNMI maintains a snake reporting hotline (28-SNAKE; N. Hawley, pers. comm. 2003). In 1996, the CNMI became a signatory of the Memorandum of Agreement (MOA) between the governments of Hawaii, Guam, and the CNMI, and individual Federal Government agencies concerned with brown tree snake eradication and control (USDOI *et al.* 1993; USDOI *et al.* 1996). This MOA commits the CNMI to a proactive brown tree snake program and allows the CNMI to apply for funding from the allotment of money appropriated by the U.S. Congress each year for brown tree snake control (OIA 1999).

On Guam, high-risk cargo leaving by air and sea currently undergoes inspection for brown tree snakes by dog teams from USDA Wildlife Services, under contract from the DOD and OIA. Inspections on Guam are as effective as possible using existing techniques; however, inspections are voluntary, compliance by shippers with quarantine procedures is variable, and USDA Wildlife Services has no regulatory authority to require inspections.

All construction companies operating in the CNMI must have a snake control plan, and the Governor of the CNMI signed a directive for the Ports Authority and related agencies to work with the CNMI DFW to develop effective snake interdiction strategies (OIA 1999). The CNMI also conducts training for its DFW and Quarantine personnel with the U.S. Geological Survey Biological Resources Discipline and USDA Wildlife Services on Guam at least two to three times per year (Vogt 1998).

On Saipan, the CNMI Quarantine Division operates a sniffer dog program that consists of two handlers and two dogs that check incoming cargo for brown tree snakes. The efficacy of these inspections needs verification, however, and the level of staffing is inadequate for the volume of goods shipped via air and sea. Outgoing cargo on Saipan currently does not undergo any inspection for brown tree snakes. Construction was completed recently on a brown tree snake barrier and quarantine area designed to facilitate inspection of high-risk cargo at the commercial port on Saipan (N. Hawley, pers. comm. 2004). The 3000-square-meter (32,400-square-foot) area within the barrier will be monitored for brown tree snakes with dogs and traps. Although the efficacy of this barrier has not yet been tested, it was designed and is expected to enhance brown tree snake interdiction.

On Tinian, a dog and handler have been used to inspect incoming cargo, but as on Saipan, the efficacy of these

inspections has not been verified. In June of 2004, the Service obligated funds to construct a brown tree snake barrier and quarantine yard at the commercial port on Tinian. We expect the barrier will be completed in 12 to 18 months. This barrier will be similar to the barrier on Saipan, and will facilitate inspection of high-risk cargo and is expected to enhance brown tree snake interdiction.

In 2004, section 101 of the Sikes Improvement Act of 1997 (Sikes Act, 16 U.S.C. 670a) was amended by adding subsection (g), sometimes termed the "invasives pilot project for Guam," which states that the Secretary of Defense shall, to the maximum extent practicable and conducive to military readiness, incorporate in Integrated Natural Resource Management Plans (INRMP) for military installations on Guam the management, control, and eradication of invasive species that are not native to the ecosystem of the military installation, and the introduction of which may cause harm to military readiness, the environment, or human health and safety, and that the Secretary of Defense shall carry out this subsection in consultation with the Secretary of the Interior. Although this amendment does not apply to the INRMP for military training in the CNMI, commitment by the military on Guam to incorporate brown tree snake management, control, and eradication measures will benefit islands in the CNMI. The Navy (M. Kaku., in litt., 2004) has also reaffirmed their commitment to continuing brown tree snake interdiction in the CNMI in general, and Tinian specifically; "Military cargo originating on Guam undergoes brown tree snake inspection prior to loading and again when off-loaded on Tinian. During the past decade of DoD and USDA WS cooperation in brown tree snake control and interdiction, there has been no reported brown tree snakes found in military cargo shipped from Guam to the CNMI. Our existing control and interdiction efforts are working to significantly reduce the probability of the accidental introduction of the brown tree snake in military cargo from Guam to CNMI."

Therefore, based on all of the brown tree snake interdiction and control efforts described above, we believe that current evidence does not suggest the Tinian monarch is threatened or endangered with extinction due to predation by the brown tree snake.

Issue 4: The relative inaccessibility of the remaining native limestone forest on Tinian does not protect it from the effects of nearby agricultural or golf course development.

Our Response: Although future development in areas containing the remaining limestone forest cannot be completely ruled out, we consider it very unlikely. The remaining limestone forest on Tinian is intact, and was not cleared before or during WWII because of its inaccessibility. The expense of developing the steep, rugged area containing limestone forest for agricultural or resort purposes, while perhaps not absolutely prohibitive, remains a substantial discouragement to development.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. We may delist a species according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened; and/or (3) The original scientific data used at the time the species was classified were in error.

After a thorough review of all available information, we have determined that none of the five factors addressed in section 4(a)(1) of the Act is currently affecting the monarch, such that the species is no longer endangered (in danger of extinction throughout all or a significant portion of its range) or threatened (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). These factors, and their application to the monarch, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At the time of listing, the numbers of the monarch were thought to be critically low due to the destruction of native forests by pre-WWII agricultural practices and war-time military activities (50 FR 45632). Since the classification of the monarch as endangered in 1970, surveys and studies in 1982, 1994 and 1995, and 1996 have shown the abundance and distribution of the monarch to be stable or increasing (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000). These surveys also indicate that the amount of forest habitat on Tinian has increased substantially since WWII (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000), and that forest density increased from 1982 to 1996 (Lusk *et al.* 2000). The monarch currently inhabits approximately 62 percent of the land area on Tinian, of which approximately 93 percent is secondary and tangantangan vegetation and 7 percent is native limestone forest (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000). Although native limestone forest may provide higher quality habitat for the monarch, secondary vegetation and tangantangan thickets also provide useful breeding and foraging habitat (Engbring *et al.* 1986; USFWS 1996; Lusk *et al.* 2000). The range and habitat quality of the monarch thus have increased since WWII, and have remained stable or possibly increased since the species was reclassified as threatened in 1987. Monitoring and evaluation of land use and development on Tinian will be part of the post-delisting monitoring program for this species.

Tinian has a total surface area of approximately 10,172 hectares (25,135 acres) (Falanruw *et al.* 1989). In 1983, the U.S. Navy entered into a 50-year lease agreement with the CNMI for 6,211 contiguous hectares (15,347 acres) of land in northern Tinian, or 71 percent of the island, for training and defense purposes, with an option to renew the lease for another 50 years (CNMI *et al.* 1983; CNMI and USA 1994, USDOD 2003). The land leased to the Navy encompasses roughly 75 percent of the current monarch habitat on the island, but contains only about 30 percent of the total remaining native limestone forest, and therefore supports about 70 percent of the total monarch population.

Approximately one-half of the lands under Navy lease are designated as Exclusive Military Use Area (DOD 1998). Activities in the Exclusive Military Use Area, which were outlined in the June 1998 Draft Environmental Impact Statement for Military Training in the Marianas (DOD 1998) and the Pre-final Integrated Natural Resource Management Plan for the CNMI (DOD 2003), include large-scale maneuvers such as Tandem Thrust, which involve U.S. Navy, Marines, Army, and Air Force units; strategic airlifting and dropping of personnel using fixed-wing aircraft; night vision, close quarter battle, and rapid runway repair training; amphibious beach assault; and urban environment and hostage rescue training. Large-scale activities will occur a maximum of three times per year, for

up to three weeks each time. Training for individuals may occur daily, weekly, or monthly. Other land uses in the Exclusive Military Use Area include construction of a small logistics-support base camp and security gates, and operation of the Voice of America radio relay station. These activities may involve clearing of forest in limited areas, but in a letter to our Pacific Islands Fish and Wildlife Office dated January 28, 2004, the U.S. Navy stated it "has no foreseeable need to adversely modify habitat on Tinian, in fact the natural forest habitat is essential to the types of non-intrusive military training" conducted on Tinian. In addition, parts of the Exclusive Military Use Area, generally those containing native limestone forest, are designated as "no wildlife disturbance," and land uses within the military lease area are subject to agreements protecting endangered species, wetlands, cultural and historical resources, and human health (USDOD 2003). We issued a biological opinion on military training in the Marianas that specified reasonable and prudent measures for minimizing the incidental take of listed species, including the monarch (USFWS 1999). These measures included avoiding troop movements within monarch nesting habitat during the peak nesting months, and limiting troop movements through monarch habitat at night to minimize nest disturbance.

Navy-leased lands outside the Exclusive Military Use Area, known as the Lease Back Area, are used primarily for agriculture and grazing (Belt-Collins 1994, USDOD 2003). Land use within the Lease Back Area is restricted for security reasons, and the permitted uses are unlikely to change. Continued use of the Lease Back Area for agriculture and grazing is not likely to significantly affect the monarch population. Some agricultural development may occur in this area, which may involve some clearing, but is not expected to occur on a large scale because water is limited and there is no irrigation system. The number of cattle grazing on the island has declined by approximately 60 percent over the last two decades, and this reduced grazing pressure appears to have led to an increase in forest density (Lusk *et al.* 2000). Other uses in the Lease Back Area could include construction of small permanent structures, most likely in the form of houses built close to agricultural or grazing areas.

The Sikes Act requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP, which integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP provides an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species, a statement of goals and priorities, a detailed description of management actions to provide for these ecological needs, and a monitoring and adaptive management plan. The INRMP for military training in the Marianas includes several projects designed to increase the amount of forest on Tinian and that will enhance and monitor habitat suitable for the Tinian monarch (DOD 2003, p. 106). These projects include: (1) reforestation on military leased lands using native tree species; (2) planting native forest understory species to improve habitat for threatened and endangered species and enhance biodiversity; (3) a vegetation survey that will map, describe, and verify the vegetation communities on military leased lands; and (4) establishment of long-term natural resource monitoring plots on military leased lands.

On September 23, 1999, the CNMI and the U.S. Navy entered into an agreement to preserve 379 hectares of land (936 acres) south of the Exclusive Military Use Area as a conservation area for the protection of endangered and threatened wildlife, particularly the Tinian monarch (USA and CNMI 1999). This was in accordance with the Environmental Assessment and Biological Assessment for Airport Improvements at Tinian International Airport (Tenorio and Associates 1998b). The agreement will be in effect for the maximum time period allowable (50 years) under section 803 of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241; 90 Stat. 263), with the option of the U.S. Government to renew this lease for all or part of the property in the CNMI for an additional term of 50 years, if so desired, at the end of the first term.

Delisting the monarch could result in non-adherence by the Navy to our biological opinion's reasonable and prudent measures designed to minimize impacts of training on the monarch. However, due to the monarch's relative abundance and its wide distribution on the island, these actions are not expected to have a significant effect on the monarch population. Moreover, other measures designed to protect natural resources on Navy lands, including the "no wildlife disturbance" areas, the 1994 Airport Mitigation Area, and projects in the INRMP designed to enhance and monitor forest habitat, are not dependent on the status of the monarch. Land uses on Navy leased land thus are not expected to change significantly in the foreseeable future.

Portions of the remaining forest in privately owned areas on Tinian may be developed in the future for agriculture, commercial purposes, and housing for a growing human population. A 400-room hotel-casino was recently completed on Tinian and two more are in the planning stages; a total of five are permitted for the island (Tenorio and Associates 1998a). However, even if additional development occurs, it is unlikely that forest clearing will approach the level that occurred before and during WWII, which resulted in the clearing of approximately 95 percent of Tinian's native forest, because approximately 71 percent of the remaining land on Tinian is covered by Navy lease until 2033. In addition, data from Engbring *et al.* (1986) and Lusk *et al.* (2000) indicates that the amount and density of forest on Tinian has recently increased.

In addition, when we proposed the species for delisting in 1985, it was thought that the accidental introduction of a psyllid insect might be a threat to the monarch's habitat. It is now known that this psyllid has not had a negative impact, and it is no longer thought to be a threat to the monarch's habitat.

Therefore, the best available evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to habitat destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The monarch is a small song bird and is not known to be threatened by or sought for commercial, recreational, scientific, or educational purposes. Vandalism is not considered a threat to the species. Therefore, current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to overutilization for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* Neither disease nor predation is known to affect the monarch. The monarch likely experiences some predation from both native and alien species, but not to an extent that currently causes it to be threatened with extinction. The monarch has been stable or perhaps has increased in number over the past two decades, indicating predators are not having a serious negative impact on the monarch population. Predators known to occur on Tinian that may prey on monarch adults or nests include alien

species such as the Asian house rat (Rattus tanezumi), Polynesian rat (R. exulans), feral cat (Felis cattus), and monitor lizard (Varanus indicus), and native species such as the collared kingfisher (Halcyon chloris) and Micronesian starling (Aplonis opaca). As discussed above under our response to Issue 3, the brown tree snake is not known to be established on Tinian and we believe that the risk from this potential threat has been significantly reduced by the current interdiction efforts. Therefore, current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* The monarch is included on the CNMI's list of threatened and endangered species, although no local regulations have been promulgated to specifically protect species on this list. The monarch will also continue to receive legal protection under CNMI Public Law 2–51, which states that it is illegal to kill, capture, or harass wildlife including forest birds (except doves, which can be hunted with a license), waterfowl, shorebirds, seabirds, and marine mammals, and their eggs or offspring. There are few, if any, enforcement problems involving the monarch because it is not harvested for commercial, recreational, or other purposes.

Perhaps more important than regulations specifically protecting the monarch are laws that protect the overall integrity of the island ecosystem, such as quarantine laws. Quarantine regulations have been promulgated and are enforced by the CNMI government at airports and ports of entry. The USDOD is self-regulatory and enforces its own quarantine regulations. The INRMP for military training in the CNMI, as described above, provides for the protection and management of natural resources on military lands, not limited to listed species.

CNMI laws that protect the environment and provide indirect benefit to the monarch include the Coastal Resource Management Act (Public Law 3–47), which was enacted February 11, 1983. This law established the Coastal Resources Management Office, Coastal Advisory Council, and the Appeals Board to encourage land-use master planning, develop zoning and building code legislation, and promote the wise development of coastal resources. The CNMI Environmental Protection Act (Pub. L. 2–23) of October 8, 1982, established the Division of Environmental Quality, in part to maintain optimal levels of air, land, and water quality to protect and preserve the public health and general welfare. The Soil and Water Conservation Act (Pub. L. 4–44) of May 1, 1985, created the Soil and Water Conservation Program within the Department of Natural Resources to promote soil and water conservation by preventing erosion. Finally, the Fish, Game, and Endangered Species Act (Pub. L. 2–51) of October 19, 1981, established the CNMI DFW to provide for the conservation of fish, game, and endangered species of plants and animals.

Because all of the CNMI regulations will be in place regardless of the monarch's Federal listing status, especially the quarantine regulations, and they will therefore protect the species after it is delisted, we believe current evidence does not suggest that the Tinian monarch is threatened or endangered with extinction due to the inadequacy of existing regulatory mechanisms.

E. *Other natural or manmade factors affecting its continued existence.* Species like the monarch that are endemic to single small islands are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a single population by random demographic fluctuations and localized catastrophes such as typhoons and disease outbreaks. However, the monarch evolved in an environment where typhoons are a natural occurrence, and its population has persisted on Tinian despite periodic habitat loss and alteration by typhoons. When considered on their own, the natural processes associated with the habitat alteration caused by typhoons do not affect the monarch to such a degree that it is threatened or endangered with extinction in the foreseeable future. These natural processes can exacerbate the threat from other anthropogenic factors, such as habitat loss or predation, which decrease the distribution or abundance of a species. Currently, the monarch is relatively numerous and widespread in suitable habitat on much of the island. Although the monarch can be considered vulnerable to extinction because it is found on only one small island that regularly experiences typhoons, the persistence of the species on that island throughout its evolutionary history indicates that typhoons and limited distribution alone do not suggest that the Tinian monarch is threatened or endangered with extinction due to other natural or manmade factors.

In summary, analysis of the five factors described in section 4(a)(1) of the Act shows that the species no longer meets the definition of threatened or endangered. Surveys in 1982 and 1996 indicate the number of monarchs has at least remained stable and possibly increased substantially since it was downlisted in 1987. The quantity of forest habitat available to the monarch has increased since WWII, and the quality of forest habitat has improved since 1982. The psyllid insect that was once thought to be a potential threat to monarch habitat in 1987 is now known not to be a threat. Neither predation nor disease is known to be affecting the monarch. The monarch is found on only one small island that regularly experiences typhoons, but it evolved and has persisted on the island under those conditions. The monarch's risk of extinction does not meet the definition of threatened or endangered. We are, therefore, removing the monarch from the Federal List of Endangered and Threatened Wildlife; thus, removing threatened status for the monarch.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting could cost government agencies staff time and monies on conducting formal section 7 consultation on actions that may affect a species no longer in need of protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the monarch.

Effects of the Rule

This final rule revises § 17.11(h) to remove the Tinian monarch from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly sections 7 and 9, no longer apply to this species. Federal agencies will no longer be required to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the monarch. There is no critical habitat designated for this species.

The monarch is protected by the CNMI Government (Pub. L. 2–51; 2 CMC 5108). Removal of the monarch from the Federal List of Endangered and Threatened Wildlife does not alter or supersede its protection by the CNMI Government.

Post-Delisting Monitoring

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires us to implement a system, in cooperation with the States, to monitor for not less than 5 years the status of all species that

have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a species delisted, due to recovery, remains secure from risk of extinction after it no longer has the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also will seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

We intend to monitor the status of the monarch, in cooperation with the CNMI, through periodic surveys of the distribution and abundance of the monarch, monitoring of development and land clearing on Tinian, assessment of impacts of military training on the USDOD-leased lands, and monitoring of the potential introduction of brown tree snakes to the island. We are developing a PDM plan for the monarch, and once completed, we will publish in the **Federal Register** a notice of availability of the proposed PDM plan soliciting public comments and review.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Tinian monarch will be collected primarily by the Commonwealth of the Northern Marianas, the U.S. Navy, and the Service. We do not anticipate a need to request data or other information from the public to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that preparation of an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this final rule are Eric A. VanderWerf, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section), and Michael Lusk, formerly with the Service's Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Section 17.11(h) is amended by removing the entry for "Monarch, Tinian (old world flycatcher)" under "BIRDS" from the List of Endangered and Threatened Wildlife.

Dated: August 20, 2004.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 04–20700 Filed 9–20–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031104274–4011–02; I.D. 091404I]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Fishery for Illex Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Illex squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, September 21, 2004. Vessels issued a Federal permit to harvest *Illex* squid may not retain or land more than 10,000 lb (4.54 mt) of Illex squid per trip for the remainder of the year (through December 31, 2004). This action is necessary to prevent the fishery from exceeding its yearly quota and allow for effective management of this stock.

DATES: Effective 0001 hours, September 21, 2004, through 2400 hours, December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail don.frei@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the Illex squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2004 specification of DAH for *Illex* squid was set at 24,000 mt (69 FR 4861, February 2, 2004). Section 648.22 requires NMFS to close the directed *Illex* squid fishery in the EEZ when 95 percent of the total annual DAH is

projected to be harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Illex* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 95 percent of the total DAH for Illex squid has been harvested. Therefore, effective 0001 hours, September 21, 2004, the directed fishery for *Illex* squid is closed and vessels issued Federal permits for *Illex* squid may not retain or land more than 10,000 lb (4.54 mt) of *Illex*. Such vessels may not land more than 10,000 lb (4.54 mt) of *Illex* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2005, when the 2005 quota becomes available.

Classification

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

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

Dated: September 14, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–21210 Filed 9–16–04; 2:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 182
Tuesday, September 21, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19140; Directorate Identifier 2004–NM–84–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 series airplanes. This proposed AD would require repetitive inspections for corrosion and cracking of the midspar fittings in the nacelle struts, and corrective actions if necessary. This action also provides an optional terminating action for the repetitive inspections. This proposed AD is prompted by reports of corrosion and cracking on midspar fittings on the nacelle struts of several Boeing Model 757 series airplanes. We are proposing this AD to detect and correct cracking in the midspar fittings of the nacelle struts, consequent reduced structural integrity of the struts, and possible separation of an engine and strut from the airplane.

DATES: We must receive comments on this proposed AD by November 5, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: *Go to http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 914–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19140; Directorate Identifier 2004–NM–84–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports of corrosion and cracking on midspar fittings on the nacelle struts of several Boeing Model 757 series airplanes. Investigation revealed that the fittings were made from 4330M material. Corrosion may cause pits that result in cracking of the midspar fittings. This condition, if not corrected, could result in reduced structural integrity of the struts, and possible separation of an engine and strut from the airplane.

Other Related Rulemaking

On August 29, 2003, we issued AD 2003–18–05, amendment 39–13296 (68 FR 53496, September 11, 2003), applicable to certain Boeing Model 757 series airplanes powered by Pratt & Whitney engines. That AD requires

modifying the nacelle strut and wing structure at a threshold of 37,500 total flight cycles or 20 years, whichever is first. That AD is part of the manufacturer's nacelle strut improvement program. The newly reported cracking of the midspar fittings that prompted this proposed AD occurred at approximately 29,700 total flight cycles and 18 years—below the compliance time threshold for the modifications required by AD 2003–18–05. If the modifications required by AD 2003–18–05 have been accomplished, operators do not need to do the inspections required by this proposed AD. The nacelle strut modification required by AD 2003–18–05 includes replacing the midspar fittings. This proposed AD does not affect the requirements of AD 2003–18–05.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999, which describes various procedures for repetitive visual and detail visual inspections of the midspar fittings located in the nacelle struts for evidence of corrosion and cracking, and corrective actions. Evidence of corrosion includes rust stains around the cap seals; along the edge of the fittings; and on the skins, spars, and bulkheads.

The service bulletin effectivity is divided into two groups of airplanes, depending on the material used to make the midspar fittings. Group 1 airplanes have midspar fittings made exclusively of 4330M material, while Group 2 airplanes have fittings made of both 4330M material and 15–5PH CRES material. For both Group 1 and Group 2 airplanes, the procedures and corrective actions include:

- Doing visual and detail visual inspections of the midspar fittings.
- If no corrosion is found, applying corrosion inhibitor and repeating the inspections at the times specified in the service bulletin.
- If corrosion is found and the fitting is not replaced before further flight, removing the clip from the affected strut and repeating the inspections at the times specified.
- If corrosion is found and the fitting is replaced before further flight, either modifying only the strut, or the wing and strut together, in accordance with the Accomplishment Instructions in Boeing Service Bulletin 757–54–0034, Revision 1, dated October 11, 2001.
- If no cracking is found, doing repetitive visual inspections of the upper and lower tangs of the midspar fittings at the intervals specified.
- If any cracking is found, replacing the fitting before further flight by either modifying only the strut, or the wing and strut together, in accordance with the Accomplishment Instructions in Boeing Service Bulletin 757–54–0034.

For Group 2 airplanes, there is an additional procedure for identifying the material used to make each fitting.

Accomplishment of the actions specified in Boeing Special Attention Service Bulletin 757–54–0042 is intended to adequately address the identified unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections for corrosion and cracking of the midspar fittings in the nacelle struts, and corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Service Information." The proposed AD also provides an optional terminating action for the repetitive inspections.

Differences Between the Proposed AD and Service Information

The service bulletin states that airplanes with any corroded midspar fitting may continue to fly for up to 18 months before replacing an affected fitting, if repetitive inspections are done at intervals of 300 flight cycles. Neither the referenced service bulletin, Boeing Special Attention Service Bulletin 757–54–0042, nor the Boeing 757 Structural Repair Manual, provide instructions for removing corrosion from these midspar fittings. Operators are allowed to make specific proposals for an alternative method of compliance through the provisions of paragraph (l) of this proposed AD. In the absence of established or acceptable methods of removing corrosion on midspar fittings, this proposed AD would require replacing any corroded midspar fitting before further flight. Continued operation with untreated corrosion can lead to cracking that emanates from a corrosion pit. This is especially true for a high strength steel like 4330M.

For Group 2 airplanes, the service bulletin states that, if there is a mixture of midspar fittings made of 15–5PH CRES material and 4330M material, regular zonal inspections may be done for airplanes less than ten years old. This proposed AD would require repetitive detailed inspections for all fittings made of 4330M material at 18-month intervals since all affected airplanes are at least ten years old.

The manufacturer is aware of these differences and concurs.

Clarification of Inspection Terminology

Boeing Special Attention Service Bulletin 757–54–0042 specifies visual and detail visual inspections of the midspar fittings. This proposed AD requires general visual and detailed inspections of the midspar fittings. Notes 1 and 2 have been included in this proposed rule to define these types of inspections.

Costs of Compliance

This proposed AD would affect about 410 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	3	$65	None	$195, per inspection cycle.	338	$65,910, per inspection cycle

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19140; Directorate Identifier 2004–NM–84–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 5, 2004.

Affected ADs

(b) This AD is related to AD 2003–18–05, amendment 39–13296.

Applicability

(c) This AD applies to Boeing Model 757 series airplanes, line numbers 1 through 639 inclusive, powered by Pratt & Whitney engines; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of corrosion and cracking on midspar fittings on the nacelle struts of several Boeing Model 757 series airplanes. We are issuing this AD to detect and correct cracking in the midspar fittings of the nacelle struts, consequent reduced structural integrity of the struts, and possible separation of an engine and strut from the airplane.

Compliance

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

Inspections for Group 1 Airplanes

(f) For airplanes identified as Group 1 in Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999: Within 18 months after the effective date of this AD, do general visual and detailed inspections for evidence of corrosion and/or cracking of the midspar fittings located in the nacelle struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999. Repeat the inspections thereafter at intervals not to exceed 18 months until the requirements of paragraph (j) are accomplished.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspections for Group 2 Airplanes

(g) For airplanes identified as Group 2 in Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999: Within 18 months after the effective date of this AD, do a general visual inspection to identify the type of material the midspar fittings are made from, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999.

(1) If all four midspar fittings are made of 15–5PH CRES material, no further action is required by this AD.

(2) If any midspar fitting is made of 4330M material, do the inspections required by paragraph (h) of this AD.

(h) For Group 2 airplanes with fittings made of 4330M material: After the inspection required by paragraph (g) of this AD, but before further flight: Do a general visual and a detailed inspection of the 4330M midspar fittings for evidence of corrosion and/or cracking, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999. Repeat the inspections for corrosion and/or cracking thereafter at intervals not to exceed 18 months until the requirements of paragraph (j) of this AD are accomplished.

Corrective Actions

(i) For Group 1 and Group 2 airplanes: If any corrosion or cracking is found during any inspection required by paragraph (f) or (h) of this AD, before further flight, replace the affected midspar fitting with a new midspar fitting by accomplishing all of the applicable actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999. Replacement of an affected midspar fitting terminates the repetitive inspections required by paragraphs (f) and (h) of this AD for that fitting only.

Optional Terminating Action

(j) Replacement of all of the midspar fittings with new midspar fittings in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999, terminates the repetitive inspections required by paragraphs (f) and (h) of this AD.

Actions Accomplished Previously

(k) Accomplishment of the nacelle strut and wing modification required by AD 2003–18–05, amendment 39–13296, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any replacement required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings.

Issued in Renton, Washington, on September 13, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21176 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–138176–02]

RIN 1545–BA99

Timely Mailing Treated as Timely Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations amending a Treasury Regulation to provide that, other than direct proof of actual

delivery, a registered or certified mail receipt is the only prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws. The proposed regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The proposed regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court.

DATES: Written or electronic comments and requests for a public hearing must be received by December 20, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138176–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138176–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS—REG–138176–02).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Charles A. Hall, (202) 622–4940; concerning submissions, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 22, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application 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 service to provide information.

The collection of information in this proposed regulation is in § 301.7502–1(e). This collection of information is voluntary. The likely recordkeepers are taxpayers who want to have evidence to establish the postmark date and prima facie evidence of delivery when using registered or certified mail.

Estimated total annual recordkeeping burden: 1,084,765 hours.

Estimated average annual burden hours per recordkeeper: 6 minutes (.10 hours).

Estimated number of recordkeepers: 10,847,647.

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

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.

Background

This document contains proposed regulations amending 26 CFR part 301 under section 7502 of the Internal Revenue Code. Section 7502(a) first appeared as part of the recodification of the Code in 1954. Section 7502(a) is commonly known as the timely mailing/timely filing rule. Section 301.7502–1 of the Procedure and Administration Regulations provides rules for taxpayers to follow to qualify for favorable treatment under section 7502. There is a conflict among the Circuits of the United States Court of Appeals as to whether the provisions in section 7502 provide the exclusive means to establish prima facie evidence of delivery of a document to the IRS or the United States Tax Court. In particular, courts have reached differing conclusions regarding whether a taxpayer may raise a presumption of delivery of Federal tax documents to the IRS and the United States Tax Court only in situations in which the taxpayer uses registered or certified mail. These proposed regulations clarify the existing regulations and provide guidance on the need to use registered or certified mail to file documents with the IRS and the United States Tax Court to enjoy a presumption of delivery.

Explanation of Provisions

These proposed regulations amend § 301.7502–1(e)(1) to clarify that, other than direct proof of actual delivery, the exclusive means to establish prima facie evidence of delivery of Federal tax documents to the IRS and the United States Tax Court is to prove the use of registered or certified mail. The IRS currently accepts only a registered or certified mail receipt to establish a presumption of delivery if the IRS has no record of ever having received the document in question. This policy not only is consistent with section 7502(c) but also provides taxpayers with certainty that, under the Code, a certified or registered mail receipt will establish prima facie evidence of delivery. Accordingly, the proposed regulations merely clarify and confirm current IRS practice under the existing regulations. These proposed regulations provide that the final regulations, to which these proposed regulations relate, will be effective for all documents mailed after the publication date of these proposed regulations.

Under section 7502(f)(3), the IRS may extend to a service provided by a private delivery service (PDS) a rule similar to the prima facie evidence of delivery rule applicable to registered and certified mail. To date the IRS has not received any comments or suggestions for extending this rule even though the IRS and the Treasury Department previously requested comments in a prior notice of proposed rulemaking under section 7502. *See* 64 FR 2606 (Jan. 15, 1999). As the IRS is clarifying what documentation it will accept as proof of delivery, it is appropriate to solicit comments on this issue again. Accordingly, the IRS and the Treasury Department encourage the public to make comments regarding whether the IRS and the Treasury Department should extend the prima facie evidence of delivery rule to a service provided by a PDS. These comments should address the reasons why the IRS should treat a service provided by a PDS as substantially equivalent to registered or certified mail, including a comparison of the benefits to taxpayers and the IRS of the PDS service with the benefits of registered and certified mail.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations.

It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Although the collection of information in this notice of proposed rulemaking affects a substantial number of small entities, the economic impact on these small entities is not substantial. If a small entity uses registered or certified mail to file a document with the IRS, the additional burden (filling out the appropriate United States Postal Service forms) over and above using regular mail is not substantial. Furthermore, the extra cost to use registered or certified mail is not substantial as certified mail costs only $2.30 and registered mail can be used for as little as $7.50. Finally, the added burden of retaining the certified or registered mail sender's receipt will be minimal as the receipt can be associated with the small entity's copy of the document that it filed with the IRS.

Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of the Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7502–1 is amended by:

1. Adding two new sentences at the end of paragraph (e)(1).

2. Adding paragraph (g)(4).

The additions read as follows:

§ 301.7502–1 Timely mailing of documents and payments treated as timely filing and paying.

* * * * *

(e) * * * (1) * * * Other than direct proof of actual delivery, proof of proper use of registered or certified mail is the exclusive means to establish prima facie evidence of delivery of a document to the agency, officer, or office with which the document is required to be filed. No other evidence of a postmark or of mailing will be prima facie evidence of delivery or raise a presumption that the document was delivered.

* * * * *

(g) * * *

(4) *Registered or certified mail as the means to prove delivery of a document.* The last two sentences of paragraph (e)(1) of this section, when published as final regulations, will apply to all documents mailed after September 21, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–21218 Filed 9–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–018]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Croix River, Wisconsin, Minnesota

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Prescott Highway Bridge, across the St. Croix River, Mile 0.3, at Prescott, Wisconsin. Under our proposed rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from November 1, 2005, to April 1, 2006. This proposed rule would allow the bridge owners to make necessary repairs to the bridge.

DATES: Comments and related material must reach the Coast Guard on or before October 21, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–04–018), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On May 3, 2004, the Wisconsin Department of Transportation requested a temporary change to the operation of the Prescott Highway Bridge across the St. Croix River, Mile 0.3 at Prescott, Wisconsin, to allow the drawbridge to remain in the closed-to-navigation position for a 5-month period while the electrical and hydraulic systems are overhauled. Navigation on the waterway consists of both commercial (excursion boat) and recreational watercraft, which may be minimally impacted by the closure period. Currently, the draw opens on signal for passage of river traffic from April 1 to October 31, 8 a.m. to midnight, except that from midnight to 8 a.m. the draw shall open on signal if notification is made prior to 11 p.m. From November 1 to March 31, the draw shall open on signal if at least 24 hours notice is given. The Wisconsin Department of Transportation requested the drawbridge be permitted to remain closed to navigation from November 1, 2005, to April 1, 2006.

Regulatory Evaluation

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

The Coast Guard expects that this temporary change to operation of the Prescott Highway Bridge will have such a minimal economic impact on commercial traffic operating on the St. Croix River that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. This temporary change will only cause minimal interruption of the drawbridge's regular operation, since the change is only in effect during the winter months while the river is frozen.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would be in effect for 5 months during the early winter months when the river is frozen over and navigation is practically at a standstill. The Coast Guard expects the impact of this action to be minimal.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because

it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated a significant energy action by the Administrator of the Office of Information and Regulatory Affairs. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From November 1, 2005, to April 1, 2006, in § 117.667, suspend paragraph (a) and add new paragraphs (d) and (e) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(d) The draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, and the Hudson Railroad Bridge, Mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) Midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(e) The draw of the Prescott Highway Bridge, Mile 0.3, need not open for river traffic and may be maintained in the closed-to-navigation position from November 1, 2005 to April 1, 2006.

Dated: September 3, 2004.

R.F. Duncan,

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

[FR Doc. 04–21136 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 307–0466b; FRL–7812–3]

Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern rule rescissions and negative declarations that address volatile organic compound (VOC) emissions from Metal Container, Closure and Coil Coating Operations, Magnet Wire Coating Operations, Resin Manufacturing, and Surfactant Manufacturing. We are proposing to approve rule rescissions and negative declarations to update the California SIP under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 21, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses rule rescissions and negative declarations for the following rules: AVAQMD Rule 1125, Metal Container, Closure and Coil Coating Operations, AVAQMD Rule 1126, Magnet Wire Coating Operations, AVAQMD Rule 1141, Control of Volatile Organic Compound Emissions from Resin Manufacturing, and AVAQMD Rule 1141.2, Surfactant Manufacturing. In the Rules and Regulations section of this **Federal Register**, we are approving these local rule rescissions and negative declarations in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse

comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 26, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–21180 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7816–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Withdrawal

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is withdrawing its proposed rule to grant a petition submitted by Teris, LLC to exclude (or delist) a certain incineration ash generated by its El Dorado, AR Plant from the lists of hazardous wastes in the Resource Conservation and Recovery Act. This notice removes the proposed rule published in 68 FR 55206 (September 23, 2003) for public review and comment. Several comments were received on this proposed rule, which highlighted gaps in the data presented by EPA. The Agency acknowledges these deficiencies. Teris withdrew its petition until such time as these deficiencies can be addressed. No further action on the proposed rule will be taken.

FOR FURTHER INFORMATION CONTACT: Michelle Peace by mail at U.S. EPA Region 6, Multimedia Planning and Permitting Division, Corrective Action and Waste Minimization Section (6PD–C), 1445 Ross Avenue, Dallas, TX 75202, or by phone at (214) 665–7430 or by email at *peace.michelle@epa.gov*.

SUPPLEMENTARY INFORMATION: On September 23, 2003, 68 FR 55206, EPA proposed to approve an exclusion from the list of hazardous wastes for Teris, LLC. We subsequently received several adverse comments which highlighted several deficiencies in the data submitted by Teris. Teris withdrew its petition submitted, June 5, 2002 on August 13, 2004, until the areas of concern and data gaps can be addressed. No further action will be taken on this petition.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921 (f).

Dated: September 9, 2004.

Carl Edlund,

Division Director, Multimedia Planning and Permitting Division, Region 6.

[FR Doc. 04–21181 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[SFUND–2004–0001; FRL–7816–6]

RIN 2050–AF04

Notice of Public Meeting To Discuss Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting to discuss EPA's proposed rule that would set federal standards and practices for conducting all appropriate inquiries, as required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed rule was published in the **Federal Register** on August 26, 2004 (69 FR 52541) and is available on the EPA Web site at *http://www.epa.gov/brownfields*. The public meeting will be held on Thursday, November 18, 2004 in San Francisco, California, at the times and location specified below.

The purpose of the public meeting is for EPA to listen to the views of stakeholders and the general public on the Agency's proposed standards and practices for all appropriate inquiries. During the public meeting, EPA officials will discuss the proposed rule, as well as accept public comment and input on the proposed rule.

DATES: The public meeting will be held on November 18, 2004 at the Park Hyatt San Francisco Hotel at Embarcadero Center. The meeting will be held from 2 p.m. to 4 p.m. PST.

ADDRESSES: The public meeting will be held in the Mercantile Room of the Park Hyatt San Francisco Hotel at Embarcadero Center, 333 Battery Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566–2774 or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: The meeting is open to the general public. Interested parties and the general public are invited to participate in the public meeting. Parties wishing to provide their views to EPA on the proposed rule, or to listen to the views of other parties, are encouraged to attend the public meeting. Any person may speak at the public meeting; however, we encourage those planning to give oral testimony to pre-register with EPA. Those planning to speak at the public meeting should notify Patricia Overmeyer or Sven-Erik Kaiser, of EPA's Office of Brownfields Cleanup and Redevelopment, U.S. Environmental Protection Agency (Mail Code 5105T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than November 10, 2004. Patricia Overmeyer can be contacted at (202) 566–2774 or *overmeyer.patricia@epa.gov*. Sven-Erik Kaiser can be contacted at (202) 566–2753 or *kaiser.sven-erik@epa.gov*. If you cannot pre-register, you may sign up at the door starting two hours before the start of the meeting in San Francisco on November 18, 2004. Oral testimony will be limited to 7 minutes per participant. Any member of the public may file a written statement in addition to, or in lieu of, making oral testimony. A verbatim transcript of the hearing and any written statements received by EPA at the public meeting will be made available at the OSWER Docket and on the EDOCKET Web site, at the addresses provided below. If you plan to attend the public hearing and need special assistance, such as sign language interpretation or other reasonable accommodations, contact Patricia Overmeyer or Sven-Erik Kaiser, at the above email addresses or phone numbers.

Interested parties not able to attend the public meeting may submit written comments to the Agency. All written comments must be submitted to EPA in compliance with the instructions that will be provided in the preamble to the proposed rule. The instructions are summarized below.

Parties wishing to comment on the proposed rule may submit written comments to EPA. Comments must be submitted to EPA no later than November 30, 2004. Submit your written comments, identified by Docket ID No. SFUND–2004–0001, by one of the following methods:

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

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

3. *E-mail:* Comments may be sent by electronic mail to *superfund.docket@epa.gov*, /Attention Docket ID No. SFUND–2004–0001.

4. *Mail:* Send comments to the OSWER Docket, Environmental Protection Agency, Mail Code: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

5. *Hand Delivery:* Deliver your comments to the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. SFUND–2004–0001. 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. SFUND–2004–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal *regulations.gov* Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Dated: September 15, 2004.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment.

[FR Doc. 04–21182 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7602]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA Gaston County				
Catawba River	At the confluence with South Fork Catawba River.	None	•571	Gaston County (Unincorporated Areas), City of Mount Holly.
	At the downstream side of Mountain Island Dam.	None	•582	
Dutchmans Creek	At the confluence with the Catawba River	None	•580	Gaston County (Unincorporated Areas), City of Mount Holly.
	A point approximately 0.52 mile upstream of the confluence with the Catawba River.	None	•581	
Fites Creek	At the confluence with the Catawba River	None	•577	Gaston County (Unincorporated Areas), City of Mount Holly.
	A point approximately 35 feet downstream of Tuckageegee Road.	None	•578	
Kittys Branch	At the confluence with the Catawba River	None	•572	Gaston County (Unincorporated Areas).
	A point approximately 100 feet downstream of CSX Transportation.	None	•586	
Nancy Hanks Branch	At the confluence with the Catawba River	None	•573	Gaston County (Unincorporated Areas).
	A point approximately 120 feet upstream of CSX Transportation.	None	•573	
Stowe Branch	At the confluence with the Catawba River	None	•573	City of Belmont, Gaston County (Unincorporated Areas).
	A point approximately 210 feet upstream of CSX Transportation.	None	•573	

City of Belmont

Maps available for inspection at the Belmont City Hall, 115 North Main Street, Belmont, North Carolina.
Send comments to The Honorable Billy W. Joye, Jr., Mayor of the City of Belmont, P.O. Box 431, Belmont, North Carolina 28012.

Gaston County (Unincorporated Areas)

Maps available for inspection at the Gaston County Planning/Code Enforcement Office, 212 West Main Street, Gastonia, North Carolina.
Send comments to Mr. Jan Winters, Gaston County Manager, 212 West Main Street, P.O. Box 1578, Gastonia, North Carolina 28053–1578.

City of Mount Holly

Maps available for inspection at the Mount Holly City Hall, 131 South Main Street, Mount Holly, North Carolina.
Send comments to The Honorable Robert Black, Mayor of the City of Mount Holly, P.O. Box 406, Mount Holly, North Carolina 28120.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 14, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–21156 Filed 9–20–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040907255–4255–01; I.D. 082704E]

RIN 0648–AS41

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Steller Sea Lion Protection Measures for the Pollock and Pacific Cod Fisheries in the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule that would adjust Steller sea lion protection measures for the pollock and Pacific cod fisheries in the Gulf of Alaska (GOA). The revisions would adjust Pacific cod and pollock fishing closure areas near four Steller sea lion haulouts and modify the seasonal management of pollock harvest in the GOA. The intent of the revisions is to maintain protection for Steller sea lions and their critical habitat while easing the economic burden on GOA fishing communities. This action is intended to

promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and other applicable laws.

DATES: Written comments must be received by October 21, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802–1668;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907–586–7557;
- E-mail to *SSL2004–0648–AS41@noaa.gov*. Include in the subject line of the e-mail comments the following document identifier: GOA SSL Proposed Rule. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the proposed rule and copies of the 1998 and 2001 Biological Opinions, and the June 19, 2003, supplement to the 2001 Biological Opinion, on the effects of the groundfish fisheries on Steller sea lions may be obtained from the same mailing address above or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

The western distinct population segment (DPS) of Steller sea lions has been listed as endangered under the Endangered Species Act (ESA), and critical habitat has been designated for this DPS (50 CFR 226.202). Temporal and spatial harvest restrictions were established for the groundfish fisheries of Alaska (68 FR 204, January 2, 2003) to protect Steller sea lions from jeopardy of extinction and their critical habitat from adverse modification or destruction from the effects of these fisheries. Pollock and Pacific cod are important prey species for Steller sea lions, and these protection measures apply to the pollock and Pacific cod fisheries in the GOA.

In June 2004, the Council unanimously recommended revisions to the Steller sea lion protection measures in the GOA to alleviate some of the economic burden on coastal communities while maintaining protection for Steller sea lions and their critical habitat. These revisions would adjust pollock and Pacific cod fishing closures near four Steller sea lion haulouts and would revise seasonal management of pollock harvest. NMFS concluded in an ESA Section 7 informal consultation dated August 26, 2004, that fishing under the proposed revisions is not likely to adversely affect Steller sea lions beyond those effects already considered in the 2001 Biological Opinion (BiOp) on the Steller sea lion protection measures and its June 19, 2003 supplement (see **ADDRESSES**). Based on results of the informal consultation and the EA/RIR (see **ADDRESSES**), NMFS has determined that this action could provide some economic relief to participants in the pollock and Pacific cod fisheries without adversely affecting Steller sea lions and their critical habitat beyond those effects already analyzed in the 2001 BiOp and its supplement. Each proposed revision is described below.

Haulout Closure Revisions

The proposed action would revise Table 4 to 50 CFR part 679 to reduce the pollock fishing closure area around Puale Bay from 10 nautical miles (nm) to 3 nm from January 20 through May 31. Puale Bay is located in Shelikof Strait on the east side of Kodiak Island. The current 10 nm fishing closure would remain unchanged from August 25 through November 1. The number of Steller sea lions using the haulout at Puale Bay has declined greatly, ranging from 14,234 winter non-pups in 1977, to 40 non-pups in 1997. Since 1990, the usage of this site in the summer and winter has been approximately 100 animals.

The decline in the Steller sea lion population at Puale Bay haulout correlates with the decline of pollock spawning aggregations in Shelikof Strait. Incidental take of Steller sea lions in foreign fisheries targeting spawning aggregations of pollock was observed to be very high in the Shelikof Strait area. The recovery of Steller sea lions at this site and in Shelikof Strait may be linked to the overall biomass level of the spawning aggregations of pollock rather than to the availability of pollock in specific near shore areas (i.e., within the closure zone). Additional fishing for pollock closer to shore of the Puale Bay haulout is not likely to affect the overall spawning aggregations of pollock in the Shelikof Strait because the total allowable catch (TAC) for pollock in the area will remain unchanged. Assuming the recovery of Steller sea lions is linked in some way to the recovery of the spawning aggregations of pollock in the Shelikof Strait, allowing additional pollock fishing near Puale Bay likely would not substantially affect the recovery of the Steller sea lions in the Shelikof Strait. According to NMFS telemetry data, Steller sea lions on the east side of Kodiak Island appear to spend most of their time closer to shore, presumably foraging there. This action would maintain a 3 nm closure to pollock fishing around Puale Bay, providing protection to these nearshore foraging areas for Steller sea lions. By allowing fishing closer to shore, the safety for the pollock fishing fleet would be improved, and the efficiency of harvest may be improved if pollock spawning aggregations occur in the waters between 3 nm and 10 nm of Puale Bay.

To offset any potential effects on Steller sea lions by allowing pollock fishing within 3 nm to 10 nm of Puale Bay, the proposed action also would revise Table 4 to 50 CFR part 679 to expand the pollock fishing closure area around the Cape Douglas/Shaw Island haulout from 10 nm to 20 nm. Pollock spawning aggregations historically have not been observed in this area, but other types of prey species may be used in this area by Steller sea lions. By expanding the closure area, the potential interaction between the fishing fleet and Steller sea lions would be reduced. Cape Douglas is one of 19 haulout sites that have been identified in the 1998 BiOp (see **ADDRESSES**) as new sites that warranted protection. Added protection to this site may be more beneficial to Steller sea lions than the current closures around Puale Bay, where Steller sea lion recovery may be more dependent on the recovery of the pollock spawning aggregations in Shelikof Strait. This action also would provide some economic relief to pollock fishery participants by offsetting the opening of Puale Bay waters that historically have had more pollock harvests with the closure of Cape

Douglas waters that have had less pollock harvest.

The proposed action also would revise Table 5 to 50 CFR part 679 to reduce the Pacific cod pot gear fishery closure around Kak Island from 20 nm to 3 nm. Because of the overlap of the closure area with the 20 nm closure around Sutwik Island, only the west side of Kak Island would be open from 3 nm to 20 nm. This area periodically has been used by the Chignik area small vessel fleet to fish for Pacific cod with pot gear. Reducing the Pacific cod pot gear fishing closure area around Kak Island would not likely result in significantly increased fishing activities by the small boat fleet. Therefore, this proposed revision is not likely to adversely affect Steller sea lions and their critical habitat beyond those effects analyzed in the 2001 BiOp because of the small number of small vessels that are likely to participate in the Pacific cod pot gear fishery and the slow rate of removal of prey species by the Pacific cod pot gear fishery. This action would provide some economic relief and additional safety to participants in the Pacific cod pot gear fishery by allowing fishing in areas closer to shore.

Last, the proposed action would revise Table 5 to 50 CFR part 679 to eliminate the Pacific cod pot gear fishing closure around the Castle Rock haulout. This area has been used by the small vessel fleet to fish for Pacific cod with pot gear during seven of the past nine years in the State of Alaska Pacific cod fishery. Because of the small number of small vessels and the method of fishing, NMFS has determined that opening this area to pot gear fishing is not likely to adversely affect the western DPS of Steller sea lions or its critical habitat beyond those effects already analyzed in the 2001 BiOp and its supplement. Opening waters around Castle Rock to Pacific cod pot gear fishing would increase safety for the participants in the fishery and would provide some economic relief by allowing Pacific cod harvest in those waters.

Pollock Harvest Management Revisions

To provide efficient harvest of pollock, the proposed action would revise § 679.23(d)(2) to remove the stand down periods between the pollock A and B seasons and between the C and D seasons. Currently, pollock fishing must stop between February 25 and March 10 and between September 15 and October 1. These stand down periods require fishery participants to return to port and wait for the opening of the B season or the D season. By allowing continuous fishing between the A and B seasons and between the C and D seasons when TACs are available, the participants in the pollock fishery would receive some economic relief by not having to stop fishing activities between seasons.

In the past several years, the pollock fishery participants were not able to fully harvest the A season pollock TAC in area 620 before February 25 because the pollock spawning aggregations moved into the area at a later time. A large amount of the unharvested pollock TAC has been rolled over into subsequent seasons. To provide greater opportunity for harvest of the seasonal TAC apportionments in the A season, the length of the A and C seasons would be increased to include the time period that previously was the stand down period. The new A and C season dates would be: A season, January 20 through March 10; and C season, August 25 through October 1. Because the Steller sea lion protection measures requiring four equal seasonal apportionments of pollock harvest would remain unchanged, NMFS has determined that this proposed revision would have no adverse effect on Steller sea lions or their critical habitat.

The proposed action would revise § 679.20(a)(5)(iii)(B) to provide for the rollover of unharvested pollock seasonal TAC apportionment to a subsequent season based on the estimated biomass within a statistical area during a season. The Steller sea lion protection measures require pollock harvest to be seasonally apportioned and spatially apportioned based on the estimates of pollock biomass. The Council's GOA Groundfish Plan Team develops estimates of the amount of biomass in each statistical area by season for the annual harvest specifications. The seasonal apportionments for the Western and Central Regulatory Areas of the GOA are distributed among statistical areas 610, 620 and 630 based on the estimate of the amount of pollock biomass that occurs in each statistical area in a season. These seasonal apportionments are published in the annual harvest specifications (69 FR 9261, February 27, 2004) and are the basis for temporal and spatial management of pollock harvest in the Western and Central Regulatory Areas.

The protection measures allow limited amounts of unharvested pollock to be rolled over into subsequent seasons during a fishing year. The current regulations at 50 CFR 679.20(a)(iii)(B) state that "within any fishing year, under harvest or over harvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for a GOA regulatory area." This provision does not allow for consideration of the estimated distribution of biomass among statistical areas by season, as intended by the Steller sea lion protection measures, potentially resulting in pollock harvests that are not appropriate for the estimated amount of pollock biomass available.

The proposed action would change the rollover provision to allow rollover of a statistical area's unharvested pollock apportionment into the subsequent season. The rollover amount would be 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. Because the harvest of pollock is apportioned among four seasons, the 20 percent seasonal apportionment limit on the rollover would be equivalent annually to the 30 percent annual limit on rollover currently in the regulations. The 20 percent seasonal apportionment limit would provide for better control of harvest than the current regulations because the amount of rollover allowed is based on seasonal biomass estimates, better fulfilling the temporal and seasonal distribution of harvest intended by the Steller sea lion protection measures. The participants in the pollock fishery also would benefit from reapportionments among statistical areas of unharvested pollock that exceed the 20 percent limit. The industry's ability to fully harvest a seasonal apportionment has varied among the statistical areas with some area harvests being consistently below the seasonal apportionments. The reapportionments among statistical areas would reduce the potential for foregone harvest, allowing the pollock fishery in the Western and Central Regulatory Areas to fully harvest available TAC.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would amend existing Steller sea lion protection measures in 50 CFR part 679 for the GOA pollock trawl and Pacific cod pot gear fisheries. The action would modify some fishing closure boundaries to better reflect historic use patterns, reduce unanticipated and unnecessary potential burdens on the fishing industry, and maintain protection for the western DPS of Steller sea lions (i.e., avoid jeopardy of extinction for the western DPS of Steller sea lions and the destruction or adverse modification of its critical habitat). Any changes to the pollock or Pacific cod fisheries affected by this action must not reduce overall efficacy of the Steller sea lion protection measures.

The proposed action would open groundfish fishing areas around three GOA Steller sea lion haulouts and close an area around one GOA Steller sea lion haulout to pollock and Pacific cod fishing; change pollock season stand-down periods, and change procedures for the rollover of unharvested pollock seasonal apportionments.

Factual Basis for Certification

Description and estimate of the number of small entities to which the rule applies: Small entities will be directly regulated by this action. This includes all small fishing operations in the GOA Pacific cod pot gear and pollock trawl gear fisheries. NMFS has determined that there were 131 small entities participating in the GOA pot gear fishery and 110 small entities participating in the GOA pollock trawl gear fishery in 2002.

Estimate of economic impact on small entities, by entity size and industry: The proposed regulatory change has a potential to yield some small benefit, but with negligible cost to industry. The analysis contained in the RIR prepared for this action concludes that all action alternative options affecting the GOA pollock trawl fishery have the potential to result in positive net benefits. The potential effect of the pollock trawl closure area of Option 1 of Alternative 2 (Cape Douglas/Shaw Island) is offset by an opening in an area that appears to be of somewhat greater historic importance to the fleet (Puale Bay). The number of vessels participating in the Cape Douglas/Shaw Island fishery is confidential (i.e., four or fewer), while between nine and 17 vessels have participated in the fishery near Puale Bay from 2001 through 2003.

The elimination of pollock trawl stand-down periods in Option 4 of Alternative 2 may lead to greater operational efficiency, but will not materially alter the revenue earned. Similarly, the change in the rollover method proposed in Option 5 of Alternative 2 may make additional pollock harvest possible earlier in the year in some areas; however, it will not alter the total annual Western and Central GOA area apportionment of total allowable catch as set in the groundfish harvest specifications process, and thus, will not materially affect total revenue. Overall, these measures have the potential to be marginally beneficial to all operators in the GOA pollock trawl fishery, including 110 small entities.

The areas proposed to be opened to Pacific cod pot fishing in Option 2 of Alternative 2 (Kak Island area) provide some additional nearshore fishing area near the port of Chignik and may marginally reduce operational costs. This provision has some potential to improve safety as well. The area to be opened under Option 3 (Castle Rock) provides some potential additional fishing area with no apparent costs. All vessels participating in these fisheries are small entities, but the number of participants (i.e., four or fewer) is confidential. Overall, these measures have the potential to be beneficial, although to a very few small entities in the GOA Pacific cod pot gear fishery.

Criteria used to evaluate whether the rule would impose "significant economic impacts": The two criteria recommended to determine significant economic impact are disproportionality and profitability of the action. The proposed action would not place a substantial number of small entities at a disadvantage relative to large entities. This action would provide additional opportunity for harvest in areas that historically have been used by small entities, but this opportunity is not provided exclusively to small entities.

This rule does not significantly reduce the profit for small entities. The costs of harvest would potentially be reduced with the opening of the closure areas and with the removal of the stand down periods between harvest seasons. The proposed action provides additional opportunities, spatially and temporally, for pollock and Pacific cod harvest that may result in additional profit for fishery participants. The absence of cost data precludes quantitative estimation of these potential cost savings and profits, although they would be expected to be minor.

Criteria used to evaluate whether the rule would impose impacts on "a substantial number" of small entities: A very small number of small entities have harvested Pacific cod by pot gear in the area of Kak Island and Castle Rock haulouts (i.e., four or fewer vessels). NMFS is unable to report the actual number of vessels because of confidentiality restrictions. The harvest of pollock near Cape Douglas/Shaw Island haulout has also been by so few vessels that the harvest data are also confidential. The opening of Puale Bay is likely to provide additional fishing opportunity to fewer than 10 percent of the small entities participating in the pollock fishery. The removal of the mandatory stand down periods between seasons and revision of the method of rolling over unharvested pollock would, however, affect all small entities participating in the pollock fishery.

Description of, and an explanation of the basis for, assumptions used: Catch information used for the pollock and Pacific cod fisheries is based on catch reporting within a State statistical area (no finer resolution of catch location is available). The closures proposed encompass only a small portion of one or more State statistical areas. The reported catch within a State statistical area was, for lack of a better option, assumed to be evenly distributed so that the proportion of the closure area to the statistical area(s) would be in the same proportion as the estimated catch from the proposed closure area compared to the estimated catch for the entire statistical area. Because catch information is not collected to a finer scale than the statistical area, it is necessary to use this method to get an estimated portion of the amount of harvest that may be applied to a closure area.

The economic analysis contained in the RIR (see **ADDRESSES**) further describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have on small entities. Based upon that analysis, it is NMFS' finding that although the proposed action may affect a substantial number of small entities, it likely does not have the potential to have a significant economic impact on the small entities participating in these fisheries.

The Regional Administrator, Alaska Region, determined that fishing activities conducted pursuant to this rule would not affect endangered and threatened species or critical habitat under the ESA.

List of Subjects in 50 CFR Part 679

. Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 16, 2004.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

2. In § 679.20, paragraph (a)(5)(iii)(B) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(iii) * * *

(B) *GOA Western and Central Regulatory Areas seasonal apportionments.* Each apportionment established under paragraph (a)(5)(iii)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(2) as follows: A Season, 25 percent; B Season, 25 percent; C Season, 25 percent; and D Season, 25 percent. Within any fishing year, underharvest or overharvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal TAC apportionment for the statistical area. The reapportionment of underharvest will be applied to the subsequent season within the same statistical area up to the 20 percent limit specified in this paragraph. Any underharvest remaining beyond the 20 percent limit may be further apportioned to the subsequent season in the other statistical areas, in proportion to estimated biomass and in an amount no more than 20 percent of the seasonal TAC apportionment for the statistical area.

* * * * *

3. In § 679.23, paragraphs (d)(2)(i) and (d)(2)(iii) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(2) * * *

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., March 10;

* * * * *

(iii) *C season.* From 1200 hours, A.l.t., August 25 through 1200 hours, A.l.t., October 1; and

* * * * *

4. Tables 4 and 5 to part 679 are revised to read as follows:

Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.80 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20,10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			20,10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay[12]	Gulf of Alaska	57 40.60 N	155 23.10 W			3,10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)[12]	Gulf of Alaska	59 00.00 N	153 22.50 W			20,10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W. Closure to directed fishing for pollock around Uliaga and Kagamil is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[12]The 3 nm trawl closure around Puale Bay and the 20 nm trawl closure around Cape Douglas/Shaw I. are effective January 20 through May 31. The 10 nm trawl closure around Puale Bay and the 10 nm trawl closure around Cape Douglas/Shaw I. are effective August 25 through November 1.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.[11]	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20,3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	20	20
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	20,10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	20	20
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	3
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock and Tanaga I./Bumpy Pt. applies only to waters west of 178°W long. and only during the HLA directed fishery. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts. Directed fishing for Pacific cod using trawl gear is prohibited between 0-3 nm of Tanaga I./Bumpy Pt.

[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[14]Trawl closure around this site is limited to waters east of 170°0'00" W long. Closure to hook-and-line fishing around Chuginadak is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

[FR Doc. 04–21217 Filed 9–20–04; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 182
Tuesday, September 21, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2004 projects and the Fred Burr 80 project and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on September 28, 2004, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: September 14, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–21133 Filed 9–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, Department of Agriculture

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, October 8, 2004. The meeting and field trip is scheduled to begin at 9 a.m. and will conclude at approximately 4:30 p.m. The meeting will be held at the Hood River Ranger Station; 6780 Highway 35; Mt. Hood Parkdale, Oregon; (541) 352–6002. The tentative agenda includes: (1) Finalizing recommendations on 2004 projects; (2) field trip to Title II Projects; and (3) public forum.

The public forum is tentatively scheduled to begin at 9:15 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the public forum. Written comments may be submitted prior to the October 8th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: September 15, 2004.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 04–21167 Filed 9–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Reestablishment

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to reestablish committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Grain Inspection, Packers and Stockyards Administration's Grain Inspection Advisory Committee. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, Designated Federal Official, Grain Inspection, Packers and Stockyards Administration, USDA, Rm. 1647–S, 1400 Independence Ave., SW., Washington, DC 20250–3604; Telephone (202) 205–8281; Fax (202) 690–2755; E-mail *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Grain Inspection Advisory Committee is to advise the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the United States Grain Standards Act, as amended, and the Reorganization Act of 1994. The Committee is essential to help facilitate the marketing of grain.

Dated:

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–21082 Filed 9–20–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

DATES: Form AD–755 must be received not later than November 22, 2004.

ADDRESSES: Completed AD–755 forms should be submitted to:

- E-Mail: Send form AD–755 via electronic mail to *Terri.L.Henry@usda.gov.*
- Mail: Send hardcopy of completed form to Terri Henry, GIPSA, USDA,

1400 Independence Ave., SW., Room 1647–S, Stop 3604, Washington, DC 20250–3604.

• Fax: Send form AD–755 by facsimile transmission to: (202) 690–6755.

• Hand Delivery or Courier: Deliver form AD–755 to: Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1647–S, Stop 3604, Washington, DC 20250–3604.

SUPPLEMENTARY INFORMATION: Under authority of section 21 of the United States Grain Standards Act (Act) as amended, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 21 of the United States Grain Standards Act Amendments of 2000, Public Law 106–580, extended the authority for the Advisory Committee through September 30, 2005.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Advisory Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the four members and the one alternate member whose terms will expire March 2005.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: GIPSA, by telephone (tel: 202–205–8281), fax (fax: 202–690–2755), or electronic mail (e-mail: *Terri.L.Henry@usda.gov*) and request Form AD–755. Form AD–755 may also be obtained via the Internet through GIPSA's homepage at: *http://www.usda.gov/gipsa/advcommittee/ad755.pdf*. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–21083 Filed 9–20–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Rescission of Antidumping Duty New Shipper Review.

SUMMARY: On June 30, 2004, the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China covering the period November 1, 2003, through April 30, 2004. See *Fresh Garlic from the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Review*, 69 FR 40868 (July 7, 2003) (*Initiation Notice*). This new shipper review covered one exporter, Shandong Jining Jinshan Textile Co., Ltd. (Jining Jinshan). For the reasons discussed below, we are rescinding the review of Jining Jinshan.

DATES: Effective September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth or Charles Riggle at (202) 482–0168 and (202) 482–0650, respectively, NME Office, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2004, the Department received a timely request for a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) from Jining Jinshan, a producer of subject merchandise sold to the United States. On June 30, 2004, the Department initiated this new shipper review covering the period November 1, 2003, through April 30, 2004. Based on evidence contained in Jining Jinshan's request for a new shipper review, the Department also launched a middleman-dumping inquiry on Jining Jinshan's exporter, H & T Trading Company. See *Initiation Notice*. On August 18, 2004, Jining Jinshan withdrew its request for review.

Scope of the Antidumping Duty Order

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

In order to be excluded from antidumping duties, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use, or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed, must be accompanied by declarations to the U.S. Customs and Border Protection (CBP) to that effect.

Rescission of New Shipper Review

Pursuant to 19 CFR 351.214(f)(1), the Department may rescind a new shipper review if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review. Jining Jinshan withdrew its request for a new shipper review on August 18, 2004, before the expiration of the 60-day deadline. We find no

compelling reason not to permit withdrawal of the request for this new shipper review. Specifically, we had not started reviewing information for purposes of calculating an antidumping duty margin for Jining Jinshan. Furthermore, we did not receive any submissions opposing Jining Jinshan's withdrawal of its request for review. For these reasons, we have accepted Jining Jinshan's withdrawal and are rescinding the new shipper review of the antidumping duty order on fresh garlic from the PRC with respect to Jining Jinshan in accordance with 19 CFR 351.214(f)(1). We are also terminating our middleman-dumping inquiry on exporter H & T Trading Company.

Cash Deposits

The Department will notify CBP that bonding is no longer permitted to fulfill security requirements for shipments from Jining Jinshan of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice, for all shipments of the subject merchandise exported by Jining Jinshan and entered, or withdrawn from warehouse, for consumption, the cash deposit rate will be the PRC-wide rate, which is 376.67 percent.

Notification to Parties Subject to Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Date: September 15, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2286 Filed 9–20–04; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), Jindal Poly Films Limited (Jindal Poly Films) requested that the Department of Commerce (the Department) conduct a changed circumstances review of the antidumping duty order on PET film from India. In response to this request, the Department is initiating a changed circumstances review of the antidumping duty order on PET film from India.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Michele Mire, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5193 or (202) 482–4711, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2004, Jindal Poly Films requested that the Department conduct an expedited changed circumstances review of the antidumping duty order on PET film from India pursuant to section 751(b)(1) of the Act and 19 CFR 351.221(c)(3)(ii). Jindal Poly Films claims to be the successor–in-interest to Jindal Polyester Limited (Jindal). Jindal Poly Films furnished a certificate of change of name filed with the office of the registrar of companies in India showing that, effective April 19, 2004, Jindal's corporate name was changed to Jindal Poly Films. *See* the July 29, 2004, request of Jindal Poly Films at Exhibit 1.

On August 25, 2004, DuPont Teijin Films, Mitsubishi Polyester Film of America and Toray Plastics (America), Inc., the petitioners to this proceeding, notified the Department that they oppose Jindal Poly Films' request that the Department conduct an expedited antidumping duty changed circumstances review. Petitioners' objections are discussed below in the initiation of review section of this notice.

Scope of Review

Imports covered by this review are shipments of PET film from India. The products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping or countervailing duty order which shows changed circumstances sufficient to warrant a review of the order. *See* 19 CFR 351.216(c). The information submitted by Jindal Poly Films regarding a change in the name of Jindal shows changed circumstances sufficient to warrant a review.

In changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled*

Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review, 64 FR 9979, 9980 (March 1, 1999). Although Jindal Poly Films submitted information indicating that Jindal was renamed Jindal Poly Films, the information is insufficient for the Department to preliminarily determine Jindal Poly Films to be the successor-in-interest to Jindal. Moreover, the petitioners argue that Jindal Poly Films experienced two significant changes in management within three days of the name change, and that it has undertaken an expansion and restructuring of its operations in connection with its acquisition of Rexor. *See* Petitioners' August 25, 2004, submission at Exhibits 1, 2, and 3. Petitioners also contend that record evidence does not adequately satisfy the Department's criteria it applies when making successor-in-interest determinations.

Concerning Jindal Poly Films' request that the Department conduct an expedited antidumping duty changed circumstances review, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Because of the interested parties' differing views and the Department's need for additional information, which we will address in a questionnaire to be issued to Jindal Poly Films, the Department finds that expedited action in this review is impracticable. *See* 19 CFR 351.216(e) and 19 CFR 351.221(c)(3)(ii). Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with section 751(b)(4)(B) of the Act and 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review, unless a change is determined to be warranted pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and

19 CFR 351.221(b)(1) of the Department's regulations.

Dated: September 10, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2284 Filed 9–20–04; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894 and A–570–895]

Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective:* September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kit Rudd or John Conniff, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1385, or 482–1009, respectively.

Preliminary Determination

We preliminarily determine that certain tissue paper products and certain crepe paper products from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Interested parties are invited to comment on these preliminary determinations. We will make our final determinations no later than 75 days after the date of publication of these preliminary determinations for certain crepe paper products and 135 days after the date of publication of this preliminary determination for certain tissue paper products.

Case History

On February 17, 2004, Seaman Paper Company of Massachusetts, Inc., American Crepe Corporation, Eagle Tissue LLC, Garlock Printing & Converting, Inc., and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC (hereafter known as, "Petitioners") filed, in proper form, a petition on imports of certain tissue paper products and certain crepe paper products from the PRC. On February 18, 2004, February 20, 2004, February 24, 2004, and February 27, 2004, the Department requested Petitioners to clarify certain aspects of the Petition. On February 23, 2004, February 24, 2004, February 27, 2004, and March 3, 2004, Petitioners submitted responses to the Department's requests for clarification. On March 15, 2004, the Department published the initiation of these antidumping duty investigations (*see Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China*, 69 FR 12128) ("*Initiation Notice*").

Respondent Selection

On March 17, 2004, the Department sent a letter to potential respondents requesting the quantity and value of all exports to the United States. On March 17, 2004, the Department notified the Commercial Secretary at the Embassy of the PRC of the initiation of these antidumping duty investigations and its request for quantity and value information with regard to exports to the United States. On March 25, 2004, Cleo Inc., Crystal Products Inc., and Marvel Products, Inc., importers of tissue paper products and China National Aero-Technology Import & Export Xiamen Corporation ("China National"), an exporter of tissue paper recommended the Department to collect separate quantity and value data for retail reams of tissue paper and for all other exports of tissue paper for the purposes of selecting mandatory respondents in the tissue paper investigation. On March 30, 2004, Petitioners urged the Department to reject the importers' and China National's request to collect separate quantity and value data on the basis that the Department considers all forms of tissue paper as one class or kind of merchandise.

On March 30, 2004, we received tissue paper quantity and value responses from the following companies: Standard Quality Corp., Fujian Xinjifu Enterprises, Co., Ltd. ("Fujian Xinjifu Enterprises"), Qingdao

Wenlong Co., Ltd. ("Qingdao Wenlong"), Qingdao Kyung—E Gift Co., Ltd., Hunan Winco Light Industry Products Import & Export Co., Ltd. ("Hunan Winco Light") , China National, Fuzhou Light Industry Import & Export Co., Ltd. ("Fuzhou Light"), Fujian Provincial Shaowu City Huaguang Special Co., Ltd. ("Huanguang"), Fujian Nanping Investment & Enterprise Co. ("Fujian Nanping"), Guilin Qifeng Paper Co. Ltd. ("Guilin"), Ningbo Feihong Stationary Limited Company ("Ningbo"), Everlasting Business & Industry Corporation, Ltd. ("Everlasting Business and Industry"), Anhui Light Industrial Import & Export Co., Ltd. ("Anhui Light"), Fujian Naoshan Paper Industry Group Co., Ltd. ("Fujian Naoshan"), Samsam Production Limited & Guangzhou Baxi Printing Products Limited ("Samsam"), Max Fortune Industrial Limited, and Fuzhou Magicpro Gifts Co., Ltd. ("Magicpro").

On March 30, 2003, we received crepe paper quantity and value responses from the following companies: Huaguang, Fuzhou Light, Everlasting Business and Industry, Fujian Nanping, Fujian Xinjifu Enterprises, and Ningbo Spring.

On April 5, 2004, China National re-filed its quantity and value data noting that the company had found two errors in its quantity and value figures. On April 7, 2004, an interested party, who wished not to have his name disclosed to the public, filed a declaration with the Department in response to the quantity and value data filed by the Chinese exporters/producers. The interested party believed that there were instances of overstated export volumes, multiple companies reporting exports made by only one company, products not covered by these investigations, and the inclusion of sales to third countries. In response to this information, on April 12, 2004, the Department requested from parties who filed quantity and value responses to confirm their initially reported figures. All parties that initially filed quantity and value responses replied to the Department's request.

On April 27, 2004, the Department selected Fujian Naoshan and China National as mandatory tissue paper respondents and Huaguang and Fuzhou Light as mandatory crepe paper respondents. *See Memorandum To Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, From, Edward C. Yang, Office Director, Selection of Respondents for the Antidumping Investigation of Certain Tissue Paper Products from the PRC*, dated April 27, 2004 ("*Tissue Respondent Selection Memo*") and *Memorandum To Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, From, Edward C. Yang, Office Director, Selection of Respondents for the Antidumping Investigation of Certain Crepe Paper Products from the PRC*, dated April 27, 2004 ("*Crepe Respondent Selection Memo*"). On April 28, 2004, the Department issued Sections A, C, and D of the antidumping questionnaire to the mandatory respondents and to the Commercial Secretary at the Embassy of the PRC. On April 29, 2004, Magicpro requested that the Department reconsider its limit of two mandatory respondents in each investigation and include Magicpro as a third mandatory respondent. Additionally, Magicpro requested that it be considered a voluntary respondent in both investigations. Magicpro withdrew its request to be a voluntary respondent in the tissue paper investigation on June 25, 2004.

Physical Characteristics

On April 5, 2004, the Department sent letters to all potential respondents who filed quantity and value responses requesting comments on the appropriate physical characteristics of tissue and crepe paper products. On April 16, 2004, the Department received comments from Petitioners, Fujian Naoshan, China National, Huaguang, Fuzhou Light, and Guilin. On May 10, 2004, the Department invited interested parties to comment on draft physical characteristics. On May 17, 2004, the Department received comments from Petitioners and China National. On May 24, 2004, the Department issued the final physical characteristics to the mandatory respondents.

Mandatory Respondents

Fujian Naoshan submitted its responses to the Department's standard questionnaire on May 25, 2004 and June 18, 2004. Petitioners submitted comments on Fujian Naoshan's A, C, and D responses on June 3, 2004, and July 2, 2004. The Department issued supplemental questionnaires to Fujian Naoshan on June 21, 2004, and July 12, 2004. Fujian Naoshan filed their responses to the Department's supplemental questionnaires on July 2, 2004, August 9, 2004, and August 11, 2004. Petitioners filed additional comments on Fujian Naoshan's supplemental responses on August 18, 2004.

China National submitted its responses to the Department's standard questionnaire on May 28, 2004 and June 28, 2004. Petitioners submitted comments on China National's A, C, and D responses on June 4, 2004, July 9, 2004, July 20, 2004, and August 13, 2004. The Department issued supplemental questionnaires to China National on June 21, 2004, July 19, 2004, August 6, 2004, and August 27, 2004. China National filed their responses to the Department's supplemental questionnaires on July 12, 2004, August 9, 2004, August 13, 2004, and September 3, 2004. Petitioners filed comments on China National's supplemental responses on August 13, 2004, and August 18, 2004. On August 19, 2004, China National filed rebuttal comments to Petitioners' August 13, 2004, comments. On August 20, 2004, China National filed rebuttal comments to Petitioners' August 18, 2004, comments.

Huaguang filed its Section A response on May 27, 2004. On June 3, 2004, the Department issued a supplemental questionnaire to Huaguang requesting the company to clarify whether it had direct exports to the United States. On June 7, 2004, Huaguang filed its response stating that the company did not have any direct exports to the United States. On June 23, 2004, the Department de-selected Huaguang as a mandatory respondent because Huaguang is not an exporter of the subject merchandise. The Department selected Magicpro as a mandatory respondent (*see Memorandum To Jeff May, From Edward Yang, titled De-selection of Mandatory Respondent, Huaguang and Selection of Magicpro In the Antidumping Investigation of Certain Crepe Paper Products from the PRC.*) Additionally, the Department noted that it will not consider further whether a separate rate is appropriate for Huaguang, as separate rates in an investigation are applied only to exporters during the period of investigation.

Magicpro submitted its responses to the Department's standard questionnaire on May 19, 2004, June 25, 2004, and June 28, 2004. Petitioners submitted comments on Magicpro's A, C, and D responses on June 29, 2004, and July 7, 2004. The Department issued supplemental questionnaires to Magicpro on July 1, 2004, and July 19, 2004. Magicpro filed its supplemental section A responses on July 14, 2004. On August 2, 2004, Magicpro did not file its response to the Department's C and D supplemental questionnaire. On August 10, 2004, Magicpro filed a letter with the Department stating that it no longer wishes to participate in the crepe paper investigation.

Fuzhou Light submitted its responses to the Department's standard

questionnaire on May 28, 2004 and June 18, 2004. Petitioners submitted comments on Fuzhou Light's A, C, and D responses on June 4, 2004, and June 29, 2004. The Department issued supplemental questionnaires to Fuzhou Light on June 22, 2004, and July 12, 2004. Fuzhou Light filed its response to the Department's section A supplemental questionnaire on July 13, 2004. On August 2, 2004, Fuzhou Light filed a letter with the Department stating that it is no longer participating in the crepe paper investigation. Petitioners filed comments regarding the crepe paper investigation on August 18, 2004.

On July 22, 2004, the Department issued a letter to all mandatory respondents clarifying the units of measure reporting requirements for the factors of production ("FOP"). On July 29, 2004, the Department issued a letter to Fujian Naoshan and Fuzhou Light requesting clarification on the respondents' selection of date of sale.

Critical Circumstances

On June 18, 2004, Petitioners alleged that critical circumstances exist with respect to imports of tissue paper and crepe paper products. On June 30, 2004, the Department requested that Fujian Naoshan, China National, Magicpro, and Fuzhou Light submit monthly shipment data for 2001, 2002, 2003 and January through June 2004. Fujian Naoshan submitted its monthly shipment data on July 15, 2004, and amended data on July 16, 2004. China National submitted monthly shipment data on July 20, 2004 and amended data on July 26, 2004, and August 13, 2004. Magicpro submitted its monthly shipment data on July 20, 2004. Fuzhou Light submitted its monthly shipment data on July 23, 2004.

Petitioners submitted comments on the respondents' critical circumstances data on the following dates: July 20, 2004 (Fujian Naoshan and China National), July 23, 2004 (Magicpro), and July 26, 2004 (China National), and August 6, 2004 (Fujian Naoshan). On August 2, 2004, the Department requested that China National segregate subject and non-subject merchandise in its monthly shipment data for 2004 to conform to its reporting methodology for 2003. On August 6, 2004, the Department asked China National to report its critical circumstances data on a per-kilogram basis rather than a per-package basis. China National submitted its critical circumstances data incorporating these changes on August 13, 2004. *See Critical Circumstances* section of this notice.

Surrogate Country and Surrogate Values

On June 9, 2004, the Department sent a letter to all interested parties requesting comments on the appropriate surrogate country and publicly available information to value FOPs. On June 16, 2004, Petitioners filed comments concerning the selection of the appropriate surrogate country in these investigations. On July 28, 2004, Petitioners, Magicpro, and China National filed publicly available information to value FOPs. On August 2, 2004, the Department selected India as the appropriate surrogate country for the purposes of these investigations. *See Memorandum To The File, Through Edward C. Yang, Office Director, titled Antidumping Duty Investigations on Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Selection of a Surrogate Country*. On August 9, 2004, Petitioners filed additional comments on publicly available factor value information. On August 18, 2003, China National filed additional comments on publicly available factor value information.

Section A Respondents

On May 19, 2004, the Department received Section A responses from Fujian Xinjifu Enterprises (tissue and crepe), Anhui Light (tissue), B.A. Marketing and Industrial Co., Ltd. ("BA Marketing") (tissue), Ningbo (tissue and crepe), Hunan Winco Light (tissue), and Magicpro (tissue), hereafter known as "Section A Respondents". On May 26, 2004, the Department received Section A responses from Qingdao Wenlong (tissue), Max Fortune (tissue), and Samsam (tissue). On May 27, 2004, the Department received Section A responses from Everlasting Business and Industry (tissue and crepe) and Guilin (tissue and crepe). On May 28, 2004, the Department received Section A responses from Fujian Nanping (tissue and crepe) and Fuzhou Light (tissue).

On June 25, 2004, Magicpro withdrew its request to be considered as a voluntary respondent in the tissue paper investigation. On July 15, 2004, the Department asked Guilin to re-file its responses because the Department noted the tissue paper and crepe paper responses were identical in form and substance. On July 16, 2004, the Department issued supplemental Section A questionnaires to all companies that filed a Section A response with the Department except Guilin. On July 19, 2004, Guilin stated that it only sold tissue paper to the United States and therefore would like to be considered for only a tissue paper separate rate. Ningbo filed its supplemental Section A responses on July 28, 2004 (tissue), and on August 11, 2004 (crepe). On July 30, 2004, the Department received supplemental Section A responses from Fujian Xinjifu Enterprises and Hunan Winco Light. On August 4, 2004, the Department received supplemental Section A responses from Qingdao Wenlong, Everlasting Business & Industry, Magicpro, BA Marketing, Max Fortune, and Samsam. On August 6, 2004, the Department received supplemental Section A responses from Fuzhou Light and Fujian Nanping.

On July 29, 2004, Anhui Light filed its Supplemental Section A response. On August 4, 2004, the Department requested that Anhui Light re-file their supplemental Section A response due to improper filing. The Department did not receive a supplemental Section A response following the Department's August 4, 2004 letter. On August 10, 2004, the Department received a supplemental Section A response from Guilin.

Postponement of Preliminary Determination

On July 1, 2004, Petitioners requested that the Department extend the deadline for issuance of the preliminary determinations in these investigations by 30 days, or until August 25 2004, to allow the Department to fully analyze and consider the information and arguments presented by parties in these investigations. On July 12, 2004, the Department postponed the preliminary determination by 30 days, to August 25, 2004 (*see Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Postponement of the Preliminary Determinations of the Antidumping Duty Investigations* 69 FR 41785). On August 25, 2004, the Department postponed the preliminary determination by an additional 20 days to no later than September 14, 2004. *See Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Postponement of the Preliminary Determination of the Antidumping duty Investigations*, 69 FR 53414 (August 31, 2004). On September 10, 2004, Petitioners requested that the Department resort to total adverse facts available because China national failed to report complete and accurate company-specific FOP data.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the

date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the Petitioners. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On September 14, 2004, China National requested that, in the event of an affirmative preliminary determination in the tissue paper investigation, the Department postpone its final determination for tissue paper products until 135 days after the publication of the preliminary determination. All requests included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination for tissue paper products until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly as requested by China National.

We have received no such requests from any of the respondents in the investigation of certain crepe paper products at this time, and thus the investigation will proceed as scheduled.

Period of Investigation

The POI is July 1, 2003, through December 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (February 17, 2004). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

Tissue Paper Products

The tissue paper products subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this investigation does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and U.S. Customs and Border Protection ("CBP") purposes; however, the written description of the scope of these investigations is dispositive.

Excluded from the scope of this investigation are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTS 4803.00.20.00 and 4803.00.40.00).

Crepe Paper Products

Crepe paper products subject to this investigation have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye-colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame-retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this investigation may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this investigation does not have specific classification numbers assigned to them under the HTSUS. Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of these investigations is dispositive.

Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, inter alia, an interested party or any other person (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(I) of the Act. Section 776(b) of the Act further provides that an adverse inference may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information,

if it can do so without undue difficulties.

For the reasons discussed below, we determine that the use of partial adverse facts available ("AFA") is appropriate for the preliminary determination with respect to China National in the tissue paper investigation and total AFA is appropriate for the preliminary determination with respect to Magicpro and Fuzhou Light in the crepe paper investigation.

Tissue Paper Investigation

China National's Missing Factors of Production

In the course of this investigation, China National stated that its affiliated converters of subject merchandise, Putian City Hongye Paper Products, Co. Ltd. ("Hongye"), Putian City Xingan Paper & Plastic Co., Ltd. ("Xingan"), and Putian City Chengxiang Qu Li Feng Paper Products Ltd. ("Lifeng") receive either jumbo rolls of tissue paper or sheets of tissue paper from five suppliers, both affiliated and unaffiliated. In China National's original Section C and D filing, the company provided FOPs from Hongye and Guilin. The company stated that it attempted to obtain FOPs from Fujian Naoshan, however, Fujian Naoshan, "a competitor {and mandatory respondent in this investigation}, declined to provide data directly to China National and instead has indicated that it will submit Section D data directly to the Department in the context of its own Section D response." *See Response to the Questionnaire, Section D dated June 28, 2004* ("*Supplemental C and D*"). Additionally, China National did not provide FOPs for merchandise received from Fuzhou Hunan Paper Products Co., Ltd. ("Hunan") and Fuzhou Bonded Zone Jianye Packing Products Co., Ltd. ("Jianye") in its original Section C and D response.

In the Department's supplemental questionnaire, dated July 19, 2004, the Department requested that China National obtain missing FOPs from Hunan, Jianye, and Fujian Naoshan. The Department also requested that if China National was unable to obtain FOPs from Hunan, Jianye, and Fujian Naoshan that it provide documentary evidence showing that these suppliers are unwilling to supply their FOPs. In China National's supplemental C and D response dated August 9, 2004, China National stated that Fujian Naoshan, Hunan, and Jianye refused to supply their FOPs to China National. China National provided correspondences between itself and its suppliers showing China National's requests for FOP data and Fujian Naoshan's, Hunan's, and Jianye's responses. In lieu of the FOPs from Fujian Naoshan, Hunan, and Jianye, China National stated that it has calculated "applied percentages" to "merge small amounts supplied by unaffiliated suppliers into other amounts supplied in order to avoid fragmentation of calculations." *See Supplemental C and D* at page 21. China National stated that "given the small amounts involved and the generally homogeneous nature of the product, we believe this method is not distortive and will facilitate the Department's calculations." *See Supplemental C and D* at 21. In place of the paper making factors from Fujian Naoshan, China National has reported its own usage rates for jumbo rolls and cut-to-length tissue paper purchased from Fujian Naoshan. China National stated that "allocations between paper-making, jumbo rolls, and cut-to-length sheets were made on the basis of usage by each affiliated producer of white jumbo roll, colored jumbo roll, white cut-to-length sheets, colored cut-to-length sheets, and printed sheets." *See Second Supplemental C and D Response* at 6. After careful consideration, the Department finds that China National appropriately allocated usage rates among paper making, jumbo rolls, and cut-to-length tissue paper for production of tissue paper.

In accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. Because Fujian Naoshan, Jianye, and Hunan, which, as producers of subject merchandise, are interested parties to China National's segment of this proceeding, did not act to the best of their ability by failing to provide the FOP information requested by the Department, we preliminary determine that it is appropriate to make an adverse inference pursuant to section 776(b) of the Act with respect to the cut-to-length tissue paper purchased by China National from Fujian Naoshan, Jianye, and Hunan. As AFA for the missing FOPs for cut-to-length tissue paper produced by Fujian Naoshan, we have assigned a surrogate value of the Petition normal value in U.S. dollars for 100 units of 7 x 20, 20-count, white fold tissue paper converted to U.S. dollars per kilogram. *See Petition at Exhibit 30.* As facts available for the FOPs not provided by Jianye and Hunan, we calculated the percentage of missing factors by summing the quantity of cut-to-length tissue paper purchased by China National from Jianye and Hunan and dividing this quantity by the total quantity of cut-to-length paper purchases to arrive at a missing FOP factor. We increased China National's usage rate for Fujian Naoshan cut-to-length tissue paper with this calculated missing FOP factor. *See China National Analysis Memo* for calculation and *Supplemental C and D Response* at Exhibit 8.

China National's Inks and Dyes

In China National's Section D response submitted to the Department on June 28, 2004, the company did not report its ink and dye usage on a CONNUM-specific basis. Instead, China National provided worksheets showing the calculation of ink and dye usage based on the color or pattern produced. In the FOP databases, China National reported the sum of the several dye usage rates to make a single color and the sum of various ink usage rates to produce a particular pattern. Reporting on the sum of dye and ink usage does not permit the Department to assign surrogate values to individual dyes and individual inks. Therefore, in the supplemental questionnaire dated September 3, 2004, the Department requested that China National revise its ink and dye databases to "calculate actual dye and ink usage on a CONNUM specific basis rather than a pattern or color specific basis." In China National's second C and D response, the company stated that it had provided links between the ink and dye databases and the FOP databases to allocate ink and dye usage on a CONNUM-specific basis. However, the Department finds that the links provided in China National's September 3, 2004 data filing do not permit a CONNUM-specific allocation for dyes and inks.

In accordance with section 776(a)(2)(B) of the Act the Department is assigning a facts available usage rate to China National because it failed to provide the data in the manner the Department requested, which was to revise its ink and dye databases so the Department would be able to calculate their usage on a CONNUM rather than color-specific basis. Furthermore, in accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. Because China National did not act to the best of its ability by not attempting to provide adequate linkages between its ink and dye databases and

the FOP databases to allocate dyes and inks on a CONNUM-specific basis, we preliminary determine that it is appropriate to make an adverse inference pursuant to section 776(b) of the Act with respect to all China National entities usage rates of inks and dyes. The Department has selected the highest surrogate value for dye and ink from Indian Import Statistics and applied this value to the sum of dyes and the sum of inks, respectively, reported in the company's FOP databases.

Crepe Paper Investigation

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. As noted above, both Magicpro and Fuzhou Light informed the Department in the course of this investigation that they no longer wish to participate in the crepe paper investigation. As such Fuzhou Light and Magicpro failed to demonstrate entitlement to a separate rate and therefore, we preliminarily determined that the PRC-wide rate should apply to them. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125, 34127 (June 18, 2004).

Non-Market Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy. *See Initiation Notice.* In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(I) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in an economically comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Factor Valuations" section, below.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to James Doyle: Antidumping Duty Investigation of Certain Tissue Paper Products from the People's Republic of China: Request for a List of Surrogate Countries*, dated June 9, 2004 and *See Memorandum from Ron Lorentzen to James Doyle: Antidumping Duty Investigation of Certain Crepe Paper Products from the People's Republic of China: Request for a List of Surrogate Countries*, dated June 9, 2004. We select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* ("*Policy Bulletin*"), dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise, certain tissue paper and crepe paper products, and there is a greater availability and reliability of data from India on such merchandise than there is from other potential surrogate countries. *See Antidumping Duty Investigations on Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Selection of a Surrogate Country*, August 2, 2004 ("*Surrogate Country Memo*"). Since our issuance of the *Surrogate Country Memo*, we have not received comments from interested parties regarding this issue.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The two tissue paper mandatory respondents and the Section A tissue paper and crepe paper respondents have provided company-specific information and each has stated that it met the standards for the assignment of a separate rate.

We have considered whether each PRC company is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining

whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. Our analysis shows that the evidence on the record supports a preliminary finding of de jure absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See Memorandum to Edward C. Yang, Senior Enforcement Coordinator, China/NME Group, Import Administration, from Hallie Zink, Case Analyst through James C. Doyle, Program Manager, Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Separate Rates for Producers/ Exporters that Submitted Questionnaire Responses*, dated September 14, 2004 ("*Separate Rates Memo*").

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the mandatory tissue paper respondents and certain Section A tissue and crepe paper respondents, the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by the mandatory tissue paper respondents and certain Section A tissue and crepe paper respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the tissue paper mandatory respondents and certain Section A respondents which shipped certain tissue paper and certain crepe paper to the United States during the POI. For a full discussion of this issue and list of Section A respondents, please see the *Separate-Rates Memo*.

PRC–Wide Rate

The Department has data that indicates there are more known exporters of certain tissue paper and certain crepe paper products from the PRC during the POI than responded to our quantity and value ("Q&V") questionnaire. *See Tissue Respondent Selection Memo* and *Crepe Respondent Selection Memo*. We issued the Q&V questionnaire to 74 known Chinese exporters of tissue paper and 73 known Chinese exporters of crepe paper, as identified in the petition. We received 24 tissue paper Q&V questionnaire responses and seven crepe paper Q&V questionnaire responses, including those from the four mandatory respondents. Also, on April 28, 2004, we issued a questionnaire to the Government of the PRC (*i.e.*, Ministry of Commerce). Although all known exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its Section A questionnaire. Additionally, the two mandatory respondents in crepe paper Fuzhou Light and Magicpro both withdrew from the crepe paper investigation. Further, the Government of the PRC did not respond to the Department's questionnaire. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from other PRC producers/exporters, which are treated as part of the countrywide entity.

Information on the record of this investigation indicates that there are numerous producers/exporters of certain tissue paper and crepe paper products in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we have preliminary determined that certain PRC exporters of certain tissue paper and crepe paper products failed to respond to our questionnaires. As a result, use of facts available ("FA") pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire, thereby necessitating the use of FA to determine the PRC-wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). We find that, because the PRC-wide entity and certain producers/exporters did not respond at all to our request for information, they have failed to cooperate to the best of their ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In accordance with our standard practice, as AFA, we have assigned the PRC-wide entity the higher of the highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin) or the highest margin calculated for any respondent in this investigation. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China* 65 FR 34660 (May 31, 2000) and accompanying Issues and

Decision Memorandum, at Comment 1. In this case, we have applied a rate of 163.36 percent for tissue paper and 266.83 percent for crepe paper, the highest rate calculated in the *Initiation Notice* of these investigations from information provided in the petition. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany,* 63 FR 10847 (March 5, 1998).

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners' methodology for calculating the export price and NV in the petition is discussed in the initiation notice. *See Initiation Notice,* 69 FR at 12128. To corroborate the AFA margin of 163.36 percent for tissue paper, we compared that margin to margins we found for a significant exporting respondent. The Department did not calculate any margins for the mandatory crepe paper respondents. Therefore, to corroborate the AFA margin of 266.83 percent for crepe paper, we compared the U.S. price of a significant exporter of crepe paper to the U.S. price in the petition. We also compared the paper usage rate between a significant producer of crepe paper and the paper usage rate calculated in the petition.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, we found that the margins of 163.36 percent for tissue paper and 266.83 percent for crepe paper have probative value. *See Memorandum to the File from Michael Ferrier, Senior Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Senior Enforcement Coordinator, China/NME Group, Preliminary Determination in the Investigation of Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China, Corroboration Memorandum* ("*Corroboration Memo*"), dated September 14, 2004. Accordingly, we find that the margin, based on the petition information as described above, of 163.36 percent for tissue paper and 266.83 percent for crepe paper are corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire, as well as to exporters which did not demonstrate entitlement to a separate rate. *See e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the two tissue paper mandatory respondents and certain Section A respondents in both the tissue and crepe paper investigations.

Because this is a preliminary determination, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 67 FR 79054 (December 27, 2002).

Margins for Section A Respondents

The exporters which submitted responses to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI but were not selected as mandatory respondents in this investigation (Section A respondents) have applied for separate rates and provided information for the Department to consider for this purpose. Therefore, for the tissue paper Section A respondents which provided sufficient evidence that they are separate from the countrywide entity and answered other questions in section A of the questionnaire, we have established a weighted-average margin based on the rates we have calculated for the two mandatory tissue paper respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available. Tissue paper companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

For the crepe paper Section A respondents which provided sufficient evidence that they are separate from the country-wide entity and answered other questions in section A of the questionnaire, we have established a 266.83 margin based the petition rate. Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis,* or are determined entirely under Section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exports not individually investigated. This provision contemplates that the Department may weight-average margins other than zero, *de minimis,* and facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only a single price-to-NV dumping margin, there are no other estimated margins available with which to create the rate for the crepe paper Section A respondents. Therefore, we applied the petition margin of 266.83 percent as the rate for the crepe paper Section A respondents. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Quality Steel Flat Products From Indonesia,* 66 FR 22163 (May 3, 2001), *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003), *and Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan* 68 FR 62560 (November 5, 2003).

Date of Sale

Section 351.401(I) of the Department's regulations states that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of

invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Fujian Naoshan stated and provided sample sales contracts and invoices demonstrating that during the POI there were changes in delivery terms between the sales confirmation and the sales invoices. *See Fujian Naoshan's Supplemental C and D Response, dated August 9, 2004, at page C–3 and Exhibit S–20.* China National stated that there are changes up to the date of shipment. China National stated the quantity shipped is not confirmed until after loading of the shipment. China National stated that it will revise the invoiced quantity to reflect the actual amount of material shipped but not revise the date on the commercial invoice. After examining the sales documentation placed on the record by Fujian Naoshan and China National we preliminary determine that invoice date and date of shipment are the most appropriate date of sale for these respondents, respectively. We made this determination because, at this time, there is not enough evidence on the record to determine that the contracts used by the respondent establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China,* 67 FR 79054 (December 27, 2002).

Fair Value Comparisons

To determine whether sales of certain tissue paper products to the United States of the mandatory respondent were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for the mandatory tissue paper respondents, because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, and because the use of CEP price was not otherwise indicated.

We calculated EP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, see the company-specific analysis memorandum dated September 14, 2004.

We compared NV to weighted-average EPs in accordance with section 777A(d) of the Act. For a discussion of the surrogate values used for the movements deductions, *see Memorandum to The File, From Kit Rudd, Case Analyst, Selection of Factor Values for Fujian Naoshan Paper Industry Group Co. Ltd.* ("*Factor Valuation Memo*") at Exhibit 5.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. FOPs include, but are not limited to hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POI or most contemporaneous with the POI, product-specific, and tax-exclusive. We used the usage rates reported by respondents for materials, energy, labor, by-products, and packing. For a more detailed explanation of the methodology used in calculating various surrogate values, *see Factor-Valuation Memo.*

Mixed Packages

During the POI, China National sold packages of merchandise that contained both tissue paper and non-subject merchandise to the Untied States. China National stated that the non-subject merchandise consisted of mulberry paper, mylar film, iridescent film, oriented poly propylene, and crepe paper. China National noted that the percentage of these sales of mixed packages constitutes less than five percent of its total sales to the United States and urged the Department to exclude these sales from the margin calculation. In Petitioners' August 9, 2004 submission, Petitioners provided publicly available information to value the non-subject merchandise components of these mixed packages. For this preliminary determination, the Department has included these sales of mixed packages in the margin calculation because the products under investigation are cut-to-length sheets of tissue paper, and not packages of tissue paper. Packaging the subject merchandise with non-subject merchandise does not transform the subject merchandise into merchandise outside the scope of the investigation. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019 (February 6, 1995). Additionally, CBP disaggregates cut-to-length tissue paper from non-subject merchandise, requiring separate reporting and collection of duties on individual cut-to-length sheets of tissue paper regardless of how they are imported. As a result, CBP, in this case, will collect duty deposits only on cut-to-length sheets of tissue paper, not the entire package of tissue paper combined with non-subject merchandise.

As part of the margin calculation we valued mulberry paper, mylar film, iridescent film, oriented polypropylene ("OPP"), and crepe paper using Indian import statistics and surrogate values provided by Petitioners. In the margin calculation, we added the value of this non-subject merchandise to NV, analogous to the Department's practice of adding a respondent's packing costs (*e.g.*, cartons, adhesive tape, labels) to NV. Interested parties are invited to provide additional surrogate values for mulberry paper, mylar film, iridescent film, OPP, and crepe paper for consideration in the final determination. In addition, interested parties are invited to comment on the appropriateness of including the non-subject merchandise component of these mixed packages in the dumping margin calculation.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see *Factor-Valuation Memo*. For a detailed description of all actual values used for market-economy inputs, see Fujian Naoshan's analysis memorandum dated September 13, 2004.

Except as discussed below, we valued raw material inputs using the weighted-average unit import values derived from the Indian Import Statistics. *See Factor-Valuation Memorandum*. The Indian Import Statistics we obtained from the World Trade Atlas were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI. Where we could not obtain publicly available information contemporaneous with the POI with which to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China* ("*CTVs from the PRC*"), 69 FR 20594 (April 16, 2004).

Indian surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate for India for the POI. The average exchange rate was based on exchange rate data from the Department's website. The POI exchange rate used is 45.76 Rupees per USD.

Surrogate Values

Wood Pulp Surrogate Value

The Department notes that the value of the main input, wood pulp, is an important factor of production in our dumping calculation as it accounts for a significant percentage of NV. As a general matter, the Department prefers to use publicly available data to value surrogate values from the surrogate country to determine factor prices that, among other things: represent a broad market average; are contemporaneous with the POI; and are specific to the input in question. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530, (May 20, 2003) and accompanying Issues and Decision Memorandum, at Comment 1.

The companies produce tissue paper with softwood pulp, hardwood pulp, bamboo pulp, kraft pulp, and waste paper. We valued softwood pulp for Fujian Naoshan and China National using the companies respective market economy purchases. We valued the remaining forms of pulp and paper, except for bamboo pulp, by selecting all Harmonized Tariff Schedule ("HTS") categories of Indian Import Statistics that contain the type of wood in the HTS description, analogous to Petitioners' proposed calculation of this value. However, China National recommended "mechanical wood pulp" as a surrogate value for hardwood pulp. Since China National has not explained why mechanical wood pulp is an appropriate surrogate value for hardwood pulp, we have not included these HTS values in the surrogate value for hardwood pulp. We valued bamboo pulp using HTS values of softwood pulp since no HTS value for bamboo pulp was located. *See Factor Valuation Memo* at Exhibit 3.

Both Petitioners and China National proposed specific HTS classifications for waste paper and imported waste paper. To encompass all forms of waste paper and imported waste paper, we selected an HTS category that covered waste from all forms of paper and paperboard in the HTS description. *See Factor Valuation Memo* at Exhibit 3.

To value dyes, the Department used data obtained from *Indian Chemical Weekly* ("*ICW*") for prices in effect on the Mumbai Dyes Market during the POI. The Department used the highest available dye value from the *ICW* price quotes to value all dyes. The Department used these price quotes because they were contemporaneous and more closely descriptive than the dye HTS classifications. To value inks, the Department selected HTS classification 3215.19 from Indian Import Statistics. *See Factor Valuation Memo* at Exhibit 3. To value chemicals used in the production of tissue paper (*i.e.*, optical brightener, talcum powder, and whitener), the Department searched Indian Import Statistics for HTS classifications with the specific chemical name. *See Factor Valuation Memo* at Exhibit 3.

We valued electricity using rates from *Key World Energy Statistics 2003*, published by the International Energy Agency ("IEA"). The Department valued steam using a surrogate value calculated in the investigation of hot-rolled steel from China. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the Peoples' Republic of China Factors of Production: Valuation for Preliminary Determination* (May 3, 2001) and *Factor Valuation Memo* at Exhibit 7.

To value scrap, the Department searched Indian Import Statistics for HTS 4707.00, "waste and scrap of paper or paperboard." The Department valued water with the Asian Development Bank's Second Water Utilities Data Book (1997) and adjusted for inflation.

To value packing materials (cartons, plastic bags, and adhesive tape), the Department used Indian Import

Statistics published by WTA. *See Factor Valuation Memo* at Exhibits 3 and 4.

To value Factory Overhead ("FOH"), Selling, General & Administrative ("SG&A") expenses and Profit for all respondents, we used the 2002–2003 financial statement of Pudumjee Pulp & Paper Mills, Ltd. ("Pudumjee"), an integrated producer of tissue paper and other paper products. *See Factor Valuation Memo* at Exhibit 8. Consistent with Department practice, we have included "consumption of stores, colors, chemicals, etc." in factory overhead. There is no evidence that they are related solely to production. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China*, 39 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 3 and *Factor Valuation Memo* at Exhibit 8.

Critical Circumstances

On June 18, 2004, the Petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain tissue paper and certain crepe paper from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), because the Petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(I) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by Petitioners in their June 18, 2004, filing; (ii) new evidence obtained since the initiation of the LTFV investigation (*i.e.*, additional import statistics released by the U.S. Census Bureau); and (iii) the International Trade Commission's ("ITC") preliminary determination of material injury by reason of imports.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(I) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of certain tissue paper products and certain crepe paper products from the PRC, Petitioners make no statement concerning a history of dumping for the PRC. We are not aware of any antidumping order in the United States or in any country on certain tissue paper products and certain crepe paper products from the PRC. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from the PRC pursuant to section 733(e)(1)(A)(I) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales transactions sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001). Because the preliminary dumping margins of the mandatory respondents and the Section A Respondents for both tissue paper and crepe paper are greater than 15 percent for EP, we find there is a reasonable basis to impute to importers knowledge of dumping with respect to all imports of tissue paper and crepe paper from the PRC. *See Critical Circumstance Memo* at Attachment I.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in section 351.206(I) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the *Critical Circumstances Memo*, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known an antidumping case was pending on certain tissue paper imports and certain crepe paper imports from the PRC by February 2004, at the latest. In addition, in accordance with section 351.206(I) of the Department's regulations, we determined December 2003 through February 2004 should serve as the "base period," while March 2004 through May 2004 should serve as the "comparison period" in determining whether or not imports have been massive in the comparison period as these periods represent the most recently available data for analysis.

In this case, the volume of imports of certain tissue paper products and crepe paper products from the PRC, which are both classified within the same HTSUS U.S. subheadings, increased 51 percent from the critical circumstances base period (December 2003 through

February 2004) to the critical circumstances comparison period (March 2004 through May 2004). *See Critical Circumstances Memo* at Attachment III.

For the two tissue paper mandatory respondents, China National and Fujian Naoshan, that submitted critical circumstances data, we preliminarily determine, as noted above, that importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act. For China National in the tissue paper investigation, we also found massive imports over a relatively short period. *See Critical Circumstance Memo* at Attachment II. China National satisfies the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act and the massive imports in accordance with section 733(e)(1)(B) of the Act. Therefore, we preliminarily find that critical circumstances exist for China National. Critical circumstances do not exist for Fujian Naoshan. *See Critical Circumstance Memo* at Attachment II.

With regard to the PRC-wide entities in both cases and the crepe paper Section A respondents, as noted above, we preliminary find that importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act. In addition, we also find massive imports over a relatively short period because the volume of imports of certain tissue paper products and crepe paper products from the PRC-wide entity increased more than 15 percent. *See Critical Circumstance Memo* at Attachment II. Therefore, we preliminary find that critical circumstances exist for the PRC-wide entities in both cases and the crepe paper Section A respondents.

Given the analysis summarized above, and described in more detail in the *Critical Circumstances Memo,* we preliminarily determine that critical circumstances exist for imports of certain tissue paper products and crepe paper products from China National (tissue paper) and the PRC-wide entity (tissue paper and crepe paper). However, for Fujian Naoshan and the tissue paper Section A respondents receiving a separate rate, we preliminarily determine that no critical circumstances exist because we do not find massive imports over a relatively short period.

We will make a final determination concerning critical circumstances for all producers/exporters of subject merchandise from the PRC when we make our final dumping determinations in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(I)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Certain Tissue Paper Products From the PRC	
Mandatory Respondents:	
Fujian Naoshan	9.55
China National	125.58
PRC-Wide Rate	163.36
Section A Respondents:	
BA Marketing and Industrial Co., Ltd.	91.32
Everlasting Business and Industry Co., Ltd.	91.32
Fujian Xinjifu Enterprises Co., Ltd.	91.32
Fujian Nanping Investment and Enterprise Co., Ltd.	91.32
Fuzhou Magicpro Gifts Co., Ltd.	91.32
Fuzhou Light Industry Import and Export Co., Ltd.	91.32
Guiling Qifeng Paper Co., Ltd.	91.32
Max Fortune Industrial Limited	91.32
Ningbo Spring Stationary Co., Ltd.	91.32
Qingdao Wenlong Co., Ltd.	91.32
Samsam Production Limited and Guangzhou Baxi Products Co., Ltd.	91.32
Certain Crepe Paper Products From the PRC	
PRC-Wide Rate	266.83
Section A Respondents:	
Everlasting Business and Industry Co. Ltd.	266.83
Fujian Nanping Investment and Enterprise Co., Ltd	266.83
Fujian Xinjifu Enterprises Co., Ltd.	266.83
Ningbo Spring Stationary Co., Ltd.	266.83

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, with respect to Fujian Naoshan and the tissue paper Section A respondents receiving a separate rate, we will instruct the CBP to suspend liquidation of all entries of subject merchandise, entered. or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** With respect to China National, the crepe paper Section A Respondents receiving a separate rate and the PRC-wide entities for tissue paper and crepe paper, the Department will direct CBP to suspend liquidation of all entries of certain tissue paper products and certain crepe paper products from the PRC that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations in these investigations. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determinations of sales at less than fair value. Section 735(b)(2) of the Act requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determinations whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain tissue paper products and certain crepe paper products, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification reports issued in these proceedings and rebuttal briefs limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department.

This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determinations no later than 75 days after the date of publication of this preliminary determination for certain crepe paper products and 135 days after the date of publication of this preliminary determination for certain tissue paper products, pursuant to section 735(a)(2) of the Act.

These determinations are issued and published in accordance with sections 733(f) and 777(l)(1) of the Act.

September 14, 2004.

James J. Jochum,

Assitant Secretary for Import Administration.

[FR Doc. E4–2285 Filed 9–20–04; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, 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 October 21, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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 Leader, Information Management Case Services Team, 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: September 15, 2004.

Jeanne Van Vlandren,

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

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Report of Financial Need and Certification for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 100. *Burden Hours:* 400.

Abstract: The Department of Education (ED) uses this form to collect financial need information of students who have Javits fellowships and certification of academic progress of Javits fellows from institutions where Javits fellows attend. ED uses the data to calculate fellowship amounts for individuals and the total amount of program funds to be sent to the institution.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2550. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@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. E4–2280 Filed 9–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Director, 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 October 21, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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 Director, 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: September 15, 2004.

Jeanne Van Vlandren,

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

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Projects with Industry Compliance Indicator Form and Annual Evaluation Plan.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden: Responses: 350; *Burden Hours:* 13,500.

Abstract: The Projects with Industry compliance indicators are based on program regulations. The regulations: (1) Require that each grant application include a projected average cost per placement for the project (379.21(c)); (2) designate two compliance indicators as "primary" and three compliance indicators as "secondary" (379.51(b) and (c)); (3) require a project to pass the two "primary" compliance indicators and any two of the three "secondary" compliance indicators to receive a continuation award (379.50); and (4) change the minimum performance levels for three of the compliance indicators (379.53(a)(1)—Placement Rate; 379.53(a)(2)—Average Change in Earnings; and 379.53(b)(3)—Average Cost per Placement). Section 379.21 of the program regulations contains the specific information the applicant must include in its grant application.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2588. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. E4–2281 Filed 9–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–262–009, ER03–262–010, ER03–262–013, EC98–40–008, ER98–2770–009, and ER98–2786–009]

New PJM Companies, American Electric Power Service Corp., Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, Inc., Virginia Electric and Power Company, The Dayton Power and Light Company, and PJM Interconnection, LLC; Notice of Filing of Offer of Settlement

September 14, 2004.

On September 9, 2004, the Virginia State Corporation; the Commonwealth of Virginia, at the relation of its Governor, Mark R. Warner and its Attorney General, Jerry W. Kilgore; and the Louisiana Public Service Commission filed an Offer of Settlement (Settlement), in the above-docketed proceedings. By this notice, the period for filing initial comments on the Settlement is September 29, 2004. Reply shall be filed on or before October 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2276 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–251–000; RP04–248–000]

El Paso Natural Gas Company; Notice Shortening Answer Period

September 14, 2004.

On September 13, 2004, El Paso Natural Gas Company and the Settling Parties in the above-captioned proceedings, filed an Offer of Settlement comprised of an Explanatory Statement and Stipulation and Agreement in these proceedings. By this notice, the period for filing initial comments on the Offer of Settlement is hereby shortened to and including September 24, 2004. Reply shall be filed on or before October 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2274 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–586–000]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice Of Proposed Changes In FERC Gas Tariff

September 14, 2004.

Take notice that on September 10, 2004, Enbridge Pipelines (AlaTenn) L.L.C., (AlaTenn) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4, to be made effective October 1, 2004.

AlaTenn states that the purpose of the filing is to reflect a revised ACA unit rate for the twelve-month period beginning October 1, 2004. AlaTenn also states that its tariff sheets reflect a $0.0002 per dekatherm decrease in AlaTenn's rates under its Annual Charge Adjustment (ACA) clause that results from a corresponding decrease in the annual charge assessed AlaTenn by the FERC.

AlaTenn further states that due to an inadvertent error and the moving of its office personnel to comply with the Commission's Order 2004 Energy Affiliate Rule, its Regulatory Department did not receive the Commission's notice of the 2004 ACA unit change prior to the September 1, 2004, filing deadline for making such changes to its FERC Gas Tariff. Additionally, AlaTenn states that it

believes good cause exists and therefore requests a waiver of the requirements of § 154.207 of the Commission's regulations, and any other waiver that may be necessary, to permit the proposed tariff sheets to be made effective on October 1, 2004.

AlaTenn states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing is also assessable on-line at *http://www.ferc.gov*, using the "eLibrary" link. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2270 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–587–000]

Enbridge Pipelines (Midla) L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 14, 2004.

Take notice that on September 10, 2004, Enbridge Pipelines (Midla) L.L.C., (Midla) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be made effective October 1, 2004:

First Revised Sheet No. 4
First Revised Sheet No. 4A

Midla states that the purpose of the filing is to reflect a revised ACA unit rate for the twelve-month period beginning October 1, 2004. Midla also states that its tariff sheets reflect a $0.0002 per dekatherm decrease in Midla's rates under its Annual Charge Adjustment (ACA) clause that results from a corresponding decrease in the annual charge assessed Midla by the FERC.

Midla further states that due to an inadvertent error and the moving of its office personnel to comply with the Commission's Order 2004 Energy Affiliate Rule, its Regulatory Department did not receive the Commission's notice of the 2004 ACA unit change prior to the September 1, 2004 filing deadline for making such changes to its FERC Gas Tariff. Additionally, Midla states that it believes good cause exists and therefore requests a waiver of the requirements of § 154.207 of the Commission's regulations, and any other waiver that may be necessary, to permit the proposed tariff sheets to be made effective on October 1, 2004.

Midla states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing is also assessible on-line at *http://www.ferc.gov*, using the "eLibrary" link. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2271 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–588–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

September 14, 2004.

Take notice that on September 10, 2004, Enbridge Pipelines (KPC), (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be made effective October 1, 2004:

Second Revised Sheet No. 16
Second Revised Sheet No. 22
Second Revised Sheet No. 27
Second Revised Sheet No. 29
Second Revised Sheet No. 31

KPC states that the purpose of the filing is to reflect a revised ACA unit rate for the twelve-month period beginning October 1, 2004. KPC also states that its tariff sheets reflect a $0.0002 per dekatherm decrease in KPC's rates under its Annual Charge Adjustment (ACA) clause that results from a corresponding decrease in the annual charge assessed KPC by the FERC.

KPC further states that due to an inadvertent error and the moving of its office personnel to comply with the Commission's Order 2004 Energy Affiliate Rule, its Regulatory Department did not receive the Commission's notice of the 2004 ACA unit change prior to the September 1, 2004 filing deadline for making such changes to its FERC Gas Tariff. Additionally, KPC states that it believes good cause exists and therefore requests a waiver of the requirements of § 154.207 of the Commission's regulations, and any other waiver that may be necessary, to permit the proposed tariff sheets to be made effective on October 1, 2004.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing is also assessible on-line at *http://www.ferc.gov*, using the "eLibrary" link. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2272 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–10–005]

Enogex Inc.; Notice of Filing

September 14, 2004.

Take notice that on August 31, 2004, Enogex Inc. tendered for filing a revised Statement of Operating Conditions to become effective October 1, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern standard time September 29, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2266 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–265–002]

Northern Natural Gas Company; Notice of Compliance Filing

September 14, 2004.

Take notice that Northern Natural Gas Company (Northern) on September 10, 2004, tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 136
Second Revised Sheet No. 137
Second Revised Sheet No. 142A
Sixth Revised Sheet No. 145
First Revised Sheet No. 442B
First Revised Sheet No. 442C

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's August 27, 2004 Order that provides for consolidation of Rate Schedule FDD service agreements.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2267 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–585–000]

Northern Natural Gas Company; Notice of Limited Waiver

September 14, 2004.

Take notice that on August 31, 2004, Northern Natural Gas Company (Northern) tendered for filing a petition for limited waiver of Northern's FERC Gas Tariff in order to allow FDD shippers to use the imbalance-to-storage option for resolving imbalances during the period of August 25, 2004 through September 30, 2004.

Northern states that the purpose of the storage allocation provision is to prevent shippers from injecting or withdrawing from their FDD or IDD storage accounts when there is insufficient daily storage capacity to accommodate all daily storage nominations. On storage allocation days imbalance-to-storage shippers still have the option to resolve their imbalances using the Monthly Imbalance Trading or Monthly Cash-in/out provisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern standard time September 21, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2269 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–390–000]

OkTex Pipeline Company; Notice of Technical Conference

September 14, 2004.

Take notice that a technical conference will be held on October 5, 2004, from 10 a.m. to 5 p.m. (e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the conference is to address OkTex Pipeline Company's (OkTex) proposal to increase its Fuel Retention Percentage (FRP) for its Midstream System and establish a tracking mechanism to annually adjust its FRP. The Commission ordered staff to convene this technical conference in a September 10, 2004 order [1] directing the parties to meet to discuss the issue, and if possible, to settle this matter.

All interested persons are permitted to attend. For further information please contact: John Robinson at (202) 502–6808 or e-mail *JohnRobinson@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2268 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

[1] OkTex Pipeline Company, 108 FERC 61,227 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–13–002]

Saltville Gas Storage Company L.L.C.; Notice of Application To Amend Certificate

September 14, 2004.

On August 2, 2004, Saltville Gas Storage Company L.L.C. (Saltville) submitted a compliance filing pursuant to the Commission's June 14, 2004 "Order Issuing Certificates" in Docket Nos. CP04–13–000, CP04–14–000, and CP04–15–000. *Saltville Gas Storage Company L.L.C.*, 107 FERC ¶ 61,267 (2004). On August 5, 2004 the Commission issued a "Notice of Compliance Filing" in Docket No. CP04–14–002 taking notice of Saltville's August 2, 2004 submittal of a compliance filing. The notice established August 20, 2004 as the deadline for submitting protests to Saltville's compliance filing.

An application to amend the certificate of public convenience and necessity issued in Docket No. CP04–13–000 was also included in Saltville's August 2, 2004 compliance filing. The August 5, 2004 notice did not address the amendment application. Accordingly, Saltville's amendment application is the subject of the instant notice.

Specifically, Saltville's August 2, 2004 compliance filing contains rates designed on the *Equitable* method as required in the June 14, 2004 Order, as well as rates based on an alternately proposed rate design method. The filing also reflects a lowering of the originally proposed capacity of Saltville's salt storage caverns. Therefore, the Commission is considering Saltville's compliance filing to be, in part, a request in Docket No. CP04–13–002 to amend the certificate of public convenience and necessity issued in Docket No. CP04–13–000. The filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866)208–3676, or for TTY contact (202) 502–8659.

Any person who filed a motion to intervene in response to Saltville's applications filed on November 10, 2003 does not need to refile a motion to intervene in response to this request for

an amendment, but may file additional comments by the comment date below. Otherwise there are two ways to become involved in the Commission's review of the amendment in Docket No. CP04–13–002. First, any person who is not already a party to these proceedings wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date indicated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission by the date indicated below an original and two copies of their comments in support of or in opposition to this amendment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the amendment provide copies of their protests only to the applicant and any party directly involved in the protest. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: September 21, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2273 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Duke Power, A Division of Duke Energy Corporation, South Carolina; Project No. 2503–080; Notice of Availability of Environmental Assessment

September 13, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 380), the Commission's staff have reviewed an application for non-project use of project lands and waters at the Keowee-Jocassee Hydroelectric Project (FERC No. 2503) and have prepared an Environmental Assessment (EA) on the application. The project consists of two reservoirs, Lake Jocassee and Lake Keowee. The proposed site for non-project use is in Oconee County, South Carolina, located on Lake Keowee. Lake Keowee is located on the Keowee River.

Specifically, the project licensee (Duke Power) has requested Commission approval to permit Keowee Town Houses, LLC, to construct and operate a commercial/residential marina on Lake Keowee. The marina will include 10 cluster docks with a total of 56 boat slips, and will be used privately by the residents of The Towne Homes at Keowee subdivision. In the EA, Commission staff analyzed probable environmental effects of the proposed marina improvements and have concluded that approval of the proposal, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled "Order Approving Non-project Use of Project Lands and Waters," which was issued August 25, 2004 and is available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Web site *http://www.ferc.gov* using the "e-library" link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659, TTY (202) 208–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2275 Filed 9–20–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2004–0006, FRL–7816–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Exploring Public and Private Preferences for Children's Health Risk Reduction, EPA ICR Number 2160.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 22, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OA–2004–0006, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Nathalie Simon, Office of Policy, Economics and Innovation, Mail Code 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2347; fax number: (202) 566–2363; e-mail address: *simon.nathalie@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2004–0006, which is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information (OEI) Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Exploring Public and Private Preferences for Children's Health Risk Reduction.

Abstract: Regulations promulgated by the U.S. Environmental Protection Agency generally have as their primary purpose the safeguard of human health. Economic analyses of the regulations' costs and benefits are often required as part of the rule-making process. Executive Order 12866 for instance requires a benefit-cost analysis of every rule expected to have a significant impact of $100 million or more.

Although most benefit cost analyses to date have been conducted using scientific and economic valuation estimates derived for adult populations, there is increased interest in conducting analyses by specific age group or life stage. Executive Order 13045, for instance, requires all agencies to specifically consider the effects of regulations on children. Advances in the scientific community have recently resulted in age-specific assessments of risk and exposure to various environmental contaminants. Similar advances are now sought in the economics field.

Currently, little is known about how the public values reductions in risk to health for children. Only a handful of valuation estimates exist in the literature that are specific to populations under the age of 18 as noted in USEPA's Children's Health Valuation Handbook (2002). Nor is it evident how other risk characteristics (e.g. the type of risk, the uncertainty associated with the health outcome, and the populations affected) affect an individual's willingness to pay for programs to reduce these risks.

To begin addressing these gaps, the National Center for Environmental Economics, in collaboration with the Office of Children's Health Protection, is in the process of designing a survey instrument to elicit willingness to pay values for cancer risk reductions to children and adults. Several versions of the survey instrument are planned so as to adequately address differences in values for these two populations as well as to assess differences in public and private scenarios.

The purpose of the proposed ICR is to gain approval for the conduct of a series of cognitive (or one-on-one) interviews as part of the survey development process. Cognitive interviews are a crucial component in the survey development process as they allow survey developers to identify problematic approaches, terminology, and graphics in the survey instrument. A total of 72 interviews are anticipated.

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

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The only burden imposed by the interviews on respondents will be the time required to complete the survey and answer interview questions. The survey developers estimate that this will require an average of 1.5 hours per respondent. With a total of 72 respondents this requires a total of 108 hours. Based on an average hourly rate of $24.95 [1] (including employer costs of all employee benefits), the survey developers expect that the average per-respondent cost for the pilot survey will be $37.43 and the corresponding one-time total cost to all respondents will be $4042.00. Since this information collection is voluntary and does not involve any special equipment, respondents will not incur any capital or operation and maintenance (O&M) costs.

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

Dated: August 27, 2004.

Al McGartland,

Office Director, National Center for Environmental Economics, Office of Policy, Economics and Innovation.

[FR Doc. 04–21186 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

[1] Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, total compensation, March 2004 *(http://stats.bls.gov/news.release/ecec.t02.htm).*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7816–5]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in his capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182 and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

The Committees are meeting to review and comment on the 2005 Strategic Operational Plan of the Commission for Environmental Cooperation, and other business.

DATES: The Committees will meet on Thursday, October 14, 2004 from 9 a.m. to 6 p.m., and on Friday, October 15, 2004 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Wyndham City Center, 1143 New Hampshire Ave., NW., Washington, DC 20037. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 8, 2004.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 04–21187 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7816–3]

Seventh Meeting of the World Trade Center Expert Technical Review Panel to Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel (or WTC Technical Panel) will hold its seventh meeting intended to provide for greater input on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center. The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the World Trade Center attacks. The panel will meet several times over the course of approximately two years. These panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The seventh meeting of the WTC Technical Panel will be held on October 5, 2004, from 9 a.m. to 5 p.m., eastern daylight savings time. On-site registration will begin at 8:30 a.m.

ADDRESSES: The WTC Technical Panel meeting will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (*e.g.*, driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the panel's Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the WTC Technical Panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. WTC Technical Panel Meeting Information

Eastern Research Group, Inc. (ERG), an EPA contractor, will coordinate the WTC Technical Panel meeting. To attend the panel meeting as an observer, please register by visiting the Web site at *http://www.epa.gov/wtc/panel.* You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. e.d.s.t. at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is September 30, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com*, subject line: WTC.

II. Background Information

Immediately following the September 11, 2001 terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and

scientific expertise on the national emergency. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at *http://www.epa.gov/wtc/*.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster,* is available on the Web at *http://www.epa.gov/ncea/wtc.htm*. Numerous additional studies by other Federal and State agencies, universities, and other organizations have documented impacts to both the outdoor and indoor environments, and to human health.

While these monitoring and assessment activities were ongoing, and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June 2002 until December 2002, residents impacted by World Trade Center dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003, by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/*.

A critical component of understanding long-term human health impacts is the establishment of health registries. The World Trade Center Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the World Trade Center towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html*.

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with World Trade Center assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one- or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments.

The focus of the seventh meeting of the WTC Technical Panel is to review status of a sampling proposal (refined based on input from the September 13 meeting), to provide an update on the World Trade Center signature validation study, and to continue to brief the panel members on current public health studies related to World Trade Center impacts. Further information on meetings of the WTC Technical Panel can be found at the Web site identified earlier: *http://www.epa.gov/wtc/panel*.

III. How To Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: September 15, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–21189 Filed 9–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 003772F.
Name: A.T.I., U.S.A., Inc.
Address: 1201 Corbin Street, Elizabeth, NJ 07201.
Date revoked: September 6, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004523F.
Name: Ronald A. Pfeiffer dba Auto Shipping International.
Address: 6 Butternut Lane, Monroe, NJ 08831.
Date Revoked: September 1, 2004.
Reason: Surrendered license voluntarily.

License Number: 002983F.
Name: Ben-G Incorporated.
Address: 460 E. Carson Plaza Drive, Suite 105, Carson City, CA 90746.
Date Revoked: September 1, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018601NF.

Name: Commercial Cargo Carriers, Inc.
Address: 3305 Spring Mountain Road, Suite 24, Las Vegas, NV 89102.
Date Revoked: September 1, 2004.
Reason: Failed to maintain valid bonds.

License Number: 004193F.
Name: EMC Shipping, Inc.
Address: 810 Third Avenue, Seattle, WA 98104.
Date Revoked: August 10, 2004.
Reason: Surrendered license voluntarily.

License Number: 018052N.
Name: International Ocean Logistics, Inc.
Address: 9390 NW 23rd Street, Pembroke Pines, FL 33024.
Date Revoked: August 21, 2004.
Reason: Failed to maintain a valid bond.

License number: 017194F.
Name: Joseph B. Hohenstein dba Joseph B. Hohenstein Customhouse Brokers.
Address: 645 Indian Street, Suite 209, Savannah, GA 31401.
Date revoked: August 16, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018380F.
Name: MCS Cargo Systems, Inc. dba Expedite America Express.
Address: 2688 Coyle Lane, Elk Grove Village, IL 60007.
Date Revoked: August 18, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018620NF.
Name: Motherlines, Inc.
Address: 11 Sunrise Plaza, Suite 301, Valley Stream, NY 11580.
Date Revoked: August 22, 2004.
Reason: Failed to maintain valid bonds.

License Numer: 015862N.
Name: NW Express, Inc.
Address: 5250 W. Century Blvd., Suite 634, Los Angeles, CA 90045.
Date Revoked: August 17, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016918N.
Name: Port of Palm Cold Storage, Inc.
Address: 1016 Clemons Street, Suite 400, Jupiter, FL 33477.
Date Revoked: August 22, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015093N.
Name: Prestige Shipping, Inc.
Address: 7270 NW 12th Street, Suite 381, Miami, FL 33126.
Date Revoked: August 29, 2004.
Reason: Failed to maintain a valid bond.

License Number: 002355NF.
Name: Pro-Service Forwarding Co., Inc.
Address: 8915 S. La Cienega Boulevard, Inglewood, CA 90301.
Date Revoked: August 18, 2004.
Reason: Failed to maintain valid bonds.

License Number: 004462F.
Name: R S Exports, Inc.
Address: 8621 Bellanca Avenue, Suite 201, Los Angeles, CA 90045.
Date Revoked: August 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017437F.
Name: Shoreline Express, Inc.
Address: 13231 Eastern Avenue, Suite No. 3, Palmetto, FL 34221.
Date Revoked: August 28, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 04–21213 Filed 9–20–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017649NF	Access Freight Forwarders, Inc., 8220 NW 30th Terrace, Miami, FL 33122	July 1, 2004.
018516N	K.E.I. Enterprise dba KEI Logix, 249 E. Redondo Beach, Gardena, CA 90248	August 4, 2004.
001727F	Lysan Forwarding Company, Inc., 5220 NW 72nd Avenue, Bay 34, Miami, FL 33166	August 5, 2004.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. 04–21214 Filed 9–20–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR Part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Boats International Inc., 771 West Atlantic Blvd., Pompano, FL 33060. Officers: Carolina Lacayo Kramme, Director (Qualifying Individual), Thomas Kramme, Managing Director.

Limco Logistic Inc., 12550 Biscayne Blvd., Suite 406, North Miami, FL 33181. Officer: Michael Lyamport, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Katt Worldwide Logistics, LLC, 4105 S. Mendenhall Road, Memphis, TN 38115. Officers: Thomas Nettle (Qualifying Individual), Michael Kattawar, President.

Ocean Lines Logistics, Inc., 2801 NW 74th Avenue, Suite 105, Miami, FL 33122. Officers: Paul Jasinksi, President (Qualifying Individual), Najib Nicholas, Secretary.

Karen V. Gregory,
Assistant Secretary.
[FR Doc. 04–21215 Filed 9–20–04; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: October 6, 2004, 8 a.m.–4 p.m. e.d.t.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., 20201, Room 325A.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Jacob Kaplan, OASPE, 200 Independence Ave., SW., 20201, Room 411B.3. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Jacob Kaplan at (202) 401–6119, *jacob.kaplan@hhs.gov.* **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting should call or e-mail Mr. Kaplan by October 1, 2004, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: On April 22, 2004, we published a notice announcing the establishment and requesting nominations for individuals to serve on the Panel. The panel members are: Mark Pauly, Edwin Hustead, Alice Rosenblatt, Michael Chernew, David Meltzer, John Bertko, and William Scanlon.

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. Interested persons may observe the deliberations and discussions, but the Panel will not hear public comments during this time. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 17, 2004.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–21205 Filed 9–20–04; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04KI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

2004 State Medicaid Survey—New—National Center for Chronic Disease Prevention and Control (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The proposed 2004 State Medicaid Survey will assess State Medicaid Programs to determine the extent of coverage for tobacco-dependence treatment. Tobacco use is the leading preventable cause of death in the United States. One of the 2010 National Health Objectives is to increase insurance coverage of evidence-based treatment for nicotine dependence (*i.e.*, Food and Drug Administration [FDA]-approved pharmacotherapies and total coverage of behavioral therapies in Medicaid programs) from 36 states to all 50 states and the District of Columbia. To increase both the use of treatment by smokers attempting to quit and the number of smokers who quit successfully, the Guide to Community Preventive Services recommends reducing the out-of-pocket cost of effective tobacco-dependence treatments (*i.e.*, individual, group and telephone counseling and FDA-approved pharmacotherapies). The 2000 Public Health Service (PHS) Clinical Practice Guideline supports expanded insurance coverage for tobacco-dependence treatment.

In 2000, approximately 32 million low-income persons in the United States received their health insurance coverage through federally funded State Medicaid programs; approximately 11.5 million (36%) of these persons smoked. The amount and type of coverage for tobacco-dependence treatment offered by Medicaid has been reported for 1998 and annually from 2000–2003. In 2002 and 2003, surveys were funded by the Robert Wood Johnson Foundation (RWJF). RWJF will no longer be tracking

this coverage; therefore, CDC proposes to fund the survey. CDC proposed to fund the survey from 2004–2010. The survey will allow CDC to continue to measure progress of State Medicaid Programs toward the 2010 National Health Objective and document changes in the provision of coverage toward reaching the Healthy People 2010 goal.

The objectives of the project are as follows:

- Conduct a study of all 50 states and the District of Columbia Medicaid Programs to determine coverage for tobacco dependence treatment (counseling and FDA-approved pharmacotherapies) and assess compliance with the PHS recommendations.
- Analyze and publish the data.

Medicaid recipients have approximately 50% greater smoking prevalence than the overall U.S. adult population, and they are disproportionately affected by tobacco-related disease and disability. Substantial action to improve coverage will be needed if the United States is to achieve the 2010 National Health Objective of 12% smoking prevalence among adults.

This project will provide an opportunity to assess the extent of coverage for tobacco-dependence treatment under Medicaid. In 2002, 36 states provided coverage for some FDA approved medications; however, only 10 states provided some form of coverage for counseling and only 2 states provided comprehensive coverage, counseling and medication. Fifteen states provided no coverage. This project will be conducted with a mailed request to State Medicaid directors to identify a knowledgeable person within their system to respond to the survey. The survey will be mailed to the identified individuals.

Respondents will be asked to submit a written copy of their Medicaid coverage policies. If responses are not received, individuals will receive a telephone follow-up. Respondents are mailed the survey that they completed the previous year and asked to make revisions if changes have occurred. If this is being done by the person who completed the survey the previous year, the response burden is reduced. If the questions are not answered or not answered clearly, follow-up is required which takes additional time. All 50 states plus the District of Columbia have reported in the past. There is no cost to respondents except the time to complete the survey.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
State Medicaid Programs with Minimal Response	35	1	15/60	9
State Medicaid Programs with Maximum Response	16	1	1	16
Total	51			25

Dated: September 14, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–21170 Filed 9–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–3:15 p.m., October 21, 2004.

Place: Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, telephone (202) 638–1616, fax (202) 347–1813.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, CDC, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors, NIOSH shall provide guidance to the Director, NIOSH on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the NIOSH:

(1) Conform to appropriate scientific standards;

(2) Address current, relevant needs; and

(3) Produce intended results.

Matters To Be Discussed: Agenda items include orientation for new Board members; report from the Director of NIOSH; the CDC Futures Initiative; NIOSH program assessment; the NIOSH research to practice initiative; the NIOSH nanotechnology initiative; and closing remarks.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

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 the Agency for Toxic Substances and Disease Registry.

Dated: September 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–21169 Filed 9–20–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–249, CMS–906, CMS–2088–92, CMS–R–48, CMS–382, CMS–484 and CMS–846–849, 854, 10125, 10126]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), 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.

1. *Type of Information Collection Request:* Extension of currently approved collection.

Title of Information Collection: Hospice Cost Report and Supporting Regulations Contained in 42 CFR 413.20 and 413.24.

Use: The hospice cost report is the mechanism used to collect data from providers for rate evaluations for the Prospective Payment System (PPS). Once CMS obtains this information, we will update the PPS as mandated by Congress.

Form Number: CMS–R–249 (OMB#: 0938–0758).

Frequency: Annually.

Affected Public: Not-for-profit Institutions and Business or other for-profit.

Number of Respondents: 1,720.

Total Annual Responses: 1,720.

Total Annual Hours: 302,720.

2. *Type of Information Collection Request:* Extension of currently approved collection.

Title of Information Collection: Fiscal Soundness Reporting Requirements and Supporting Regulations in 42 CFR 417.126, 422.502(f) and 422.516(a).

Use: CMS needs this information to establish on-going fiscal soundness of the Managed Care Organizations and Insurance Companies.

Form Number: CMS–906 (OMB#: 0938–0469).

Frequency: Quarterly and Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 150.

Total Annual Responses: 750.

Total Annual Hours: 150.

3. *Type of Information Collection Request:* Extension of currently approved collection.

Title of Information Collection: Outpatient Rehabilitation Cost Report and Supporting Regulations Contained in 42 CFR 413.20 and 413.24.

Use: This form is used by community mental health centers to report their health care costs to determine the amount of reimbursement for services furnished to Medicare beneficiaries.

Form Number: CMS–2088–92 (OMB#: 0938–0037).

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for profit Institutions, State, Local or Tribal governments.

Number of Respondents: 618.

Total Annual Responses: 618.

Total Annual Hours: 61,800.

4. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Hospital Conditions of Participation (COP) and Supporting Regulations in 42 CFR 482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 485.618 and 485.631.

Use: Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals and critical access hospitals (CAHs).

Form Number: CMS–R–48 (OMB# 0938–0328).

Frequency: Annually.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Gov.

Number of Respondents: 6,085.

Total Annual Responses: 6,085.

Total Annual Hours: 5,627,513.

5. *Type of Information Collection Request:* Revision of currently approved collection.

Title of Information Collection: ESRD Beneficiary Selection and Supporting Regulations Contained in 42 CFR 414.330.

Use: ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers.

Form Number: CMS–382 (OMB#: 0938–0372).

Frequency: Other: one time only.

Affected Public: Individuals or Households, Business or other for-profit, and Not-for profit Institutions.

Number of Respondents: 7,400.

Total Annual Responses: 7,400.

Total Annual Hours: 617.

6. *Type of Information Collection Request:* Revision of currently approved collection.

Title of Information Collection: Oxygen.

Use: This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute. Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) etc.

Form Number: CMS–484 (OMB#: 0938–0534).

Frequency: Other-as needed.

Affected Public: Business or other for-profit.

Number of Respondents: 11,000.

Total Annual Responses: 1,200,000.

Total Annual Hours: 497,000.

7. *Type of Information Collection Request:* Revision of currently approved collection.

Title of Information Collection: Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation.

Use: The information collected on these forms is needed to correctly process claims and ensure proper claim payment. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims. In addition to the other revisions in this collection, it is important to note the introduction of two new CMS form numbers. CMS form numbers 851, 852, and 853 have been replaced with DIFs and have been issued new CMS form numbers. CMS form number 851 is now CMS form number 10125. CMS form numbers 852 and 853 have now combined into a single DIF with CMS form number 10126.

Form Number: CMS–846–849, 854, 10125,10126 (OMB#: 0938–0679).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 51,000.

Total Annual Responses: 5,400,000.

Total Annual Hours: 1,215,000.

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/regulations/pra/*, 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 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 9, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–21027 Filed 9–20–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–263 and CMS–10082]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), 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.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* On-site Inspection for Durable Medicare Equipment (DME) Supplier Location and Supporting Regulations in 42 CFR, Section 424.57; *Form No.:* CMS–R–263 (OMB # 0938–0749); *Use:* CMS collects information on any supplier who submits bills to Medicare or who applies for a Medicare Billing Number before allowing the supplier to enroll. This information must minimally clearly identify the provider and its place of business as required in Public Law 99–272 Section 9202(g) and provide all necessary documentation to prove that they are qualified to perform the services for which they are billing. The on-site inspection for Durable Medical Equipment (DME) Supplier Location verifies this information; *Affected Public:* Business or other for-profit, not-for-profit institutions, and State, Local, or Tribal Gov.; *Number of Respondents:* 20,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 10,000.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CMSO Survey of States: Performance Measurement Reporting Capability; *Form No.:* CMS–10082 (OMB # 0938–0898); *Use:* Because of the wide variability of Medicaid and SCHIP financing and service delivery approaches, there is little common ground from which to develop uniform reporting on performance measures by states. While CMS has decided on the first seven measures to be used, the ability of states to calculate those measures using HEDIS directly or HEDIS specifications (*e.g.*, when calculating measures from fee-for-service claims data) is highly variable. Current efforts are focused on assessing the capability of each state to report on the selected measures and on helping states to make necessary adjustments in order to be able to report measures uniformly so that state-to-state comparisons can be made. To accomplish this, states will be requested to report available numerator and denominator data for the seven core HEDIS measures via a survey instrument created for this purpose. The data will be requested for each state's Medicaid and SCHIP programs by delivery system; *Frequency:* Once; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 2,360.

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/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.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: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 9, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–21028 Filed 9–20–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: Reporting Form for the MCHB National Hemophilia Program Grantees and Hemophilia Treatment Center (HTC) Affiliates Having Factor Replacement Product (FRP) Programs—New

The Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is planning to implement an annual reporting form required of grantees of the MCHB National Hemophilia Program and their HTC affiliates having a factor replacement product (FRP) program. The purpose of the form is to provide systematic information and data comprising a financial overview of the FRP programs of the HTCs receiving funding through grantees of the MCHB National Hemophilia Program. The proposed form will constitute a new reporting requirement for the MCHB National Hemophilia Program grantees and their affiliate HTCs having FRP programs.

Data from the form will provide quantitative information on the financial and services provision aspects of each of the HTC FRP programs under each of the MCHB National Hemophilia Program grantees, specifically: (a) Patient FRP program participation, (b) FRP program revenue, (c) FRP program costs, (d) FRP program net income, and (e) use of FRP program net income. This form will provide data useful to grantees and their affiliate HTCs having FRP programs as well as to the MCHB National Hemophilia Program in assessing FRP program performance including FRP program operational costs appropriateness, FRP program cost efficiency, and FRP program services benefits-information that is essential to evaluating HTCs having FRP programs, grantees, and the MCHB National Hemophilia Program.

Each HTC having an FRP program is to submit their report to their grantee and each grantee is to submit the individual reports of each of their affiliate HTCs having an FRP program to the MCHB National Hemophilia Program as a part of their annual grant application.

The burden estimate for this project is as follows:

FORM HRSA/MCHB FACTOR REPLACEMENT PRODUCT (FRP) DATA SHEET FOR HEMOPHILIA TREATMENT CENTERS HAVING FRP PROGRAMS

Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
68	1	68	30	2040

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: September 13, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–21130 Filed 9–20–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; 67 FR 46519, July 15, 2002; and 68 FR 787–793, January 7, 2003; as last amended at 68 FR 64357–64357, November 13, 2003; 68 FR 64357–64357–64358.)

This notice reflects several organizational changes in the Health Resources and Services Administration. Specifically, this notice updates the functional statement of the Office of Planning and Evaluation (RA5); Office of Information Technology (RAG); Bureau of Primary Health Care (RC); Maternal and Child Health Bureau (RM); Bureau of Health Professions (RP); and the HIV/AIDS Bureau (RV). This notice also changes the organizational titles of the Special Programs Bureau (RR) to the Healthcare Systems Bureau and the Office of Management and Program Support (RS) to the Office of Administration and Financial Management. The major components of the reorganization, in addition to streamlining and delayering the organization, includes: (1) The transfer of the Ricky Ray Hemophilia/ Relief Fund Act of 1998 administration from the Bureau of Health Professions (RP) to the Healthcare Systems Bureau (RR); (2) the transfer of the 340B Drug Pricing Program from the Bureau of Primary Health Care (RC) to the Healthcare Systems Bureau (RR); (3) the transfer of the Poison Control Center Enhancement and Awareness Act administration from the Maternal and Child Health Bureau (RM) to the Healthcare Systems Bureau (RR); (4) the consolidation of all grants and Federal assistance activities to the newly established Office of Federal Assistance Management (RJ); and (5) the transfer of the Border Health function from the Office of International Health Affairs (RAH) to the Office of Rural Health Policy (RH).

Chapter RA—Office of the Administrator

Section RA–10, Organization

Delete in its entirety and replace with the following:

The Office of the Administrator (OA) is headed by the Administrator, Health Resources and Services Administration, who reports directly to the Secretary. The OA includes the following components:

(1) Immediate Office of the Administrator (RA);
(2) Office of Equal Opportunity and Civil Rights (RA2);
(3) Office of Planning and Evaluation (RA5);
(4) Office of Communications (RA6);
(5) Office of Minority Health (RA9);
(6) Office of Legislation (RAE);
(7) Office of International Health Affairs (RAH); and
(8) Office of Information Technology (RAG)

Section RA–20, Functions

(1) Delete the functional statements for the Office of Financial Policy and Oversight (RAJ); the Division of Financial Integrity (RAJ1); and the Division of Grants Policy (RAJ2) and move the functions to the newly established Office of Federal Assistance Management (RJ);

(2) Delete the Division of Border Health (RAH1) and move the functions to the Office of Rural Health Policy (RH); and (3) Delete the functional

statements for the Office of Planning and Evaluation (RA5) and the Office of Information Technology (RAG) in their entirety and replace it with the following:

Office of Planning and Evaluation (RA5)

(1) Serves as the Administrator's primary staff unit for coordinating the Agency's strategic, evaluation and research planning processes; (2) oversees communication and maintains liaison between the Administrator, other OPDIVs, higher levels of the Department and other Departments on matters involving analysis of program policy undertaken in the Agency; (3) prepares policy analysis papers and other planning documents as required in the Administration's strategic planning process; (4) analyzes budgetary data with regard to planning guidelines; (5) collaborates in the development of budgets, performance plans, and performance reports required under the Government Performance and Results Act (GPRA); (6) coordinates activity related to the prevention agenda, Healthy People activities and other Departmental and Agency initiatives; (7) analyzes and coordinates the information needs of the Agency, including coordination of the public use reports clearance function; (8) analyzes policy issues surrounding the application and promotion of healthcare information technology in HRSA programs; and (9) serves as the focal point for health systems organization and financing issues, with particular emphasis on the Agency's relationship with the Centers for Medicare and Medicaid Services and safety net providers.

Office of the Director and Chief Information Officer (RAG)

Responsible for the organization, management, and administrative functions necessary to carry out the responsibilities of the CIO including: organization development, investment control, budget formulation and execution, policy development, strategic and tactical planning, and performance monitoring. The CIO provides leadership in the development, review and implementation of policies and procedures to promote improved information technology management capabilities and best practices throughout HRSA. The CIO coordinates IT workforce issues and works closely with the Departmental Office of Human Resources Management on IT recruitment and training. The Chief Technology Officer (CTO) is responsible for the HRSA emerging and advanced technology integration program consistent with HRSA missions and program objectives. The CTO manages technology planning and AV/multimedia technology support. The CTO provides leadership for strategic planning that leverages information systems security, program strategies, and advanced technology integration to achieve program objectives through innovative technology use.

Division of Electronic Information and Data Management (RAG1)

Provides consultation, assistance, and services to HRSA to promote and manage communication and collaboration practices using Web technology. EIDM evaluates and integrates emerging technology to facilitate the translation of data and information into electronic or Web-enabled format for internal and external Web dissemination. EIDM is responsible for the collective design, deployment, and maintenance of HRSA's Web presence including development and implementation of World Wide Web-related policies and procedures. EIDM develops and maintains an overall knowledge management strategy for HRSA that is integrated with HHS and Government-wide strategies. EIDM identifies information needs across HRSA and develops approaches for meeting those needs using Web-based technologies. EIDM ensures that data required for enterprise information requirements are captured in appropriate enterprise applications; enhances and expands use and utility of HRSA's data by providing basic analytic and user support; develops and maintains a range of information products; and demonstrates potential uses of information in supporting management decisions.

Division of Capital Planning, Architecture and Security (RAG2)

Performs long-range strategic planning, develops and implements an integrated HRSA Enterprise Architecture, prepares and submits HRSA IT Budget Exhibits to OMB, and manages the Agency's IT Security Program. CPAS develops and implements the Agency's Capital Planning and Investment Control (CPIC) policies and procedures in accordance with HHS standards, ensures the integration of CPIC business processes with budgeting, enterprise architecture, strategic planning, and maintains/operates HRSA's IT Portfolio Management Tool (PMT). CPAS manages and implements the Agency-wide IT security program, which includes development and dissemination of HRSA IT security policy and guidance, monitoring of HRSA organizational components, and direction of the Agency's Incident Response Team. CPAS collaborates with Agency staff to oversee the implementation of security policy in the management of their IT systems, and directs all planning and auditing activities associated with FISMA or other departmental security initiatives. CPAS is responsible for coordinating the Agency's Enterprise Architecture (EA) efforts with the capital planning process, ensuring the suitability and consistency of technology investments with HRSA's EA and strategic objectives, and incorporating security standards as a component of the EA process. CPAS also provides leadership and establishes policy to address legislative or regulatory requirements, such as Government Paperwork Elimination Act, Section 508 of the Rehabilitation Act, or other information collection activities.

Division of Enterprise Solutions Development and Management (RAG3)

Provides leadership, consultation, and IT project management services in the definition of Agency business applications architectures, the engineering of business processes, the building and deployment of applications, and the development, maintenance and management of enterprise systems and data collections efforts. ESDM is responsible for technology evaluation, application and data architecture definition, and data modeling and stewardship services for business process owners. ESDM facilitates business process engineering efforts, systems requirements definition, and provides oversight for application change management control. ESDM provides enterprise application user training, Tier-3 assistance, and is responsible for end-to-end application building, deployment, maintenance and data security assurance.

Division of IT Operations Management (RAG4)

Provides leadership, consultation, and management services for HRSA's enterprise computing environment. ITOM directs and manages the support of HRSA network hardware, application servers, telecommunication network, communication devices, software licenses, workstation tools for navigation, backup, printing, mail/messaging, and Web server operation and management. ITOM controls infrastructure configuration management, installations and upgrades, security perimeter protection, and system resource access. ITOM

coordinates IT for Continuity of Operations Planning (COOP) Agency-wide and ensures adequate support for HRSA's COOP, including telecommunications to support emergency and COOP requirements. ITOM supports the telephone system requirements of the Agency and represents HRSA at working groups and committees addressing secure telecommunications issues.

Division of Business Services Management (RAG5)

Provides consultation, assistance, and services to assist and empower Agency staff and external business partners in the application of information technology to support program objectives of HRSA. In support of HRSA's programs, BSM maintains and supports an Agency IT training center and is also responsible for a variety of career development and workforce IT training. BSM is accountable for IT life cycle management and tracking of Agency-wide IT capital equipment. BSM provides oversight for outsourced Tier-1 Help Desk Call Center activities and Tier-2 and Tier-3 technical assistance; maintains workstation hardware and software configuration management controls; and provides oversight of outsourced network and desktop services to staff in HRSA Regional Offices.

Chapter RC—Bureau of Primary Health Care

Section RC–10, Organization

Delete in its entirety and replace with the following:

The Bureau of Primary Health Care (BPHC) is headed by the Associate Administrator for Primary Health Care who reports directly to the Administrator, Health Resources and Services Administration. The BPHC includes the following components:

(1) Office of the Associate Administrator (RC)
(2) Office of Minority and Special Populations (RCE)
(3) Division of Health Center Development (RCH)
(4) Division of Health Center Management (RCJ)
(5) Division of Clinical Quality (RCK)
(6) Division of State and Community Assistance (RCL)
(7) Division of National Hansen's Disease Program (RC7)
(8) Division of Immigration Health Services (RC9)

Section RC–20, Functions

(1) Delete the functional statement for the Office of Policy, Evaluation and Data (RCI); and (2) delete the functional statements for the Division of Health Center Development (RCH); the Division of Clinical Quality (RCK); and Division of Immigration Health Services(RC9) in their entireties and replace with the following:

Office of the Associate Administrator (RC)

Provides overall leadership, direction, coordination, and strategic planning in support of Bureau programs. Specifically: (1) Has lead responsibility to bring primary health care services to the nation's neediest communities; (2) serves as a central point of contact for Bureau communication and information; (3) establishes program policies, goals, and objectives and provides oversight as to their execution; (4) interprets program policies, guidelines, and priorities; (5) stimulates, coordinates and evaluates program development and progress; (6) maintains effective relationships with HRSA, other Department and Health and Human Services (HHS) organizations, other Federal agencies, State and local governments, and other public and private organizations concerned with primary health and improving the health status of the Nation's underserved and vulnerable populations; and (7) plans, directs, coordinates and evaluates Bureau-wide administrative management activities; (8) assures the BPHC's funding recommendations are consistent with authorizing legislation, program expectations and HHS and HRSA policies; (9) provides leadership, direction and overall coordination of the analysis and clearance of policy across the bureau; (10) provides leadership, direction, and overall coordination of the analysis and clearance of policy across Bureau programs; (11) serves as the focal point for the development and monitoring of the Bureau's Strategic Plan and annual spending plans; (12) serves as focal point for external communication, publication, and dissemination; (13) provides consultation to and coordinates activities with other components within HRSA, other Federal agencies, consumer and constituency groups, national and state organizations involved in policy; and (14) manages the Bureau's executive secretariat functions; (15) serves as focal point to design, establish and implement an evaluation for assessing and improving program performance; (16) directs and coordinates performance review and monitoring activities related to: GPRA, OMB, PART, GAO, OIG, and IOM reports; (17) coordinates and serves as the external liaison with governmental and private-sector advisory groups that have a policy and/or performance impact on the Bureau; (18) serves as the Bureau's principal source for management and administrative advice and assistance; (19) provides advice, guidance and coordinates personnel activities for the Bureau including EEO, timekeeping, labor relations, ethics; (20) directs and coordinates the allocation of personnel resources; (21) provides organization and management analysis, develops policies and procedures for internal operation and interprets and implements Bureau's management policies, procedures and systems; (22) develops and coordinates Bureau program and administrative delegations of authority activities; (23) provides guidance to the Bureau on financial management activities; (24) provides Bureau-wide support services such as COOP Plans, employee training, contracts, procurement, supply management, equipment utilization, printing, property management, space management, records management, and management reports; and (25) performs a range of functions relating to the awarding of appropriated funds, including Preview development, working with program staff on recommended grant actions, and maintaining commitment levels for Bureau grantees and programs.

Division of Health Center Development (RCH)

Serves as the organizational focus of the competitive grant process for BPHC. Specifically, DHCD: (1) Provides leadership and direction, including tactical planning for the development and expansion of new health centers, health systems infrastructure; (2) provides pre-application assistance to communities and community-based organizations related to health center development, health systems infrastructure development; and (4) provides consultation to and coordinates activities with other components within HRSA, other Federal agencies, consumer and constituency groups, national and state organizations involved in implementation of BPHC's competitive process.

Division of Clinical Quality (RCK)

(1) Provides clinical and quality leadership for BPHC to meet the President's Initiative to expand health centers; (2) supports BPHC functions to assess the Nation's health care needs of underserved populations and to assist communities in providing primary health care services to the underserved in moving toward eliminating health

disparities; (3) provides leadership for implementing BPHC clinical and quality agenda; (4) serves as the focal point of leadership, coordination, and communication for BPHC clinical and quality activities; (5) provides leadership, direction and coordination for health workforce planning as it supports health center development; (6) supports BPHC through assessments of clinical, quality improvement, risk management, and patient safety activities to improve policies, and programs for primary health care services including clinical information systems; (7) coordinates BPHC clinical and quality liaison with other DHHS organizations, other Federal, State, and private agencies, and organizations for clinical and quality issues for community based primary health care for underserved populations; and (8) coordinates clinical technical assistance program for BPHC health professional and non-health professional staff; (9) carries out data collection and analysis activities that document the clients served and services funded by the Bureau programs; and (10) gathers and evaluates data on costs of publicly financed care and quality of the Bureau's health care programs.

Division of Immigration Health Services (RC9)

Serves as the primary focal point for planning, management, policy formulation, program coordination, direction and liaison for all health matters pertaining to aliens detained by the U.S. Immigrations and Customs Enforcement (ICE), Department of Homeland Security (DHS) and for juvenile aliens through the Office of Refugee Resettlement (ORR). Additionally, DIHS is responsible for provision of direct primary health care at all ICE Service Processing Centers and selected contract detention facilities throughout the Nation. Specifically: (1) Works with ICE to plan, manage, formulate policy, coordinate programs, and provide direction and liaison for health matters pertaining to aliens detained by ICE, (2) manage ICE direct primary care facilities, conduct telehealth services, and assist in oversight of care provided in contract facilities; (3) ensures the efficient operation of a comprehensive health care delivery system by providing direction to a nationwide integrated health care system that includes direct delivery of care as well as managed care services; (4) develops and implements policy and guidelines relating to detained alien health, dental, and mental health screening and care; (5) provides liaison between ICE, DHS, ORR, other Department of Justice activities and other DHHS components; communicates with members of Congress and their staffs on behalf of ICE, Office of Management and Budget (OMB) staff, and national/international leaders at universities and in the private health care sector for all issues involving health care of detained aliens and as well as for emergency and certain preventive health care for ICE employees; (6) provides medical support including aviation medicine during removal and repatriation of aliens by ICE; (7) provides health care and public health services during deployment for designated special operations; (8) reviews and evaluates all ICE alien health activities in terms of unmet needs, operational improvement, and health and safety of both the health care facilities and detention environments; (9) coordinates payment for all off-site services arranged and authorized by DIHS; and (10) compiles statistical data of the health status of detained alien population and the cost of care within the DIHS and the care purchased outside of the ICE.

Chapter RH—Office of Rural Health Policy

Section RH–30, Functions

Delete the functional statement for the Office of Rural Health Policy (RH) in its entirety and replace with the following:

Office of Rural Health Policy (RH)

Serves as a focal point within the Department and as a principal source of advice to the Administrator and Secretary for coordinating efforts to strengthen and improve the delivery of health services to populations in the Nation's rural areas and border areas. Specifically, the Office of Rural Health Policy is responsible for the following activities: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health and Human Services; (4) stimulates and coordinates interaction on rural health activities and programs in the Agency, Department and with other Federal agencies; (5) supports rural health center research and keeps informed of research and demonstration projects funded by States and foundations in the field of rural health care delivery; (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates congressional and private sector inquiries related to rural health; (8) advises the Agency, Administrator and Department on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas to attract and retain physicians and other health professionals; (9) oversees compliance by Center for Medicare and Medicaid Services (CMS) with the requirement that rural hospital impact analyses are developed whenever proposed regulations might have a significant impact on a substantial number of small rural hospitals; (10) oversees compliance by CMS with the requirement that 10 percent of its research and demonstration budget is used for rural projects; (11) supports specialized rural programs on minority health, mental health, and agricultural health and safety; (12) plans and manages a nationwide rural health grants program; (13) plans and manages a program of grants to States to initiate and expand offices of rural health; (14) provides leadership and direction to coordinate the Agency's assets in border regions; (15) assures that the Agency's engagement with regions of the border is strategic, performance based, builds partnerships and alliances, and maximizes utilization of Agency assets; (16) assures Agency-wide coordination by establishing border health program policies and procedures including tracking mechanisms; (17) conducts management and evaluation studies to improve the health delivery system on the border; (18) serves as the secretariat and chair for the Agency's Border Health Workgroup; (19) plans, directs, and coordinates the Agency's border health activities; and (20) plans, coordinates and facilitates the Agency agreements activities with border health issues.

Establish the Office of Federal Assistance Management as follows:

Chapter RJ—Office of Federal Assistance Management

Section RJ–00, Mission

To provide national leadership, oversight, and financial integrity assurances for the administration of HRSA's Federal assistance programs.

Section RJ–10, Organization

The Office of Federal Assistance Management (OFAM) is headed by the Associate Administrator for Financial Assistance Management who reports directly to the Administrator, Health Resources and Services Administration. The OFAM includes the following components:

(1) Office of the Associate Administrator (RJ)

(2) Division of Financial Integrity (RJ1)

(3) Division of Grants Policy (RJ2)

(4) Division of Grants Management (RJ3)

(5) Division of Independent Review (RJ4)

Section RJ–20, Functions

Office of Federal Assistance Management (RJ)

Provides national leadership in the administration and assurance of the financial integrity of HRSA's programs and provides oversight over all HRSA activities to ensure that HRSA's resources are being properly used and protected. Provides leadership, direction and coordination to all phases of grants policy, administration and independent review. Specifically, (1) serves as the Administrator's principal source for grants policy and financial integrity of HRSA programs; (2) exercises oversight over the Agency's business processes related to assistance programs; (3) facilitates, plans, directs and coordinates the administration of HRSA grant policies and operations; (4) plans, directs and carries out the grants officer functions for all of HRSA's programs; and (5) directs and carries out the independent review of grant applications for all of HRSA's programs.

Division of Financial Integrity (RJ1)

(1) Serves as the Agency's focal point for coordinating financial audits of grantees; (2) coordinates the external financial assessment of HRSA grantees and the resolution of any audit findings; (3) conducts the pre- and post-award review of grant applicants' and grantees' accounting systems; (4) conducts ad hoc studies and reviews related to the financial integrity of the HRSA business processes related to assistance programs; (5) serves as the Agency's liaison with the Office of Inspector General for issues related to grants; (6) manages and maintains the Agency's hot line for reporting fraudulent fiscal activities; and (7) establishes an assessment model for grantee oversight.

Division of Grants Policy (RJ2)

(1) Advises on grants policy issues and assists in the identification and resolution of grants policy issues and problems; (2) analyzes, develops and implements the Agency's grants policy; (3) coordinates the review of departmental grants policies and ensures that Agency policies and procedures are revised to reflect appropriate changes; (4) conducts review of the limited competition process; (5) monitors and reviews the Agency's program application guidance; (6) serves as the grants liaison for the Agency's electronic systems and processes; (7) coordinates the development of standardized documents and processes for the Agency related to grants; (8) reviews Agency programs for proper interpretation and timely implementation and application of grants management policies; and (9) serves as the coordinator for General Accounting Office and OIG studies on HRSA programs.

Division of Grants Management Operations (RJ3)

(1) Exercises the sole responsibility within HRSA for all aspects of grant and cooperative agreement receipt and award processes; (2) participates in the planning, development, and implementation of policies and procedures for grants and other Federal financial assistance mechanisms; (3) provides assistance and technical consultation to program offices in the development and interpretation of laws, regulations, policies and guidelines relative to the Agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods and materials for the administration of the Agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews grantee financial status reports and prepares reports and analyses on the grantee's use of funds; (7) provides technical assistance to applicants and grantees on financial and administrative aspects of grants projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning and management decisions; and (9) participates in the development of program guidance and instructions for grant competitions.

Division of Independent Review (RJ4)

(1) Plans, directs and carries out HRSA's independent review of applications for grants and cooperative agreement funding, and assures that the process is fair, open and competitive; (2) develops, implements and maintains policies and procedures necessary to carry out the Agency's independent review/peer review processes; (3) provides technical assistance to independent reviewers ensuring that reviewers are aware of and comply with appropriate administrative policies and regulations; (4) provides technical advice and guidance to the Agency regarding the independent review processes; (5) coordinates and assures the development of program policies and rules relating to HRSA's extramural grant activities; and (6) provides HRSA's Offices and Bureaus with the final disposition of all reviewed applications.

Chapter RM—Maternal and Child Health Bureau

Section RM–10, Organization

Delete in its entirety and replace with the following:

The Maternal and Child Health Bureau (MCHB) is headed by the Associate Administrator for Maternal and Child Health who reports directly to the Administrator, Health Resources and Services Administration. The MCHB includes the following components:

(1) Office of the Associate Administrator (RM)

(2) Office of Operations and Management (RM1)

(3) Division of Services for Children with Special Health Needs (RM2)

(4) Division of Child, Adolescent and Family Health (RM3)

(5) Division of Research, Training and Education (RM4)

(6) Division of Healthy Start and Perinatal Services (RM5)

(7) Division of State and Community Health (RM6)

(8) Office of Data and Program Development (RM7)

Section RM–20, Functions

Delete the functional statements for the Division of Services for Children with Special Health Needs (RM2); the Division of Child, Adolescent and Family Health (RM3); the Division of Perinatal Systems and Women's Health (RM5); and the Office of Data and Information Management (RM7); in their entireties and replace with the following:

Division of Services for Children With Special Health Needs (RM2)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among children with special health care needs (CSHCN) and their families, with

special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations. Specifically, the Division carries out the following activities: (1) Administers a program that supports the development of systems of care and services for CSHCN and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for CSHCN and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) provides consultation and technical assistance to State programs for CSHCN and to local communities, consistent with a Bureau wide technical assistance consultation plan and in concert with other agencies and organizations; (6) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for CSHCN and their families; (7) develops and implements a national program for those at risk or living with genetic diseases, including a national program for persons with hemophilia, implementing a system of demonstration projects related to early identification, referral, treatment, education, and counseling information; (8) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act, Supplemental Security Income, Individuals with Disabilities Education Act, and others) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for CSHCN, including those with genetic disorders, and their families; (9) promotes the dissemination of information on preventive health services and advances in the care and treatment of CSHCN, including those with genetic disorders, and their families; (10) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for CSHCN, including those with genetic disorders, and their families; (11) provides a focus for international health activities of the Bureau for services for CSHCN and their families; (12) participates in the development of interagency agreements concerning Federal assignees to State MCH programs; (13) carries out a national program on traumatic brain injury, and (14) administers funds and other resources for grants, contracts, and cooperative agreements.

Division of Child, Adolescent, and Family Health (RM3)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease and injury among children, adolescents, and their families with special emphasis on the development and implementation of family-centered, comprehensive, coordinated, community-based and culturally competent systems of care for such populations. Specifically, the Division carries out the following activities: (1) Administers a program that supports the development of systems of care and services for children, adolescents, and their families; (2) develops policies and guidelines and promulgates standards for professional services, effective organization and administration of health programs for children, adolescents, and their families; (3) accounts for the administration of funds and other resources for grants, contracts, and programmatic consultation and assistance; (4) coordinates with MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for children, adolescents, and their families; (6) provides consultation and technical assistance to State programs for children, adolescents, and their families and to local communities, consistent with a Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) carries out a national program designed to improve the provision of emergency medical services for children: (8) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for children, adolescents, and their families; (9) serves as the national focus for improving the health and well-being of adolescents; (10) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for children, adolescents, and their families; (11) disseminates information on preventive health services and advances in the care and treatment of children, adolescents, and their families; (12) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for children, adolescents, and their families; (13) provides a focus for international health activities for the Bureau for services for children, adolescents, and their families; and (14) administers funds and other resources for grants, contracts, and cooperative agreements.

Division of Healthy Start and Perinatal Services (RM5)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on perinatal, infant and women's health to improve and strengthen the access, delivery, quality, coordination and information for services for the targeted populations, especially for the vulnerable and high-risk. Specifically, the Division is responsible for the following activities: (1) Administers national programs on perinatal and women's health with an emphasis on infant mortality reduction and prevention; (2) provides policy direction, technical assistance, and professional consultation on Division programs; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other Maternal and Child Health Bureau Divisions and Offices in promoting Division programs' objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic requirements for the Division's programs; (6) coordinates Division programs within the Agency and with other Federal programs; (7) provides liaison with public, private, professional and voluntary organizations for Division programs; (8) disseminates information on Division programs; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to Division programs; (10) provides a focus for international health activities of the Bureau for Division programs; and (11) administers funds and other resources for grants, contracts, and cooperative agreements.

Office of Data and Program Development (RM7)

Provides leadership by carrying out the following two activities: (1) Identifies and analyzes data needs and

utilizes and implements a data strategy and program focusing on the promotion of health and prevention of disease among women of reproductive age, infants, children, adolescents and their families with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations; and (2) serves as the Bureau focal point for the management of the planning, evaluation, legislation, and legislative implementation activities, including the development, coordination, and dissemination of program objectives, policy positions, reports and strategic plans. Specifically, the Office carries out the following data functions: (1) Develops, coordinates, and maintains a data and information system designed to improve implementation of Title V and other Bureau programs; (2) develops, coordinates, and implements systematic technical assistance and consultation on data and information systems and evaluation approaches to State and local agencies and organizations or groups concerned with infants, children, adolescents, and children with special health care needs (CSHCN); (3) through grants and contracts, provides support for a broad range of data collection, analyses and projects designed to improve the health status of infants, children, adolescents, and CSHCN; (4) coordinates and provides professional consultation and technical assistance to State and local agencies and organizations; (5) develops, coordinates and disseminates data; (6) plans, implements and monitors a system of placement of Federal employees assigned to State health agencies; (7) coordinates and monitors the placement of Centers for Disease Control and Prevention sponsored epidemiologists in State agencies; and (8) provides for data program coordination at all levels of Bureau program operations through analyses of program data, trends and other issues concerning scientific and policy matters, the provision of health services and data and information related to the promotion of health and prevention of disease among infants, children, adolescents, and CSHCN. In addition, the Office carries out the following program development functions: (1) Advises and assists the Associate Administrator for Maternal and Child Health and other Bureau staff in the development, coordination and management of strategic planning and policy documents, responses to departmental and HRSA initiatives, and information papers to support Bureau and Administration goals; (2) interprets evaluation requirements and develops, coordinates, and manages the preparation of the annual evaluation plans and activities, and conducts or contracts for specific evaluation projects related to the performance of MCHB programs; (3) develops, coordinates, and manages Bureau activities related to the development, clearance, and dissemination of **Federal Register** notices, guidelines, final grant reports, and periodic and annual reports to other Federal and non-Federal agencies; (4) participates in the development of budget submissions including the Government Performance Review Act annual performance plan and the Office of Management and Budget Program Assessment Review Tool; (5) coordinates activities closely and continuously with the Office of Planning and Evaluation, and the MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (6) provides liaison with public, private, professional, and voluntary organizations on programs related to MCHB planning and legislative issues; and (7) participates in international health activities of the Bureau.

Chapter RP—Bureau of Health Professions

Section RP–10, Organization

Delete in its entirety and replace with the following:

The Bureau of Health Professions (BHPr) is headed by the Associate Administrator for Health Professions who reports directly to the Administrator, Health Resources and Services Administration. The BHPr includes the following components:

(1) Office of the Associate Administrator (RP)

(2) Office of Workforce Evaluation and Quality Assurance (RPM)

(3) Division of Medicine and Dentistry (RPC)

(4) Division of State, Community and Public Health (RPE)

(5) Division of Nursing (RP5)

(6) Division of Health Careers Diversity and Development (RPD)

(7) Division of National Health Services Corps (RPH)

Section RP–20, Functions

Delete the functional statements for the Bureau of Health Professions (RP); the Office of Program Support (RP1); the Office of Planning and Policy (RPA); the Division of Practitioner Databanks (RPB); Division of Medicine and Dentistry (RPC); and the National Center for Health Workforce Analysis (RPL) in their entirety and replace with the following:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Directs the national health professions education, student assistance and development programs and activities; (2) provides policy guidance and staff direction to the Bureau; (3) maintains liaison with other Federal and non-Federal organizations and agencies with health personnel development interest and responsibilities; (4) provides guidance and direction for technical assistance activities in the international aspects of health personnel development; (5) provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate; (6) directs and coordinates Bureau programs in support of Equal Employment Opportunity; (7) coordinates and provides guidance on the Freedom of Information Act and Privacy Act activities; (8) plans, directs, coordinates, and evaluates Bureau-wide administrative management activities; and (9) serves as the Bureau's focal point for correspondence control.

Office of Workforce Evaluation and Quality Assurance (RPM)

Serves as the Bureau focal point for program planning, evaluation, coordination, and analysis, including analysis and operations review of Information Management systems; health professions data analysis and research; and for health professions quality assurance efforts. Maintains liaison with governmental, professional, voluntary, and other public and private organizations, institutions, and groups for the purpose of providing information exchange. Specifically the office is responsible for the following activities: (1) Stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provides staff services to the Associate Administrator for program and strategic planning and its relation to the budgetary and regulatory processes, (3) develops issue papers and congressional reports relating to Bureau programs; (4) coordinates the development and implementation of the Bureau's evaluation program; (5) monitors obligatory service requirements and conditions of deferment for compliance; (6) coordinates with other Divisions within the Bureau to develop policy and program guidance to monitor obligatory

service requirements and conditions of deferment; (7) develops and provides program data and reports regarding service requirements and conditions of deferment; (8) provides departmental, Agency and Bureau leadership for a National Health Workforce and Analysis Program; (9) sponsors and conducts research, special studies, and forecasting models on important issues that affect the national, State and local health workforce including studies relevant to current and future policies of the Bureau and their impact on the supply and demand for health professionals and the health industry at large; (10) provides technical assistance to States, educational institutions, professional associations and other Federal agencies relative to health personnel analytical information and analysis; (11) develops and coordinates the Bureau data collection and modeling in conjunction with other entities involved in data collection and analysis, such as the Agency for Healthcare Research and Quality (AHRQ), the National Center for Health Statistics (NCHS), the Centers for Medicare and Medicaid Services (CMS), and the Administration on Aging (AOA); (12) provides national leadership and management of the designation of health professional shortage areas and medically-underserved populations; (13) maintains and enhances the Agency's critical role in the Nation's efforts to address equitable distribution of health professionals and access to health care for underserved populations; (14) encourages and fosters an ongoing, positive working relationship with other Federal, State and private sector partners regarding health professional shortage areas and medically-underserved populations; (15) approves designation requests and finalizes designation policies and procedures for both current and proposed designation criteria; (16) negotiates and approves State designation agreements (e.g., use of databases, population estimates, Statewide Rational Service Areas); (17) coordinates with the Department and other Federal entities, State licensing boards, and national, State and local professional organizations to promote quality assurance efforts and deter fraud and abuse by administering the National Practitioner Data Bank (NPDB) as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, and administering the Healthcare Integrity and Protection Data Bank (HIPDB) for the Office of Inspector General; (18) maintains active consultative relations with professional organizations, societies, and Federal agencies involved in the NPDB and HIPDB; (19) develops, proposes and monitors efforts for (a) credentials assessment, granting of privileges, and monitoring and evaluating programs for physicians, dentists, and other health care professionals including quality assurance, (b) professional review of specified medical events in the health care system including quality assurance, and (c) risk management and utilization reviews; (20) encourages and supports evaluation and demonstration projects and research concerning quality assurance, medical liability and malpractice; (21) conducts and supports research based on NPDB and HIPDB information; (22) works with the Secretary's office to provide technical assistance to States undertaking malpractice reform; and (23) maintains liaison with the Office of the General Counsel and the Office of the Inspector General, HHS for Bureau programs.

Division of Medicine and Dentistry (RPC)

Serves as the principal focus with regard to education, practice, and research of medical personnel; with special emphasis on allopathic and osteopathic physicians, podiatrists, dentists, physician assistants and clinical psychologists. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, training modalities, credentialing and practice; (4) conducts and supports studies and evaluations of physician, dentist, physician assistant, podiatrist and clinical psychologist personnel requirements, distribution and availability, and cooperates with other components of the Bureau and Agency in such studies; (5) analyzes and interprets physician, dental, physician assistant, podiatrists and clinical psychologists programmatic data collected from a variety of sources; (6) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians, dentists, physician assistants, podiatrists and clinical psychologists by specialty and geographic location, including the linkages between their training and practice characteristics; (7) conducts and supports studies to determine potential national goals for the training and distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (8) supports and conducts programs with respect to activities associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (9) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; (10) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including Regional Offices, other agencies of the Federal Government, and international agencies and foreign governments on all aspects of the Division's functions; (11) provides administrative and staff support for the Advisory Committee on Training and Primary Care Medicine and Dentistry and for the Council on Graduate Medical Education; (12) represents the Bureau, Agency and Federal Government, as designated, on national committees and/or the Accreditation Council for Graduate Medical Education (ACGME) and the Accreditation Council for Continuing Medical Education (ACCME); (13) administers support programs for the development, improvement, and the operation of general, pediatric, and public health dental educational programs; (14) designs, administers and supports activities relating to dentists; (15) provides technical assistance and consultation to grantee institutions and other governmental and private organizations on the operation of these educational programs; (16) promotes the dissemination and application of findings arising from programs supported; (17) develops congressional and other mandated or special program-specific reports and publications on dental educational processes, programs and approaches; and (18) promotes, plans, and develops collaborative educational activities in clinical psychology.

Chapter RR—Healthcare Systems Bureau

Rename the Special Programs Bureau (RR) as the Healthcare Systems Bureau and amend the organization and

functional statements to include functions related to the Ricky Ray Program, the 340B Drug Pricing Program, and Poison Control Centers Program.

Section RR–10, Organization

Delete in its entirety and replace with the following:

The Healthcare Systems Bureau (HSB) is headed by the Associate Administrator for Healthcare Systems who reports directly to the Administrator, Health Resources and Services Administration. The HSB includes the following components:

(1) Office of the Associate Administrator (RR)
(2) Division of Transplantation (RR1)
(3) Division of Facilities Compliance and Recovery (RR2)
(4) Division of Facilities and Loans (RR3)
(5) Division of Vaccine Injury Compensation (RR4)
(6) Division of Healthcare Emergency Preparedness (RR5)
(7) Smallpox Vaccine Injury Compensation and Ricky Ray Hemophilia Relief Program Office (RR6)
(8) Office of Pharmacy Affairs (RR7)
(9) Division of Engineering Services (RR8)

Section RR–20, Functions

Delete the functional statements for the former Special Programs Bureau in their entities and replace with the following:

Healthcare Systems Bureau (RR)

(1) Administers the Organ Procurement and Transplantation Network and the Scientific Registry of Transplant Recipients; (2) administers the National Marrow Donor Program in matching volunteer unrelated marrow donors for transplants and studying the effectiveness of unrelated marrow donors for transplants and related treatment; (3) administers the National Cord Blood Stem Cell Bank (NCBSCB); (4) develops and maintains a national program of grants and contracts to organ procurement organization and other entities to increase the availability of various organs to transplant candidates; (5) manages the national program for compliance with the Hill-Burton uncompensated care requirement and other assurances; (6) directs and administers the Section 242 hospital mortgage insurance program (through inter-agency agreement with HUD) and HHS direct and guaranteed construction loan repayment program; (7) directs and administers an earmarked grant program for the construction/renovation/equipping of health care and other facilities; (8) directs and administers the National Vaccine Injury Compensation Program; (9) directs and administers the Smallpox Emergency Personnel Protection Act Program; (10) serves as the focal point for providing leadership and direction to States to develop plans for providing access to affordable health insurance coverage for all citizens; (11) directs and administers the National Hospital Bioterrorism Preparedness Program; (12) directs and administers the Trauma-Emergency Medical Services Program; (13) directs and administers the Poison Control Center Enhancement and Awareness Act; (14) directs and administers the Ricky Ray Hemophilia Relief Fund Act of 1998; (15) manages and promotes the 340B Drug Pricing Program; and (16) provides policy input and operational direction for the facilities engineering and construction management system.

Division of Transplantation (RR1)

On behalf of the Secretary of Health and Human Services (HHS), administers all statutory authorities related to the operation of the Nation's organ procurement and transplantation system, the National Bone Marrow Donor Registry and the Cord Blood Bank programs. The Organ Transplantation program supports: (1) The operation of the Organ Procurement and Transplantation Network (OPTN), which facilitates the matching of donor organs to patients in need of organ transplants; (2) the operation of the Scientific Registry of Transplant Recipients (SRTR), which facilitates the ongoing evaluation of the scientific and clinical status of organ transplantation; (3) public education programs to increase awareness about the need for organ donation; (4) peer-reviewed grants and contracts with public and private nonprofit entities to conduct studies and demonstration projects designed to increase organ donation and recovery rates; (5) grants to States to support organ donation awareness programs; (6) public education, outreach programs, and studies designed to increase the number of organ donors, including living donors; (7) the development and dissemination of educational materials to inform health care professionals and other appropriate professionals in issues surrounding organ, tissue and eye donation; (8) grants to qualified organ procurement organizations and hospitals to establish programs to increase the rate of organ donation; (9) financial assistance to living donors to help defray travel, subsistence and other incidental non-medical expenses; and (10) mechanisms to evaluate the long-term effects of living organ donation.

The Division: (1) Administers the two national programs to facilitate blood and marrow transplantation with donors unrelated to the patients: the National Bone Marrow Donor Registry (NBMDR) and the National Cord Blood Stem Cell Bank (NCBSCB); (2) stays informed of the medical, scientific, research, and financial environment for blood and marrow transplantation; (3) Develops policy in the area of blood and marrow transplantation, in coordination with the NBMDR and NCBSCB contractors, other DHHS agencies, and the U.S. Navy; (4) administers and oversees the contracts for the operation of the NBMDR and NCBSCB, advising on contractor projects and participating in contractor committees; (5) consults with the Department of State (through HRSA's Office of International Health) regarding the possible foreign policy implications of proposed international agreements between the NBMDR and NCBSCB contractors and transplant centers and other organizations outside the U.S.; and (6) initiates, and conducts directly or contracts for, studies to advance the knowledge of blood and marrow transplantation, to address patient needs, to increase donor recruitment in targeted populations, and to address financial issues in transplantation.

Division of Facilities Compliance and Recovery (RR2)

Substantiates health facilities compliance with the reasonable volume of uncompensated services assurance and administers the Health Care and Other Facilities program. Specifically, (1) establishes, develops, monitors, and enforces the implementation of regulations, policies, procedures, and guidelines for use by staff and health care facilities; (2) maintains a system for receipt, analysis and disposition of audit appeals by Hill-Burton obligated facilities and for receiving and responding to patient complaints; and (3) coordinates its activities with other components of the Bureau, HRSA, other HHS agencies, and other department components.

Division of Facilities and Loans (RR3)

On behalf of the Secretary of Health and Human Services (HHS) and in coordination with the U.S. Department of Housing and Urban Development (HUD), with which there is a Memorandum of Agreement, the Division of Facilities and Loans (DFL) administers the Section 242 Hospital Mortgage Insurance Program, monitors the financial condition of Hill-Burton and other HHS loan recipients, and generally assists other agencies both

within and outside HHS in both loan and construction activities. DFL accomplishes these tasks by the (1) review and evaluation of the financial and programmatic portions of new applications; (2) monitoring of the financial and physical condition of loans in the portfolio; (3) assistance to those clients in the accomplishment of loan modifications and during times of financial difficulty; (4) site and/or program assessment on behalf of clients contemplating the purchase, rehabilitation, or new construction of Head Start facilities, post-secondary educational facilities, general healthcare facilities and other facilities related to the local infrastructure such as hospitals and public health buildings, and other government buildings for nations in the Pacific Rim; (5) maintenance of automated information systems necessary for program implementation; (6) provision and dissemination of program information; and (7) development of legislative amendments, regulations, and policies related to both HUD and HHS programs. DFL maintains a working relationship with other Federal and private sector partners in the administration and operation of the loan and construction activities. The organizational structure of DFL shall be comprised of two Branches under the Office of the Director.

Division of Vaccine Injury Compensation (RR4)

On behalf of the Secretary of Health and Human Services (HHS), administers all statutory authorities related to the operation of the National Vaccine Injury Compensation Program (VICP) by the (1) evaluation of petitions for compensation filed under the VICP through medical review and assessment of compensability for all complete claims; (2) processing of awards for compensation made under the VICP; (3) promulgation of regulations to revise the Vaccine Injury Table; (4) provision of professional and administrative support to the Advisory Commission on Childhood Vaccines (ACCV); (5) development and maintenance of all automated information systems necessary for program implementation; (6) provision and dissemination of program information; and (7) promotion of safer childhood vaccines. Maintains a working relationship with other Federal and private sector partners in the administration and operation of the VICP. The organizational structure of DVIC shall be compromised of two Branches under the Office of the Director.

Division of Healthcare Preparedness (RR5)

Facilitates the development of State, territorial, and municipal preparedness programs, via grants, cooperative agreements, and contracts, to enhance the capacity of the Nation's hospitals and other healthcare entities to respond to mass casualty incidents caused by terrorism and other public health emergencies. Specifically, the Division, together with other components of the Agency: (1) Serves as the national focus for leadership in and coordination of Federal, State, local and non-governmental efforts to define the readiness needs for hospitals and other healthcare entities to respond to terrorism or other public health emergencies and to assist in the development of programs that address identified problems; (2) analyzes regional or national issues and problems and recommends responses to those problems through research, training, or other actions, as indicated; (3) develops, interprets, and disseminates policies, regulations, standards, guidelines, new knowledge, and program information for the various programs and services relevant to healthcare terrorism and public health emergency preparedness; (4) provides technical assistance and professional consultation to field and headquarters staffs, State and local health personnel, other Federal agencies, hospitals, hospital associations, and professional organizations on all aspects of healthcare terrorism and public health emergency preparedness planning efforts; (5) establishes and maintains cooperative working relationships with professional organizations and other relevant entities and serves as a focal point for communications to improve healthcare terrorism and public health emergency preparedness; (6) works collaboratively with the Centers for Disease Control and Prevention and the Department's Office of the Assistant Secretary for Public Health Emergency Preparedness in administering the National Bioterrorism Hospital Preparedness Program; (7) promotes coordination of healthcare terrorism and public health emergency preparedness under Public Law 107–188, the Public Health Security and Bioterrorism Preparedness Act of 2002 (Section 319 of the Public Health Service Act, 42 U.S.C. 201 *et seq.*), while supporting activities related to countering potential terrorist threats to civilian populations; (8) administers the Poison Control Program within the authority of Public Law 108–194, the Poison Control Center Enhancement and Awareness Act Amendments of 2003, to ensure the availability of the Nation's poison control centers as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism; (9) administers the Emergency System for Advance Registration of Volunteer Healthcare Personnel Program within the authority of Section 107 of the Public Health Security and Bioterrorism Preparedness Act of 2002, to identify qualified healthcare personnel to respond to emergency and mass casualty events and ensure the qualifications of these identified individuals; and (10) administers the Trauma—Emergency Medical Services Systems Program, within the authority of Title XII of the Public Health Service Act, to facilitate the development of effective, comprehensive, and inclusive Statewide trauma systems that are prepared and responsive to emergency and mass casualty events.

Smallpox Vaccine Injury Compensation and Ricky Ray Hemophilia Relief Fund Program Office (RR6)

Responsible for implementing and administering, on behalf of the Secretary of Health and Human Services (HHS), the Smallpox Emergency Personnel Protection Act of 2003 and the Ricky Ray Hemophilia Relief Fund Act of 1998. Specifically, the Smallpox Vaccine Injury Compensation Program: (1) Develops regulations which describe program administrative operational policies and procedures; (2) evaluates petitions for compensation filed under the Act through medical review and assessment of compensability for all completed request for benefits; (3) processes benefits for payments made under the Act; (4) promulgates regulations to revise the Smallpox Vaccine Injury Table; (5) develops and maintains all automated information systems necessary for program implementation; (6) provides and disseminates program information; (7) establishes Memorandums of Understanding and Inter-Agency Agreements with other Federal Agencies and Departments which contribute to program operations; and (8) maintains a working relationship with other Federal and private sector partners in the administration and operation of the Smallpox Emergency Personnel Protection Act of 2003. Specifically, the Ricky Ray Hemophilia Relief Program (RRHRFP): (1) Develops and maintains information systems necessary for the program implementation; (2) develops and implements program operation plans, policies and procedures; (3) develops regulations which describe the

program's criteria, guidelines, and operating procedures; (4) develops program data needs, formats, and reporting requirements, including collection, collation, analysis, and dissemination of data; (5) evaluates petitions for a compassionate payment under the RRHRFP through a medical review and an assessment of all complete petition files; (6) tracks compassionate payments made by the program; (7) reports to the Secretary and the Congress when warranted; (8) proposes revisions to the Act when warranted; (9) provides information to the general public and others on the program; (10) maintains liaison with the Office of General Counsel and other agencies concerning the program; (11) serves as the principle point of contact for inquiries and information from individuals on matters relating to the program operations, the petition process, payment and reconsideration process; (12) receives, reviews and makes recommendations concerning litigation requests; and (13) provides program budget estimates and justifications, and long-range and annual program plans.

Office of Pharmacy Affairs (RR7)

Promotes access to clinically and cost effective pharmacy services by: (1) Maximizing the value of 340B Drug Pricing Program for entities eligible to participate by (a) managing the PHS Pharmaceutical Pricing Agreements with pharmaceutical manufacturers who participate in the Medicaid program, (b) maintaining a database of covered entities and organizations eligible to become covered entities, including status of certifications, where required, and identification of contracted pharmacies, when used by covered entities, (c) publishing guidelines and/or regulations to assist covered entities, drug manufacturers, and wholesalers to use the Drug Pricing Program and comply with the requirements of Section 340B of the Public Health Service Act, (d) implementing and overseeing the 340B Prime Vendor Program that provides drug distribution and price negotiation services for participating covered entities, (e) coordinating the 340B implementation activities of programs in the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Indian Health Service, and the Office of Public Health and Science that provide support to entities eligible to access the Drug Pricing Program, (f) providing a full range of technical assistance to eligible and participating entities, (g) working with the Centers for Medicare and Medicaid Services and the Department of Veterans Affairs, which operate related drug rebate and discount programs, to coordinate policies and operations, and (h) maintaining liaison with grantee associations, professional organizations, the pharmaceutical industry, and trade associations concerning drug pricing and pharmacy issues; (2) supporting HRSA health centers, States, and other delivery systems as they develop quality programs for affordable drug benefits through (a) managing clinical pharmacy demonstration projects, (b) assisting health centers and other grantees to make optimum use of resources available for pharmacy services, (c) demonstrating innovative methods of delivering pharmacy services, and (d) providing technical assistance to grantees, States, local governments, and other health care delivery systems to plan and implement pharmacy benefits; (3) serving as a Federal Government resource for pharmacy practice through (a) developing and maintaining cooperative relationships with national pharmacy and governmental organizations to share information and build infrastructure for safety-net providers, (b) providing technical assistance for pharmacy practice, and (c) providing model pharmacy products (such as sample contracts and business plans) for safety-net health care providers; and (4) carrying out special projects as assigned by the Administrator.

Division of Engineering Services (RR8)

(1) Provides policy input and operational direction for the Agency's facilities engineering and construction management system; (2) provides input into the intra and the interagency reimbursement agreements for the DES services with the Administration on Children and Families, the Office of Minority Health, the Office of Rural Health, the Department of Housing and Urban Development (Section 242 Hospital Mortgage Insurance), and the National Cancer Institute (NCI); (3) assures the delivery of comprehensive architectural and engineering services in support of federally assisted and direct Federal construction services; (4) administers property management activities related to PHS owned or utilized facilities; (5) serves as a source of expertise and provides technical assistance on architecture and engineering activities to field offices; (6) develops, implements, and monitors the annual work plan related to assigned program areas in response to national and regional priorities; (7) coordinates the development of regional objectives which cross program and organizational lines; advises the Bureau Director's office and others on Agency architectural engineering activities, representing the Agency on committees and work groups; (9) performs assigned work tasks when called upon; (10) develops guidance materials and technical publications to enhance efficiency and economy in the design, construction, modernization, and conversion activities, and (11) jointly develops pertinent programmatic materials with components of the Bureau, HRSA, DHHS, and other concerned Federal agencies.

Chapter RS—Office of Administration and Financial Management

Rename the Office of Management and Program Support (RS) as the Office of Administration and Financial Management and amend the organization and functional statements to reflect: (1) the realignment of the Office of Human Resources and Development (RS7) to the Office of the Assistant Secretary for Administration and Management; and (2) the realignment of the Division of Grants Management Operations' (RSA) functions to the newly established Office of Federal Assistance Management (RJ).

Section RS–20, Organization

Delete in its entirety and replace with the following:

The Office of Administration and Financial Management (OAFM) is headed by the Associate Administrator for Administration and Financial Management who reports directly to the Administrator, Health Resources and Services Administration. The OAFM includes the following components:

(1) Office of the Associate Administrator (RS)

(2) Division of Management Services (RS1)

(3) Division of Financial Management (RS2)

(4) Division of Procurement Management (RS4)

(5) Division of Policy Review and Coordination (RS7)

Section RS–30, Functions

(1) Delete the functional statements for the Division of Grants Management Operations (RSA) and the Division of Independent Review (RS9) and move the functions to the newly established Office of Federal Assistance Management (RJ); and(2) Delete the functional statements for the Office of Management and Program Support (RS); the Division of Management Services (RS1); and the Division of Policy Review and Coordination (RS7) in their

entireties and replace with the following:

Office of Administration and Financial Management (RS)

Provides Agency-wide leadership, program direction, and coordination to all phases of management. Specifically, the Office of Administration and Financial Management: (1) Provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (2) manages the Agency-wide Contingency of Operations (COOP) program; (3) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, human resources management, including labor relations, debt management, procurement management, real and personal property accountability and management, alternative dispute resolution and administrative services; (4) directs and coordinates the development of policy and regulations; (5) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (6) directs and coordinates the Agency's organization, functions and delegations of authority programs; and (7) administers the Agency's Executive Secretariat and committee management functions.

Division of Management Services (RS1)

Provides Agency-wide leadership and direction in the areas of management policies and procedures and property management, and serves as the Executive Officer for the Office of the Administrator (OA), Office of Administration and Financial Management (OAFM), and the Office of Federal Assistance Management (OFAM). Specifically: (1) Provides advice and guidance for the establishment or modification of organization structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, reports and mail management programs; (3) conducts Agency-wide management, improvement and information studies and survey; (4) oversees and coordinates the implementation of directives and policies relating to the Privacy Act; (5) plans, directs, and coordinates administrative management activities and services including human resources, financial, material management, and general administrative services for OA, OAFM, and OFAM; (6) acts for the Associate Administrator for Administration and Financial Management concerning space planning, parking and communications management for headquarters and represents him/her in matters relating to the management of the Parklawn Building Complex; (7) advises on and coordinates Agency-wide policies and procedures required to implement General Services Administration and departmental regulations government material management, including travel transportation, motor vehicle and utilization and disposal of property; (8) coordinates the Agency's Alternative Dispute Resolution (ADR) Program; (9) manages the Agency's ethics and security programs; (10) administers the Agency's performance management, quality of work life, customer service and awards programs; (11) ensures that management practices and polices related to the Commissioned Corps are coordinated throughout the Agency; (12) coordinates with the service provider the provision of human resources management, working with the service provider to monitor their performance; and (13) coordinates and serves as a focal point for the Agency's intern programs;

Division of Policy Review and Coordination (RS7)

(1) Advises the Administrator and other key Agency officials on cross-cutting policy issues and assists in the identification and resolution of cross-cutting policy issues and problems; (2) establishes and maintains tracking systems that provide Agency-wide coordination and clearance of policies, regulations and guidelines; (3) contributes to the analysis, development and implementation of Agency-wide policies through coordination with relevant Agency program components and other related sources; (4) plans, organizes and directs the Agency's Executive Secretariat with primary responsibility for preparation and management of written correspondence; (5) arranges briefings for Department officials on critical policy issues and oversees the development of necessary briefing documents; (6) administers administrative early alert system for the Agency to assure senior Agency officials are informed about administrative actions and opportunities; (7) coordinates the preparation of proposed rules and regulations relating to Agency programs and coordinates Agency review and comment on other Department regulations and policy directives that may affect the Agency's programs; (8) manages and maintains a records management program for the Agency; (9) manages the intra- and interagency agreements process; (11) oversees and coordinates the Agency's committee management activities; and (12) coordinates the review and publication of Federal Register Notices.

Chapter RV—HIV/AIDS Bureau

Section RV–10, Organization

Delete in its entirety and replace with the following:

The HIV/AIDS Bureau (HAB) is headed by the Associate Administrator for HIV/AIDS who reports directly to the Administrator, Health Resources and Services Administration. The HAB includes the following components:

(1) Office of the Associate Administrator (RV)
(2) Office of Program Support (RV2)
(3) Division of Science and Policy (RVA)
(4) Division of Service Systems (RV5)
(5) Division of Community Based Programs (RV6)
(6) Division of Training and Technical Assistance (RV7)
(7) Office for the Advancement of Telehealth (RV9)

Section RV–20, Functions

Delete the functional statements for the Office of Program Support (RV2); the Office of Policy and Program Development (RV3); and the Office of Science and Epidemiology (RV4) in their entireties and replace with the following:

Office of Program Support (RV2)

Plans, directs, coordinates and evaluates Bureau-wide administrative management support activities. Specifically, OPS: (1) Serves as the Bureau's principal source for management and administrative advice and assistance; (2) assists in the development and administration of policies and procedures which govern funding recommendations to the Associate Administrator; (3) provides guidance to the Bureau on financial management activities; (4) coordinates personnel activities for the Bureau and advises on the allocation of the Bureau's personnel resources; (5) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (6) coordinates the Bureau's delegations of authority activities; (7) manages the Bureau's performance management systems; (8) provides or arranges for the provision of support services such as procurement, safety and security, property management, supply management, space management, manual issuances, forms, records, reports, and supports civil rights compliance activities; (9) provides

direction regarding technological developments in office management activities; and (10) manages the Bureau's executive secretariat function.

Division of Science and Policy (RVA)

Serves as the Bureau's principal source of program data collection and evaluation, the development of innovative models of HIV care, and the focal point for coordination of program performance activities and development of policy guidance. The Division will advise the Associate Administrator and collaborate with Division Directors in plans for and the development of both science and policy proposals to support the mission of the Bureau. The Division coordinates and develops collaborative efforts with other HHS components and all HRSA Bureaus, including the Office of Planning and Evaluation, in the preparation of HIV/AIDS-related program policies. Specifically; Science: (1) Coordinates the documentation of all HIV/AIDS science, evaluation, and innovative models of care within HRSA programs; (2) organizes, guides, and coordinates the Bureau's scientific planning and development activities in epidemiology, health services research, and demonstration projects; (3) studies and analyzes trends in health care, including availability, access distribution, organization, and financing, to determine if the Bureau's activities address HIV/AIDS issues in an effective, efficient manner; (4) designs and implements special scientific studies on the impact and outcomes of Bureau health care programs; (5) carries out data collection and analysis activities that document the clients served and services funded by the Bureau programs; (6) gathers and evaluates data on costs of publicly financed care and quality of the Bureau's health care programs; (7) plans, directs, coordinates, and administers the Bureau's annual program evaluation strategy; and (8) directs and manages the implementation and evaluation of priority models of care through the Special Programs of National Significance (Title XXVI, Part F of the PHS Act), including developing Program Application and Guidance documents. Specifically, Policy: (1) Participates in the development and coordination of program policies and implementation plans, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (2) provides program policy interpretation and guidance to the Bureau, Agency, Department, grantees, and other governmental and private organizations and institutions; (3) coordinates activities pertaining to policy and position papers to assure the fullest possible consideration of programmatic requirements that meet departmental and Agency goals, policies, and procedures and Federal statute; (4) monitors and analyzes HIV/AIDS-related policy developments, both within and outside the Department, for their potential impact on HIV/AIDS activities, and develops recommendations for the Bureau's response; (5) serves as the liaison to HRSA's Office of Planning and Evaluation and other appropriate offices to respond to and prepare HIV/AIDS related program policies, including testimony and related information; (6) serves as the liaison for all legislatively-related matters and activities; (7) directs and coordinates performance review and monitoring activities related to: a) GPRA, OMB, PART and Healthy People 2010 activities; b) GAO, OIG, and IOM reports; c) Agency, Department, Administration or other congressionally mandated initiatives; and d) other issues requiring performance review by the Bureau; (8) develops the Bureau's strategic planning agenda, providing guidance and coordination for the Bureau's program planning and development activities; (9) coordinates Bureau and HRSA responses and comments on HIV/AIDS-related reports, position papers, guidance documents, correspondence, and related issues, including Freedom of Information Act requests; (10) coordinates and serves as the external liaison with governmental and private-sector advisory groups that have a policy and/or performance impact on the Bureau; and (11) maintains a current Resource Library containing significant and relevant Bureau and HIV/AIDS-related materials, documents, and publications.

Section RA–30, Health Resources and Services Administration, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

Dated: September 13, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–21131 Filed 9–20–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19106]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comments on PREP triennial exercise schedule for 2005, 2006, and 2007, and PREP Guidelines.

SUMMARY: The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2005 through 2007, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises. Additionally, this notice requests comments on issues or concerns related to the PREP.

DATES: Comments and related material must reach the Docket Management Facility on or before November 22, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–19106 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Lieutenant Commander Mark Cunningham, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–2877, fax 202–267–

4065 or e-mail *MCunningham@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Preparedness for Response Exercise Program (PREP) Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/prepexercisesked.html*. To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 2002 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/prepexercisesked.html* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301–386–5394. The stock number of the manual is USCG-X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2004–19106), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire pollution response mechanism in a given geographic area to ensure adequate response preparedness.

A National Schedule Coordination Committee (NSCC) was established for scheduling these Area exercises. The NSCC is comprised of personnel representing the four Federal regulating agencies—the USCG, U.S. EPA, MMS, and RSPA's Office of Pipeline Safety (OPS). Since 1994, the NSCC has published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail.

PREP Schedule

In the PREP exercise notice for 2004 through 2006 published on October 16, 2003 (68 FR 59627), we provided in Table 1 a lists of the dates and **Federal Register** cites of past PREP exercise notices.

This notice announces the next triennial schedule of Area exercises. The PREP schedule for calendar years 2005, 2006, and 2007 for Government-Led and Industry-Led Area exercises is available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/PREP_Ex_Schedule_05–07.pdf*. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

PREP Guidelines and Workshop

The NSCC is considering whether or not to hold a public workshop on the state of the PREP. If there are issues or concerns related to the PREP and its Guidelines, please submit your comments using the procedures described under the **ADDRESSES** section of this notice. If sufficient interest exists, the NSCC may hold a public workshop in calendar year 2005.

Dated: September 14, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–21137 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss,

Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

OMB Number: 1651–0066.

Form Number: N/A.

Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 325.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annualized Cost on the Public: $8,000.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21157 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Commercial Invoice

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Commercial Invoice. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the 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. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Commercial Invoice.

OMB Number: 1651–0090.

Form Number: N/A.

Abstract: The collection of the Commercial Invoice is necessary for the proper assessment of duties. The invoice(s) is attached to the CBP Form 7501. The information which is supplied by the foreign shipper is used to ensure compliance with statues and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 46,500,000.

Estimated Time Per Respondent: 10 seconds.

Estimated Total Annual Burden Hours: 130,200.

Estimated Total Annualized Cost on the Public: $2,050,650.00.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21158 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; User Fees (Form CBP–339)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning User Fees. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: User Fees.

OMB Number: 1651–0052.

Form Number: Form CBP–339.

Abstract: The information collected on the User Fee Form CBP–339 is necessary in order for CBP to collect user fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 60,025.

Estimated Time Per Respondent: 16 minutes.

Estimated Total Annual Burden Hours: 16,100.

Estimated Total Annualized Cost on the Public: $192,000.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21159 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: N/A.

Abstract: The "Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes" is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 55.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 27.

Estimated Total Annualized Cost on the Public: $754.65.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21160 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; CBP Regulations for Customhouse Brokers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the CBP Regulations for Customhouse Brokers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn. Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: CBP Regulations for Customhouse Brokers.

OMB Number: 1651–0034.

Form Number: N/A.

Abstract: This information is collected to ensure regulatory compliance for Customhouse brokers.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 3800.

Estimated Time Per Respondent: 1.4 hours.

Estimated Total Annual Burden Hours: 5450.

Estimated Total Annualized Cost on the Public: $545,000.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21161 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Cost Submission

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Cost Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 2004.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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; (2) the accuracy of the agency's estimates of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (5) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Cost Submission.

OMB number: 1651–0028.

Form number: Form CBP–247.

Abstract: These Cost Submissions, Form CBP–247, are used by importers to furnish cost information to CBP which serves as the basis to establish the appraised value of imported merchandise.

Current actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of review: Extension (without change).

Affected public: Businesses, Individuals, Institutions.

Estimated number of respondents: 1,000.

Estimated time per respondent: 50 hours.

Estimated total annual burden hours: 50,000.

Estimated total annualized cost on the public: $1,089,000.

Dated: September 14, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–21164 Filed 9–20–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1506–DR]

American Samoa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of American Samoa (FEMA–1506–R), dated January 13, 2004, and related determinations.

EFFECTIVE DATE: September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated January 13, 2004, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for American Samoa. These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21152 Filed 9–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATES: Effective September 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004.

Broward, Citrus, Columbia, DeSoto, Duval, Flagler, Hardee, Highlands, Hillsborough, Indian River, Lake, Levy, Martin, Okeechobee, Orange, Osceola, Palm Beach, Polk, Seminole, St. Johns, and Volusia Counties for [Categories C–G] under the Public Assistance program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

Calhoun, Jefferson, Manatee, Sarasota, and Suwannee Counties for Public Assistance [Categories C–G] under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21153 Filed 9–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1546–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1546–DR), dated September 10, 2004, and related determinations.

DATES: Effective September 12, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 12, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21154 Filed 9–20–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) To Renew an Existing Collection of Information; Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the information collection requirement abstracted below that will be submitted to OMB in compliance with the Paperwork Reduction Act of 1995.

DATES: Send your comments by November 22, 2004.

ADDRESSES: Comments may be delivered to Pamela Friedmann, Director Public Private Initiatives, Office of Transportation Security Policy, TSA Headquarters, TSA–9, 601 S. 12th Street, Arlington, VA 22202–4220; or by e-mail at *pamela.friedmann@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, TSA–17, 601 S. 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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.

Description of Data Collection

TSA plans to continue to conduct a pilot technology program in 2005, in a limited number of airports, to test and evaluate the merits of the Registered Traveler (RT) concept under OMB control number 1652–0019. This pilot program (RT Pilot) is designed to positively identify qualified, known travelers via advanced identification technologies for the purposes of expediting those passengers' travel experience at the airport security checkpoints and thereby enabling TSA to improve the allocation of its limited security resources.

TSA will collect and retain a minimal amount of personal information from individuals who volunteer to participate in the RT Pilot that will be used to verify an applicant's claimed identity, complete a background check, and, if applicable, issue an identification token prior to enrollment in the program. In addition, TSA will administer two instruments to measure customer satisfaction and to collect data on the effectiveness of the pilot technologies and business processes. The first instrument will be a survey of a representative percentage of the RT Pilot participants. The second instrument will be an interview conducted with the key stakeholders at sites participating in the RT Pilot. All surveys and interviews will be voluntary and anonymous.

The collection of information from individuals who volunteer to participate in the RT Pilot will be gathered electronically. This not only fulfills the requirements of the Government Paperwork Elimination Act, but it also facilitates the collection and processing of the data and provides an efficient means of retrieving credential information. Due to operational constraints and practical considerations, the RT customer service surveys and interviews will be conducted manually. RT surveys will be distributed at airports and the respondents may freely choose not to participate. The respondents who choose to participate in the surveys will be asked to return the completed survey in less than 30 days from the time of receipt; they may choose not to comply with this request. Key stakeholders involved in the RT Pilot will be asked to designate representative(s) to participate in short, individual interview sessions intended to evaluate the effectiveness of the RT Pilot from the stakeholders' perspective and to gather any additional feedback the stakeholder may wish to share. Stakeholders who choose to participate in the interview sessions will be asked to schedule an interview with TSA no later than 30 days after the completion of the RT Pilot. Interview sessions will be conducted on a one-on-one basis at mutually agreed upon locations. Stakeholders may choose not to participate in the interview sessions.

Burden Estimates of Data Collection

For the RT Pilot program volunteer enrollments, TSA expects a total of 40,000 respondents and, based on an estimate of a 10-minute burden per respondent, a maximum total burden program-wide of 6,667 hours. For the survey submissions, TSA expects a total of 6,000 respondents and, based on an estimate of a 15-minute burden per respondent, a maximum total burden program-wide of 1,500 hours. For the stakeholder interview sessions, TSA expects approximately 20 stakeholder representatives to participate and, based on an estimate of a 45-minute burden per interview, a maximum total burden of 15 hours. There will be no cost burden to any respondent.

Issued in Arlington, Virginia, on September 10, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–21141 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–29]

Notice of Proposed Information Collection: Comment Request; Manufactured Home Construction and Safety Standard Reporting Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below

will be sumitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn McKee, Structural Engineer, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6423 x5609 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Manufactured Home Construction and Safety Standards Reporting Requirements.

OMB Control Number, if applicable: 2502–0253.

Description of the need for the information and proposed use: Collection of this information will result in a better determination of reporting on placement of labels and notices in manufactured homes. It also will allow HUD & State Agencies to locate manufactured homes with defects.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 182,414 the number of respondents is 254 generating approximately 1,493,443 annual responses.

Status of the proposed information collection: Request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 10, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 04–21150 Filed 9–20–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–28]

Notice of Proposed Information Collection: Comment Request Technical Suitability of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: November 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 541 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jason Mc Jury, Structural Engineer, Officer of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2866 × 2691 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility;, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Section 521 of the National Housing Act.

OMB Control Number, if applicable: 2502–0313.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the

burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Seciton 521 of the National Housing Act.

OMB Control Number, if applicable: 2502–0313.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act.

Agency form numbers, if applicable: HUD 92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 2,220; the number of respondents is 50 generating approximately 50 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 44 hours.

Status of the proposed information collection: Request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 4, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 04–21151 Filed 9–20–04; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–03]

Announcement of Funding Awards for Fiscal Year 2004 Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2004 Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The CDWSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education. These programs assist colleges and universities in bringing their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their respective communities.

The CDWSP was enacted in the Housing and Community Development Act of 1988. (Earlier versions of the program were funded by the Community Development Block Grant Technical Assistance Program from 1982 through 1987 and the Comprehensive Planning Assistance Program from 1969 through 1981.) Eligible applicants include institutions of higher education having qualifying academic degrees, and Area-wide planning organizations and states that apply on behalf of such institutions. The CDWSP funds graduate programs only. Each participating institution of higher education is funded for a minimum of three and maximum of five students under the CDWSP. The CDWSP provides each participating student up to $9,000 per year for a work stipend (for internship-type work in community building) and $5,000 per year for tuition and additional support (for books and travel related to the academic program). Additionally, the CDWSP provides the participating institution of higher education with an administrative allowance of $1,000 per student per year.

The Catalog of Federal Domestic Assistance number for this program is 14.512.

On May 14, 2004 (69 FR 27123), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.98 million in FY 2004 funds and $378,844 in previously unexpended funds for the CDWSP. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2004 Community Development Work Study Program Funding Competition, by Name, Address, Phone Number, Grant Amount and Number of Students Funded

Region One

1. Southern New Hampshire University, Dr. Nelly Lejter, (603) 644–3103, School of Community Economic Development, 2500 North River Road, Manchester, NH 03106. Grant: $90,000 to fund 3 students.

2. University of Massachusetts Lowell, Ms. Linda Concino, (978) 934–4723, Office of Research Administration, 600 Sufflok Street, 2nd Floor South, Lowell, MA 01854. Grant: $90,000 to fund 3 students.

3. University of Rhode Island, Dr. Marcia Feld, (401) 277–5235, Community Planning and Landscape Architecture, 70 Lower College Road, Kingston, RI 02881. Grant: $90,000 to fund 3 students.

Region Two

4. State University of New York at Buffalo, Ms. Marlene Casey, (716) 645–2977, 520 Lee Entrance, Suite 211–UB Commons, Amherst, NY 14228. Grant: $90,000 to fund 3 students.

Region Three

5. University of Pittsburgh, Dr. David Miller, (412) 648–7655, Graduate School of Public and International Affairs, 350 Thackeray Hall, Pittsburgh, PA 15260. Grant: $90,000 to fund 3 students.

6. West Virginia University, Dr. Christopher Plein, (304) 293–2614,

Applied Social Sciences, 886 Chestnut Ridge Road, P.O. Box 6845, Morgantown, WV 26506. Grant: $90,000 to fund 3 students.

7. University of Pennsylvania, Dr. Eugenie Birch, (215) 898–8329, City and Regional Planning, 3451 Walnut Street P221 Franklin Building, Philadelphia, PA 19104. Grant: $90,000 to fund 3 students.

8. Metropolitan Washington Council of Governments, Mr. Calvin Smith, (202) 962–3326, Human Services, Planning and Public Safety, 777 North Capitol Street, NE., Suite 300, Washington, DC 20002. Grant: $270,000 to fund three institutions three students each.

9. Virginia Polytechnic Institute & State University, Ms. Natalie Hart, (540) 231–5578, Office of Sponsored Programs, 460 Turner Street, Suite 306, Blacksburg, VA 24060. Grant: $90,000 to fund 3 students.

10. University of Delaware, Dr. Leslie Cooksy, (302) 831–0765, College of Human Services, Education and Public Policy, 210 Hullihen Hall, Newark, DE 19716. Grant: $90,000 to fund 3 students.

Region Four

11. Clemson University, Dr. G. Cunningham, (864) 656–1587, Department of Planning and Landscape Architecture, 131 Lee Hall, Clemson, SC 29634. Grant: $90,000 to fund 3 students.

12. The University of Tennessee at Chattanooga, Dr. Deborah Arfken, (413) 425–5369, 615 McCallie Avenue, Chattanooga, TN 37377. Grant: $90,000 to fund 3 students.

13. Florida State University, Dr. Charles Connerly, (850) 644–8516, Department of Urban and Regional Planning, 97 South Woodward Avenue, Tallahassee, FL 32306. Grant: $90,000 to fund 3 students.

14. University of North Carolina at Greensboro, Dr. Kenneth Klase, (336) 256–0510, Department of Political Science, 1000 Spring Garden Street, Greensboro, NC 27402. Grant: $90,000 to fund 3 students.

Region Five

15. Indiana University, Professor Leda McIntye-Hall, (574) 520–4803, School of Public and Environmental Affairs, P.O. Box 1847, Bloomington, IN 47402. Grant: $90,000 to fund 3 students.

16. Michigan State University, Dr. Herb Norman, (517) 353–9054, Urban & Regional Planning Program, 301 Administration, East Lansing, MI 48824. Grant: $90,000 to fund 3 students.

17. Minnesota State University-Mankato, Dr. Anthony Filipovitch, (507) 389–5035, Urban & Regional Studies, 106 Morris Hall, Mankato, MN 56001. Grant: $90,000 to fund 3 students.

18. University of Illinois, Dr Curtis Winkle, (312) 996–2155, Urban Planning and Policy Program, MB 502, M/C551 809 S. Marshfield Avenue, Chicago, IL 60612. Grant: $90,000 to fund 3 students.

19. Southern Illinois University Edwardsville, Dr. T. R. Carr, (618) 650–3762, Public Administration and Policy Analysis, Campus Box 1046, Edwardsville, IL 62026. Grant: $90,000 to fund 3 students.

20. University of Cincinnati, Dr. David Varady, (513) 556–4943, College of Design, Architecture, Art & Planning, Edwards One, Suite 7148, P.O. Box 210627, Cincinnati, OH 45221. Grant: $90,000 to fund 3 students.

21. University of Minnesota, Ms. Tyra Darville, (612) 626–7634, Humphrey Institute of Public Affairs, 450 McNamara Center, 200 Oak Street, SE., Minneapolis, MN 55455. Grant: $90,000 to fund 3 students.

22. University of Wisconsin at Milwaukee, Dr Stephen Percy, (414) 299–5916, Graduate School, P.O. Box 340, Milwaukee, WI 53201. Grant: $90,000 to fund 3 students.

Region Six

23. North Central Texas Council of Governments, Mr. Eastland, (817) 695–9101, Executive Director's Office, P.O. Box 5888, Arlington TX, 76005. Grant: $270,000 to fund 3 students at each of 3 institutions.

Region Seven

24. University of Missouri-Kansas City, Ms. Robyne Turner, (816) 235–5243, 5100 Rockhill Road, Kansas City, MO 64110. Grant: $90,000 to fund 3 students.

25. University of Nebraska at Omaha, Dr. Russell Smith, (402) 554–3188, School of Public Administration, 6001 Dodge Street, Omaha, NE 68182. Grant: $90,000 to fund 3 students.

Region Nine

26. California Polytechnic State University Foundation, Mr. Michael Fish, (805) 756–2982, Sponsored Programs, One Grand Avenue, Building 38 Room 102, San Luis Obispo, CA 93407, Grant: $90,000 to fund 3 students.

27. University of California-Berkeley, Ms. Patricia Gates, (510) 642–8109, Institute of Urban & Regional Development, 336 Sproul Hall, MC5940, Berkeley, CA 94720. Grant: $90,000 to fund 3 students.

28. University of Southern California, Ms. Dion Jackson, (213) 740–6868, School of Policy, Planning and Development, University Park Campus, Los Angeles, CA 90089. Grant: $90,000 to fund 3 students.

Region 10

29. University of Washington, Ms. Patsy Rogers, (206) 221–3084, Evans School of Public Affairs, 109 Parrington Hall, Box 353055, Seattle, WA 98195. Grant: $90,000 to fund 3 students.

Dated: September 3, 2004.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. E4–2277 Filed 9–20–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–13]

Announcement of Funding Awards for Fiscal Year 2004; Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2004 Tribal Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or (202) 708–1455 (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was enacted under Section 107 of the CDBG appropriation for Fiscal Year 2004, as part of the "Veterans Administration, HUD and Independent Agencies Appropriations Act of 2004" and is

administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities. On May 14, 2004 (69 FR 27077), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.9 million in Fiscal Year 2004 funds for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded five applications.

The Catalog Federal Domestic Assistance number for this program is 14.519.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows.

List of Awardees for Grant Assistance Under the FY 2004 Tribal Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region Five

1. College of Menominee Nation, Holly Burr, P.O. Box 1179, Keshena, WI 54135. Grant: $594,340.

2. Lac Courte Oreilles Ojibwa Community College, Dan James Gretz, 13466 W. Trepania Road, Hayward WI 54843. Grant: $600,000.

Region Eight

3. Cankdeska Cikana Community College, Harold J. McCowan, P.O. Box 269, Fort Totten, ND 58335. Grant: $600,000.

4. Stone Child College, Steve Galbavy, RP1 P.O. Box 1082, Box Elder MT 59521. Grant: $600,000.

5. Si Tanka University, Francine Hall, P.O. Box 220, Eagle Butte, SD 57652.

Grant: $587,960.

Dated: September 14, 2004.

Darlene F. Williams,

General Deputy, Assistant Secretary for Policy Development and Research.

[FR Doc. E4–2282 Filed 9–20–04; 8:45 am]

BILLING CODE 4210–27–P

INTER-AMERICAN FOUNDATION

Agenda for Board of Directors' Meeting, October 1, 2004, 9:30 a.m.–1:30 p.m.

The meeting will be open except for the portion specified as a closed session as provided in 22 CFR Part 1004.4(f).

9:30 a.m. Call to Order; Welcome words for the new Board Members; Approval of the Minutes of the April 23, 2004 meeting; Resolutions in recognition of outgoing Chairman Frank D. Yturria and Vice Chair Patricia Hill Williams; Executive Session (Closed session to discuss personnel issues, as provided in 22 CFR Part 1004.4(f)).

11 a.m. President's Report

FY 2004 Accomplishments

- Public diplomacy and outreach
- Inter-agency cooperation
- The grant program
- The Haiti Program
- Corporate outreach
- Internal operations

Challenges and Opportunities for the Future

- Fulfilling the IAF mission
- IAF as trendsetter
- Is the IAF under-funded given its potential?
- Areas for improvement
- Analysis of the evaluation of 10 randomly selected grants: What have we learned?
- Highlights of the grant to Arariwa in Cuzco, Perú: Increasing crop yields through integrated community-based pest control.

12 p.m. Lunch.

12:30 p.m. Other Business of interest/concern to Board Members.

1:30 p.m. Adjournment; Office tour and meet staff.

David Valenzuela,

President.

[FR Doc. 04–21313 Filed 9–17–04; 3:17 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Pinery West Subdivision, City of Parker, Douglas County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application

SUMMARY: This notice advises the public that U.S. Homes (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse, *Zapus hudsonius preblei* (Preble's), federally-listed as threatened, through loss and modification of its habitat associated with the Pinery West Subdivision, City of Parker, Douglas County, Colorado. The duration of the permit would be 30 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application, which includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for Preble's for the Pinery West Subdivision. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP and associated documents for the proposed issuance of the incidental take permit. All comments on the EA and permit application will become part of the administrative record and will be available to the public. We provide this notice pursuant to section 10(a) of the ESA and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA/HCP should be received on or before November 22, 2004.

ADDRESSES: Comments regarding the permit application and EA/HCP should be addressed to Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments also may be submitted by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Spagnuolo, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the EA/HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the ESA and Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the ESA, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental take is defined under the ESA as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Pinery West Subdivision Property is located approximately seven miles south of Parker on Route 83, along Cherry Creek, in the City of Parker, Douglas County, State of Colorado. The project site is 127.1 hectares (314.3 acres), but the proposed project will directly impact a maximum of 6.3 hectares (15.5 acres), according to the Service's definition of Preble's habitat, that may result in incidental take of the Preble's. An HCP has been developed as part of the preferred alternative to allow for the incidental take of the Preble's by permitting a commercial and industrial subdivision to be constructed in an area that may be periodically used as foraging, breeding, or hibernation habitat.

In addition to the Proposed Action, alternatives considered included: (a) waiting for the Douglas County Regional HCP to be approved; (b) construction of the subdivision at an alternative site; (c) an alternative site design that included a residential development; and (d) no action. The EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, and also on vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, and cultural resources.

Only one federally-listed species, the threatened Preble's, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation that will likely provide a net benefit to the Preble's mouse and other wildlife by enhancing the Cherry Creek corridor onsite and its associated riparian areas through revegetation efforts, including planting of native grasses and shrubs, and protecting existing habitat along Cherry Creek from any future development by placing land in open space. Following construction, 1.9 hectares (4.8 acres) of uplands and 16.9 hectares (39.7 acres) of floodplain will be reseeded. Willows also will be planted on 0.8 hectare (2.0 acres) of floodplain. In addition, grazing will be removed and noxious weeds will be controlled on 52.04 hectares (128.6 acres). The Applicant also proposes to dedicate 52.04 hectares (128.6 acres) of the project that is not developed to Douglas County as open space. Two large sediment control ponds will be constructed to collect storm water from the completed subdivision. The water will be discharged at a controlled rate, thus minimizing erosion and facilitating revegetation of upland areas with additional water. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Pinery West Subdivision property, all of which is included in the drainage basin of Cherry Creek.

This notice is provided pursuant to section 10(c) of the ESA. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the ESA. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction of Pinery West Subdivision. The final permit decision will be made no sooner than 60 days after the date of this notice.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D.D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with "No Surprises" assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain "No Surprises" assurances.

Sharon Rose,

Regional Director, Denver, Colorado.

[FR Doc. 04–21171 Filed 9–20–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–04–1320–EL–P; MTM 93477]

Notice of Invitation—Coal Exploration License Application MTM 93477

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in lands located in Big Horn County, Montana, encompassing 1937.92 acres.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management (BLM), Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

SUPPLEMENTARY INFORMATION: The lands to be explored for coal deposits are described as follows:

T. 8 S., R. 38 E., P.M.M.
Sec. 12: Lots 7, 10, E½SE¼
T. 8 S., R. 39 E., P.M.M.
Sec. 4: Lots 13–24, S½
Sec. 5: Lots 13–16, 18–24
Sec. 8: SE¼
Sec. 9: E½
Sec. 14: NW¼NE¼, SE¼NE¼

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, BLM, P.O. Box 36800, Billings, Montana 59107–6800, and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 93477 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice

in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

Dated: August 9, 2004.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 04–21129 Filed 9–20–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–910–04–0777–XX]

Notice of Bureau of Land Management Front Range Resource Advisory Council Call for Nominations; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Front Range Resource Advisory Council is hosting a call for nominations for a position on the advisory council. There is a vacated seat in category Two representing archaeology/history. Upon appointment, the individual selected to this position will fill the seat until August 20, 2005, the remainder of this position's term.

DATES: BLM will accept public nominations until October 21, 2004. Applicants are requested to submit a completed nomination form and nomination letters to the address listed below no later than October 21, 2004.

ADDRESSES: Send nominations to: Ken Smith, Cañon City Field Office, BLM, 3170 E. Main Street, Cañon City, Colorado 81212; 719–269–8553.

FOR FURTHER INFORMATION CONTACT: Hillerie C. Patton, Bureau of Land Management, (303) 239–3671.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees must be residents of Colorado. BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision making.

The following must accompany nominations:

- Letters of reference from represented interest or organizations.
- A completed background information nomination form, (contact Ken Smith at 719–269–8553 to obtain a nomination form).
- Any other information that highlights the nominees qualifications.

The BLM Colorado State Office and Cañon City Field Office will issue press releases providing additional information for submitting nominations with specifics about the category and member position available in the State. These press releases will be available on September 21, 2004.

The Federal Policy and Management Act (FLPMA) (43 U.S. C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils, which are consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The BLM regulations governing RACs are found at 43 CFR part 1784. These regulations describe three general representative categories:

Category One—Holders of Federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

Category Three—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the affected public-at-large.

Dated: August, 25, 2004.

Ron Wenker,

Colorado State Director, Bureau of Land Management.

[FR Doc. 04–21128 Filed 9–20–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM010–1430–ER]

Reverse Emergency Closure Within the Ojito Special Management Area in Sandoval County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective September 21, 2004, an area previously closed (60 FR, June 29, 1995) to mechanical vehicles is open. Mountain bikes (mechanical vehicles) are a recognized legal conveyance on approximately (5) sections of public land southwest of San Ysidro, New Mexico.

The area is located within sections 17, 20, 21, 28, & 29, T. 15 N., R. 1 E., New Mexico Principal Meridian.

The purpose of the 1995 closure was to prevent unnecessary degradation of resources and undue environmental damage. The notice stated that until further notice the area would remain closed to mechanical use. It has been determined mountain bikes are not a threat to the resources or the environment.

The reversal of the emergency closure is in accordance with the provisions of 43 CFR 8364.1. This order remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Donna Dudley, Outdoor Recreation Planner at the Bureau of Land Management, Albuquerque Field Office, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8700.

SUPPLEMENTARY INFORMATION: Copies of this closure order and maps showing the location of the affected area are available at the Albuquerque Field Office, during normal business hours, Monday through Friday, 7:45 a.m. to 4:30 p.m.

Dated: June 29, 2004.

John E. Bristol,

Acting Assistant Field Manager.

[FR Doc. 04–21127 Filed 9–20–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received

by the National Park Service before September 4, 2004.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 6, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Merced County

Bank of Italy, Merced, 501 W. Main St., Merced, 04001135

Orange County

Goldschmidt House, 243 Avenida La Cuesta, San Clemente, 04001136

San Francisco County

Golden Gate Park, Bounded by Fulton St., Stanyan St., Fell St., Baker St., Oak St., Lincoln Way and The Great Highway, San Francisco, 04001137

GEORGIA

Gwinnett County

Bona Allen Shoe and Horse Collar Factory, 554 W. Main St., Buford, 04001138

IOWA

Dallas County

Prairie Center Methodist Episcopal Church and Pleasand Hill Cemetery, Beaumont Ave. and 200th St., Yale, 04001141

Lee County

Keokuk Young Women's Christian Association Building, 425 Blondeau St., Keokuk, 04001140

KANSAS

Atchison County

Stranger Creek Warren Truss Bridge, (Metal Truss Bridges in Kansas 1861–1939 MPS) On Haskell Rd., 0.8 mi. S of the jct. with 262 Rd., 0.5 mi. S of town of Farmington, Farmington, 04001139

Leavenworth County

Abernathy Furniture Company Factory, 200–210 Seneca St., Leavenworth, 04001142

Saline County

Hobbs Creek Truss Leg Bedstead Bridge, (Metal Truss Bridges in Kansas 1861–1939 MPS) On Hobbs Creek Rd., 0.6 mi. W of jct with Solomon Rd., Gypsum, 04001143

MISSISSIPPI

Washington County

Leland Historic District, Portions of N and S Broad, N and S Main, Deer Creek Dr., and Third St., Leland, 04001144

NEW YORK

Queens County

Main Street Subway Station (Dual System IRT), (New York City Subway System MPS) Near jct. of Roosevelt Ave. and Main St., Flushing, 04001147

OHIO

Cuyahoga County

Vitrolite Building, 2911–2915 Detriot Ave., Cleveland, 04001148

Franklin County

Buckeye State Building and Loan Company Building, 36–42 E. Gay St., Columbus, 04001145

Stark County

Purcell, Robert A. and Elizabeth H., House, 2700 Fairway Ln., Alliance, 04001146

PUERTO RICO

San Juan Municipality Edificio Victory Garden, 1001 Ponce de Leon Ave., corner of Elisa Colberg St., San Juan, 04001149

SOUTH CAROLINA

Richland County

University Neighborhood Historic District, Roughly bounded by Gervais St., the Sourther Railroad Cut, Greene St. and Pickens St., Columbia, 04001150

TEXAS

Hays County

Camp Ben McCulloch, (Rural Properties of Hays County, Texas MPS) 18301 Ranch Rd. 1826, Driftwood, 04001151

Travis County

Worrell—Ettlinger House, 3110 Harris Park Ave., Austin, 04001152

WISCONSIN

Dane County

Jenifer—Spaight Historic District, Jenifer and Spaight Sts. roughly bounded by S. Brearly st. and Williamson St., Madison, 04001153

A request for a move has been made for the following resource:

CALIFORNIA

San Diego County

Naval Training Station Barnett St. And Rosecrans Blvd. San Diego, 00000426

[FR Doc. 04–21132 Filed 9–20–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–954 (Final) (Remand)]

Carbon and Certain Alloy Steel Wire Rod From Canada; Notice and Scheduling of Remand Proceeding

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of proceedings in the NAFTA Panel Review-ordered remand in Investigation No. 731–TA–954 (Final).

DATES: *Effective:* September 16, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193 or Karen V. Driscoll, Office of General Counsel, telephone 202–205–3092, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening Record

In October 2002, the Commission made a final affirmative determination in an antidumping investigation regarding wire rod imports from Canada.[1] On November 27, 2002, Canadian Respondent Ivaco requested a NAFTA Panel Review of this determination (Secretariat File No. USA–CDA–2002–1904–09).

On August 12, 2004, the NAFTA Panel issued an opinion requiring the Commission to reexamine certain aspects of its investigation and determination, including rejecting as untimely a September 24, 2002 submission by Canadian Respondent Ivaco. The Commission is required to respond to the Panel's remand order within 60 days of the issuance of the order or by October 12, 2004.

The Commission is reopening the record in the final investigation on wire

[1] Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine, 67 Fed. Reg. 66,662 (Int'l Trade Comm'n 2002). The Commission's views were published in Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine, Inv. Nos. 701–TA–417–421 and 731–TA–953, 954, 956–959, 961 and 962 (Final) USITC Pub. 3546 (October 2002).

rod from Canada for the limited purpose of placing the September 24, 2002 submission by Ivaco on the record. The September 24, 2002 submission is a public document, and will be obtainable by accessing the Commission's Electronic Document Information System (EDIS) on its Internet server (*http://www.usitc.gov*).

Participation in the Proceeding

Only those parties who were parties to the original administrative proceeding (*i.e.*, parties listed on the Commission Secretary's service list), may participate in this remand proceeding. No additional filings with the Commission will be necessary for these parties to participate in the remand proceeding. Parties that are participating in the remand proceeding may file comments on this document on or before September 24, 2004. Information obtained during the remand proceeding will be governed, as appropriate, by the administrative protective order ("APO") in effect in the original investigation.

Written Submissions

Each party participating in this remand proceeding may submit one set of written comments to the Commission. These comments must be concise and limited specifically to comments on the September 24, 2002 submission. Any material in the comments that does not address the content of the September 24, 2002 submission will be disregarded. No new factual information may be included in such comments. Comments shall be submitted in a font of no smaller than 11-point (Times New Roman) and shall be limited to no more than five double-spaced pages (inclusive of footnotes, tables, graphs, exhibits, appendices, etc.). These comments must be filed at the Commission no later than the close of business on September 24, 2004.

All comments must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16 (c) and 207.3 of the rules, each document filed by a party to the original investigation must be served on all other parties to the original investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: September 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–21259 Filed 9–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–525]

Certain Semiconductor Devices and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 18, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Taiwan Semiconductor Manufacturing Company, Ltd. of Hsinchu, Taiwan, TSMC North America of San Jose, California, and WaferTech L.L.C. of Camas, Washington. Supplements to the complaint were filed on September 7 and September 15, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices and products containing same by reason of infringement of claims 1 and 11 of U.S. Patent No. 6,121,091, claims 1–6 and 8–15 of U.S. Patent No. 6,251,795, and claims 1, 2, 5, 6, 15, and 16 of U.S. Patent No. 6,235,653 and also by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that there exists an industry in the United States with respect to the asserted intellectual property rights.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 14, 2004, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor devices or products containing same by reason of infringement of claims 1 or 11 of U.S. Patent No. 6,121,091, claims 1–6, 8–14, or 15 of U.S. Patent No. 6,251,795, or claims 1, 2, 5, 6, 15, or 16 of U.S. Patent No. 6,235,653, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States of certain semiconductor devices or products containing same or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Taiwan Semiconductor Manufacturing Company, Ltd., 8 Li-Hsin Road 6, Hsinchu Science Park, Hsinchu, Taiwan.

TSMC North America, 2585 Junction Ave., San Jose, California 94134

WaferTech L.L.C., 5509 NW. Parker Street, Camas, Washington 98607.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Semiconductor Manufacturing International Corporation, No. 18 Zhangjiang Road, Pudong New Area, Shanghai 201203, China.

Semiconductor Manufacturing International (Shanghai) Corporation, No. 18 Zhangjiang Road, Pudong New Area, Shanghai 201203, China.

SMIC Americas, 45757 Northport Loop West, Fremont, California 94538.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–D, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–21192 Filed 9–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–381–382 and 731–TA–797–804 (Review)]

Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews and scheduling of full five-year reviews concerning the countervailing duty orders on stainless steel sheet and strip from Italy and Korea and the antidumping duty orders on stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on stainless steel sheet and strip from Italy and Korea and the antidumping duty orders on stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission also hereby gives notice of scheduling of the subject full five-year reviews. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On September 7, 2004, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response and the respondent interested party group responses concerning France, Germany, Italy, Korea, and Mexico to its notice of institution (69 FR 30958, June 1, 2004) were adequate and that the respondent interested party group responses concerning Japan, Taiwan, and the United Kingdom were inadequate. Nevertheless, the Commission determined to conduct full reviews of all orders in order to promote administrative efficiency. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such

access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on April 6, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 26, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 22, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 22, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 15, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 5, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 5, 2005. On June 3, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 15, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–21143 Filed 9–20–04; 8:45 am]

BILLING CODE 7020–02–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 04–10]

Public Outreach Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Corporation (MCC) will hold a public outreach meeting on Friday, September 24, 2004. On August 31, 2004, MCC published its proposed criteria and methodology for selection of countries eligible for Millennium Challenge Account Assistance in FY 2005 and initiated a 30-day public comment period, as required by the Millennium Challenge Act of 2003, 22 U.S.C.A 7701, 7707(b). MCC staff will review the criteria and methodology and entertain questions from the audience.

DATES: Friday, September 24, 2004, 11 a.m.–12 p.m.

ADDRESSES: General Services Administration, Main Entrance, 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Cassandra Jastrow at (202) 521–3855.

SUPPLEMENTARY INFORMATION: Due to security requirements at the meeting location, all individuals wishing to attend the meeting are encouraged to arrive at least 20 minutes before the meeting begins and must comply with all relevant security requirements of the General Services Administration. Those wishing to attend should e-mail Cassandra Jastrow at *jastrowcl2@mcc.gov* with the following information: Name, telephone number, affiliation/company name, social security number, and date of birth. Seating will be available on a first come, first served basis.

Dated: September 16, 2004.

Frances C. McNaught,

Vice President, Domestic Relations, Millennium Challenge Corporation.

[FR Doc. 04–21191 Filed 9–20–04; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

Time and Dates for 2005: 12 noon, Eastern Time, January 6, March 3, May 5, July 7, September 1, November 3.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these conference calls will be open to the public. Those interested in participating in conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agendas: Roll call, announcements, overview of accomplishments, planning, reports, new business, adjournment.

Contact Person for More Information: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: September 16, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–21203 Filed 9–20–04; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

ACTION: Notice of meeting.

TIME AND DATE: 10 a.m., Thursday, September 23, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Request from a Federal Credit Union to Expand its Community Charter.

(2) Requests form two (2) Federal Credit Unions to Convert to Community Charters.

(3) Notice and Request for Comment—Federal Credit Union Bylaws.

(4) Final Rule: Section 701.36 of NCUA's Rules and Regulations, Federal Credit Union Ownership of Fixed Assets.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: (703) 518–6304

Mary Rupp,

Secretary of the Board.

[FR Doc. 04–21250 Filed 9–17–04; 8:53 am]

BILLING CODE 7535–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Notice of Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than September 28. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: Open sessions—October 13, 2004, from 8:30 am to 5:30 pm; October 14, 2004, from 8:30 am to 5:30 pm; and October 15, 2004, from 8:30 am to 2 pm.

ADDRESSES: The University of Texas System, Ashbel Smith Hall, 9th Floor, 201 West 7th Street, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; e-mail: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Pub. L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board 's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on October 13–15, 2004, will focus on future and current program activities, presentations by education researchers, and other relevant literacy activities and issues.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 am to 5 pm.

Dated: September 15, 2004.

Sandra L. Baxter,

Interim Director.

[FR Doc. 04–21134 Filed 9–20–04; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–184]

National Institute of Standards and Technology (NIST); Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of the National Bureau of Standards Reactor (The NBSR) Facility Operating License No. TR–5 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License No. TR–5, which authorizes the National Institute of Standards and Technology (NIST), to operate the National Bureau of Standards Reactor (NBSR) at 20 megawatts thermal power for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the NBSR (TR–5) expired on May 16, 2004.

On April 9, 2004, the Commission's staff received applications from NIST filed pursuant to 10 CFR 50.51(a), to renew the Operating License No. TR–5 for the NBSR. A Notice of Receipt and Availability of the license renewal application, "National Institute of Standards and Technology (NIST) Notice of Receipt and Availability of Application for Renewal of the National Institute of Standards and Technology Reactor (the NBSR) Facility Operating License No. TR–5 for an Additional 20-year Period," was published in the **Federal Register** on May 12, 2004 (69 FR 26414). Because the license renewal application was timely filed under 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that NIST has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that is acceptable for docketing. The current Docket No. 50–184 for Operating License No. TR–5, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. Additionally, in accordance with 10 CFR 51.20(b)(2), the NRC will prepare an environmental

impact statement that contains a statement of the license renewal purpose and a description of the environment that is affected. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** Notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licensee. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.* If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 50 and 51, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the NBSR license renewal application.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the licensee. The licensee's contact for this is Dr. Seymour H. Weiss, Chief, Reactor Operations and Engineering, Center for Neutron Research, National Institute of Standards and Technology, U.S.

[1] To the extent that the applications contain attachments and supporting documents that are not publically available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors," can be obtained from the Commission's PDR. Copies of the application to renew the operating license for the NBSR are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, and on the NRC's Web page at *http://www.nrc.gov/what-we-do/regulatory/adjudicatory/hearing-license-applications.html*. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The application also may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML041120161. Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of September, 2004.

For the Nuclear Regulatory Commission.

Patrick M. Madden,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21149 Filed 9–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting: October 13–14, 2004—Salt Lake City, UT: The U.S. Nuclear Waste Technical Review Board's Panel on the Waste Management System Will Meet To Discuss Issues Related to the U.S. Department of Energy's Planning for the Possible Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste to a Proposed Repository at Yucca Mountain in Nevada

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board's Panel on the Waste Management System will meet in Salt Lake City, Utah on Wednesday, October, and Thursday, October 14, 2004. The panel will discuss issues elated to planning for the potential transportation of spent nuclear fuel and high-level radioactive waste to a proposed repository at Yucca Mountain in Nevada. The meeting will be open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of activities undertaken by the U.S. Department of Energy (DOE) as stipulated in the Nuclear Waste Policy Amendments Act.

The panel meeting will be held at the Sheraton City Center Hotel; 150 West 500 South; Salt Lake City, Utah 84101; (tel.) 801–401–2000; (fax) 801–534–3450. The panel is scheduled to meet from 8 a.m. until 5:30 p.m. on October 13 and from 8 a.m. until approximately 12 noon on October 14. Meeting times and agenda details will be confirmed approximately one week before the meeting dates. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*.

The purpose of the meeting is to discuss the DOE's transportation planning and the experience of regional groups involved in transporting spent nuclear fuel and high-level radioactive waste (Wednesday) and to review the experiences of Private Fuel Storage, LLC, in planning for transportation of spent nuclear fuel to its proposed facility in Utah (Thursday). On Thursday, the panel also will review issues of risk perception in the transportation planning process.

Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, beginning on November 29, 2004.

A block of rooms has been reserved at the Sheraton City Center Hotel for meeting participants. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. Reservations should be made by September 20, 2004 to receive the meeting rate.

For more information, contact the NWTRB: Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel.) 703–235–4473; (fax) 703–235–4495.

Dated: September 8, 2004

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 04–21178 Filed 9–20–04; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Medically Underserved Areas for 2005

AGENCY: Office of Personnel Management.

ACTION: Notice of medically underserved areas for 2005.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2005. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2005, OPM's calculations show that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Alaska, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, Texas, and Wyoming. For the 2005 contract year Alaska is being added to the list and Maine, West Virginia, and Utah are being removed.

DATES: January 1, 2005.

FOR FUTHER INFORMATION CONTACT: Ingrid Burford, (202) 606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health

services in States with critical shortages of primary care physicians. The FEHB law also requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

Kay Coles James,

Director, Office of Personnel Management.

[FR Doc. 04–21165 Filed 9–20–04; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, October 21, 2004.

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street NW., Washington, DC 20415 (202) 606–1500.

Dated: September 13, 2004.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 04–21166 Filed 9–20–04; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–7, SEC File No. 270–147, OMB Control No. 3235–0131.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–7 [17 CFR. 240.17a–7] under the Securities Exchange Act of 1934 requires non-resident brokers or dealers registered or applying for registration pursuant to Section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Securities Exchange Act of 1934. Alternatively, Rule 17a–7 provides that the non-resident broker or dealer may sign a written undertaking to furnish the requisite books and records to the Commission upon demand.

There are approximately 65 non-resident brokers and dealers. Based on the Commission's experience in this area, it is estimated that the average amount of time necessary to preserve the books and records required by Rule 17a–7 is one hour per year. Accordingly, the total burden is 65 hours per year. With an average cost per hour of approximately $55.00, the total cost of compliance for the respondents is $3,575 per year.

There are no individual record retention periods in Rule 17a–7. Compliance with the rule is mandatory. However, non-resident brokers and dealers may opt to provide the records upon request of the Commission rather than store it in the United States. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an e-mail to: *David_Rostker@omb.eop.gov,* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: September 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2260 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and

Information Services, Washington, DC 20549.

Extension: Rule 17a–4(b)(11), SEC File No. 270–449, OMB Control No. 3235–0506.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Sec. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–4(b)(11) (17 CFR 240.17a–4(b)(11)) under the Securities Exchange Act of 1934 ("Act") describes the record preservation requirements for those records required to be kept pursuant to Rule 17a–3(a)(16) under the Act, including how such records should be kept and for how long, to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 105 active broker-dealer respondents registered with the Commission incur an average burden of 315 hours per year (105 respondents multiplied by 3 burden hours per respondent equals 315 total burden hours) to comply with this rule.

Under Rule 17a–4(a)(11) broker-dealers are required to retain records for a period of not less than three years. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (1) The Desk Officer for the Commission, by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (2) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: September 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2261 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation A (Forms 1–A and 2–A), OMB Control No. 3235–0286, SEC File No. 270–110.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Regulation A (OMB Control No. 3235–0286; SEC File No. 270–110) provides an exemption from registration under the Securities Act for certain limited securities offerings by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. Form 2–A is used to report sales and use of proceeds in Regulation A offerings. All information is provided to the public for review. The information required is filed on occasion and is mandatory. Approximately 165 issuers annually file Forms 1–A and 2–A. It is estimated that Form 1–A takes 608 hours to prepare, Form 2–A takes 12 hours to prepare and Regulation A takes one administrative hour to review for a total of 621 hours per response. The total burden hours are 102,465. It is estimated that 75% of the 102,465 total burden hours (76,849 burden hours) would be prepared by the company.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2262 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 8c–1, SEC File No. 270–455, OMB Control No. 3235–0514.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of the following rule: Rule 8c–1.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 163 respondents per year (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current

year) that require an aggregate total of 3,668 hours to comply with the rule. Each of these approximately 163 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 7,335 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,668 burden hours. The approximate cost per hour is $22, resulting in a total cost of compliance for the respondents of $80,696 (3,668 hours @ $22 per hour).

The retention period for the recordkeeping requirement under Rule 8c–1 is three years. The recordkeeping requirement under this Rule is mandatory to ensure that broker-dealers do not commingle their securities or use them to finance the broker-dealers' proprietary business. This rule does not involve the collection of confidential information. Persons should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (1) Desk Officer for the Securities and Exchange Commission by sending an e-mail to *David_Rostker@omb.eop.gov*; and (2) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW. Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2263 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–3(a)(16), SEC File No. 270–452, OMB Control No. 3235–0508.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. sec. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–3(a)(16) (17 CFR 240.17a–3(a)(16)) under the Securities Exchange Act of 1934 identifies the records required to be made by broker-dealers that operate internal broker-dealer systems. Those records are to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules, as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 105 active broker-dealer respondents registered with the Commission incur an average burden of 2,835 hours per year (105 respondents multiplied by 27 burden hours per respondent equals 2,835 total burden hours) to comply with this rule.

Rule 17a–3 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (1) The Desk Officer for the Commission, by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (2) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: September 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2264 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 20, 2004:

A Closed Meeting will be held on Tuesday, September 21, 2004 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session and determined that earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, September 21, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 15, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–21135 Filed 9–15–04; 4:06 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50386; File No. SR–FICC–2003–05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Additional Account Structures

September 15, 2004.

I. Introduction

On July 9, 2003, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FICC–2003–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the

[1] 15 U.S.C. 78s(b)(1).

Federal Register on February 13, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of both the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") of FICC with respect to their additional account structures. GSD and MBSD both permit members to open and maintain accounts in addition to their primary accounts. These additional accounts developed as an administrative convenience for members that wanted to keep certain activities segregated from their primary accounts. The proposed rule change addresses certain legal risks associated with these accounts.

Government Securities Division

For each additional account opened for a member, GSD assigns a unique participant ID number and separately calculates daily clearing fund requirements, funds-only settlement requirements, and net settlement positions based solely upon the activity in the additional account.[3] Currently, the opening and maintenance of additional accounts requested by a GSD member is governed by an agreement between the member and GSD.[4] Pursuant to the additional account agreement, the member agrees to be responsible for all of the obligations and liabilities associated with the additional account; however, GSD's rules do not address the opening and maintenance of these additional accounts.[5]

The proposed rule change reflects the principles set forth in the additional account agreement and those that FICC management has defined to govern these accounts. Specifically, additional accounts that are opened for someone other than a member itself or for the member's wholly-owned subsidiary shall require the approval of FICC's Membership and Risk Management Committee. The proposed rule change makes clear that GSD members will be responsible for all of the obligations arising under GSD's rules that are associated with additional accounts. The additional account entity will not have any proprietary interest with respect to the additional account and will not have any rights or privileges of GSD members. GSD will have the right to deny the opening of an additional account if it believes that the additional account entity presents risk to FICC, such as legal risk from an insolvency regime that is adverse to GSD's rights.

Mortgage-Backed Securities Division

Currently, MBSD rules expressly permit participants to open additional accounts upon request for themselves or for any other entity. FICC has reviewed MBSD's current rules and is enhancing them by making clear that (i) additional account holders do not have membership or property rights with respect to additional accounts and (ii) MBSD may apply collateral associated with one account of a participant to satisfy obligations among any or all of that participant's accounts. These provisions will serve to protect MBSD in the event an additional account holder makes a claim with respect to the property, proceeds, or collateral associated with the activity of the account.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[6] The proposed rule change, by clarifying the rights and obligations of FICC and of its members with respect to additional accounts established by FICC's members for their own use or for the use of non-members, is designed to protect FICC and its members from any unnecessary financial risks. Accordingly, the proposed rule change should help to assure the safeguarding of securities and funds which are in FICC's custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2003–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2278 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

[2] Securities Exchange Act Release No. 49212 (February 9, 2004), 69 FR 7273.

[3] The maintenance of such accounts has billing implications as set forth in GSD's fee structure.

[4] The additional account structure permitted by GSD should be contrasted with GSD's executing firm feature, which permits a member to submit trades of a non-GSD member with which the member has a correspondent relationship. Executing firm trades are commingled with the member's own trades in the member's GSD account and are not separated from the member's other activity (including other executing firm activity) for any purpose. Therefore, the member's clearing fund requirement, funds-only settlement requirement, and net settlement position reflects all executing firm activity in its GSD account.

[5] The only exceptions to this are with respect to repo brokers that are expressly required to open second accounts for their brokered repo activity and GSD's fee structure which includes charges associated with the maintenance of additional accounts.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50372; File No. SR–NASD–2004–074]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify and Modify Market Maker Quote Re-Entry Obligations

September 14, 2004.

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 April 28, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdsaq. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes certain changes to Rule 4620 to clarify and modify market makers' quote re-entry obligations when

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 30, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the rule text in the original proposal with a new version to reflect changes to NASD rules effected by SR–NASD–2004–076. *See* Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

a quote is withdrawn by Nasdaq's systems because of a dividend application or a trading halt.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its [Quote] *two-sided quotation* from the Nasdaq Market Center. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq-listed security in the Nasdaq Market Center shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq Market Center and thereby terminates its registration as a market maker in Nasdaq-listed issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with Nasdaq Market Center participant requirements contained in Rule 6100.

(b) and (c) No change

(d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq Market Center if the market maker's two-sided quotation in the subject security is withdrawn by Nasdaq's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the market maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;

(2) the market maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the market maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, Nasdaq MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

[(d)]*(e)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by [Market Makers] *market makers* seeking review of their denial of a reinstatement pursuant to [paragraph (b) above] *paragraphs (b) or (d) of this Rule.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 proposed rule change seeks to clarify the existing practice with respect to market maker quote reinstatement following a Nasdaq system-initiated withdrawal of the quote and to give market makers an additional trading day within which to request such a reinstatement. Nasdaq systems withdraw all market maker quotes in a security when certain corporate actions occur (*e.g.*, a dividend is applied) and in the event of a trading halt. After such Nasdaq system-initiated quote withdrawal, a market maker is expected to reinstate its quote within a reasonable period of time in order to avoid being deemed as having voluntarily terminated its registration in the particular security.

Currently, a market maker is expected to re-enter its quote by the close of the regular market session on the day that the corporate action occurred or regular trading resumed. If trading resumes in the extended hours session, the market maker has until market open on the next regular trading day to re-enter a quote. The proposed rule change would codify this policy.

The proposed rule change would also permit market makers who inadvertently failed to re-enter their quotes within the time frames described above to contact Nasdaq's MarketWatch department by the close of regular trading on the next trading day after the date of the corporate action or trading resumption and to seek to enter a quote. Nasdaq states that Nasdaq MarketWatch would monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases would deny immediate reactivation and deem the market maker's registration in the security as having been voluntarily terminated. Market makers would be able to seek a review by the Market Operations Review Committee of a denial of reinstatement under Rule 4620(d).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] including Section 15A(b)(6) of the Act,[5] which requires that the rules of the NASD be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. Nasdaq believes that the proposed rule change would make the existing policy concerning quote reinstatements following system-initiated withdrawals more transparent and contribute to the quality of the market and benefit investors. Nasdaq also believes that, by extending the amount of time available to submit a new quote following system-initiated withdrawals, the proposed rule change would also further encourage the desired re-infusion of liquidity and yield corresponding additional benefits to the market and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. 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–NASD–2004–074 and should be submitted on or before October 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2279 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50373; File No. SR–OC–2004–02]

Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Initial Listing Standards of Single Stock Futures

September 14, 2004.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on August 25, 2004, OneChicago, LLC ("OneChicago" 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 OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On August 24, 2004, OneChicago filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act[3] ("CEA") in which OneChicago indicated that the effective date of the proposed rule change would be August 26, 2004.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OneChicago proposes to amend the initial listing standards for a security futures product based on a single security ("single stock future") relating to the trading volume of the underlying security. The text of the proposed rule change appears below. New language is in italics. Deleted text is in brackets.

* * * * *

Eligibility and Maintenance Criteria for Security Futures Products

I. Initial listing standards for a security futures product based on a single security.

A. For a security futures product that is physically settled to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

(i)–(v) No Change.

(vi) In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, it must have [had an average daily] trading volume (in all markets in which the underlying security [has] is traded) of at least [109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months] *2,400,000 shares in the preceding 12 months.*

Requirement (vi) as Applied to Restructure Securities:

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may "look back" to the trading volume history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(1) The Restructure Security has an aggregate market value of at least $500 million;

(2) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(3) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(4) The revenues attributed to the business represented by the Restructure Security equal or exceed $50 million and the Relevant Percentage of the

revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term "Relevant Percentage" means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security's closing price on its primary market on the last business day prior to the date on which the Restructure Security is selected as an underlying security for a security futures product ("Selection Date"), or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the trading volume history of an Original Equity Security for any trading day unless it also relies upon the market price history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security's trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the Original Equity Security for any trading day thereafter.

(vii)–(xi) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago 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. OneChicago 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

OneChicago proposes to amend its Eligibility and Maintenance Criteria for Security Futures Products ("Listing Standards") with respect to the trading volume requirement of an underlying security for the initial listing of a single stock future. OneChicago's current initial Listing Standards require, among other things, that the security underlying a single stock future must have had an average daily trading volume (in all markets in which the underlying security has traded) of at least 109,000 shares in each of the preceding 12 months.[4] The proposed rule change adopts the standard used by some option exchanges[5] and allows OneChicago to list a single stock future on an underlying security that had trading volume of at least 2,400,00 shares in the preceding 12 months.

According to OneChicago, the proposed rule change allows the Exchange to list single stock futures that are beneficial to investors, for hedging and speculative purposes, while still providing adequate protection for investors. OneChicago believes that the proposed listing standard is well established on option exchanges. In conjunction with the other listing standard criteria, the proposed listing standard also permits derivatives to trade on securities that have sufficient liquidity and provides adequate customer protection.

Section 6(h)(3)(C) of the Act[6] requires that OneChicago's Listing Standards be no less restrictive than comparable listing standards for options traded on a national securities exchange. The Commission has approved a similar rule for the CBOE, Amex and ISE.[7] Since CBOE, Amex and ISE have a comparable listing standard, OneChicago believes that the proposed rule change meets the requirement of Section 6(h)(3)(C) of the Act.[8]

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, and is designed to protect investors and the public interest. OneChicago also believes that the proposed rule change promotes competition and is designed to protect investors and the public interest by providing products that could be used by investors for hedging and speculative purposes. The proposed rule change is an established criterion used by other option exchanges. According to OneChicago, the experience of those option exchanges establish that the proposed rule change, along with the other Listing Standard requirements, are designed to provide investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change will not unduly burden competition. In fact, the OneChicago believes that the proposed rule change will promote competition by allowing OneChicago to list a broader array of single stock futures, without jeopardizing investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change became effective on August 26, 2004. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[10]

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.

[4] OneChicago Listing Standard I.A.(vi).

[5] *See, e.g.*, Chicago Board Options Exchange, Inc. ("CBOE") Rule 5.3, Interpretation .01(b)(1); American Stock Exchange LLC ("Amex") Rule 915, commentary .01(3); and International Securities Exchange, Inc. ("ISE") Rule 502(b)(4).

[6] 15 U.S.C. 78f(h)(3)(C).

[7] *See supra* note 5.

[8] 15 U.S.C. 78f(h)(3)(C).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(1).

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*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OC–2004–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OC–2004–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of OneChicago. 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–OC–2004–02 and should be submitted on or before October 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2265 Filed 9–20–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(75).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 22, 2004.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "Lender Transcript of Account."

Description of Respondents: Lenders requesting SBA to provide the Agency with breakdown of payments.

Form No: 1149.

Annual Responses: 5,000.

Annual Burden: 5,000.

Title: "Settlement Sheet."

Description of Respondents: SBA Borrowers to complete loan authorization.

Form No: 1050.

Annual Responses: 39,988.

Annual Burden: 29,991.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–21216 Filed 9–20–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Changes to SBA Secondary Market Program

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

SUMMARY: The purpose of this notice is to provide the public with notice of program changes in SBA's Secondary Market Loan Pooling Program. These changes are being made to conform the timely payment guaranty of this program to the budgetary effects of having this program under the Federal Credit Reform Act of 1990. The changes described in this notice will be incorporated, as needed, into the Guaranteed Loan Pool Certificates for the 7(a) loan program (the "Pool Certificates"), the Secondary Market Program Guide, and all other appropriate secondary market documents.

DATES: The changes in the Notice will apply to loan pools with an issue date on or after October 1, 2004.

ADDRESSES: Address comments concerning this notice to James W. Hammersley, Director, Loan Programs Division, U.S. Small Business Administration, 8th floor, 409 3rd St. SW., Washington, DC 20416 or *james.hammersley@sba.gov*.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Loan Programs Division, U.S. Small Business Administration, 8th floor, 409 3rd St. SW., Washington, DC 20416 or *james.hammersley@sba.gov*.

SUPPLEMENTARY INFORMATION: When Congress enacted the Small Business Secondary Market Improvements Act of 1984, it authorized SBA to guarantee the timely payment of principal and interest on trust certificates representing an ownership interest in a pool of guaranteed portions of loans made under SBA's section 7(a) guaranteed loan program ("SBA 7(a) loans"). Congress anticipated that the timely payment guarantee could be structured so that SBA would have no additional. budgetary exposure and no need for any direct taxpayer subsidy of this cost.

SBA established the Master Reserve Fund ("MRF"), which has served as a self-funding mechanism to cover the cost of the timely payment guaranty. Borrower payments on the guaranteed portion of pooled SBA 7(a) loans, as well as any SBA guaranty payments on defaulted SBA 7(a) loans, are deposited into the MRF and all payments to investors ("Registered Holders") are made from the MRF. Interest earned while the payments are in the MRF is used, as needed, to make the timely payments to the Registered Holders. In its 18 year existence, there have always been sufficient funds in the MRF to meet SBA's timely payment obligations.

However, SBA, in consultation with the Office of Management and Budget, and the SBA's financial statement auditor, recently determined that the timely payment guaranty must conform to the requirements of the Federal Credit Reform Act of 1990 ("FCRA"), 2 U.S.C. 661 *et seq.* Under FCRA, SBA is required to develop a model of MRF activity to estimate whether there will

be sufficient funds in the MRF to meet the timely payment obligations to the Registered Holders for each loan pool. This is the same process that SBA follows every year to estimate the subsidy cost of the section 7(a) and section 504 loan programs. This subsidy model is developed based on assumptions related to several factors, including interest rates and prepayments over the life of the pools. SBA used the same loan performance and economic assumptions to develop the subsidy rate for the section 7(a) program. SBA's forecast for pools to be originated in FY 2005 (the "FY 2005 pools") indicates that the interest that will be earned in the MRF in connection with the FY 2005 pools will not be sufficient to make all timely payments of principal and interest due to the Registered Holders under the current program terms. Under FCRA, SBA must address this shortfall. Therefore, SBA has decided to make minor program changes that will allow the program to operate at no cost to the taxpayers rather than seek authority to assess a fee. These changes will affect how certain payments are passed through to the Registered Holders, including the first principal payment as well as the amounts paid to the Registered Holders after prepayments are made in whole or in part. These changes will cause an increase in the constant prepayment rate.

To understand the program changes, it would be helpful to first summarize certain features of the loan pooling program. To facilitate the formation of loan pools, SBA permits loans of differing maturities to be put into the same pool. The Pool Certificates have the maturity of the longest loan in the pool. Borrower payments are received based on the amortization schedule in the borrower's note and paid out to Registered Holders based on the amortization schedule of the Pool Certificate. Loans with a maturity shorter than the maturity of the pool add more money each month to the MRF than is being paid out for that particular loan to the Registered Holders each month. When a loan with a maturity shorter than the pool maturity is paid in full, the excess that has accumulated in the MRF is paid to Registered Holders over the remaining life of the pool. This process is followed for each loan in a pool until pool maturity or until the last loan in the pool is prepaid, if earlier. At that time, all funds owed to Registered Holders are paid to them. Although this practice allows an excess of funds to accumulate in the MRF in the short run (the "amortization excess"), it results in a long-term cost to the MRF because the amortization excess earns interest at a lower rate than the rate that is ultimately paid to the Registered Holders. SBA expected earnings on other cash flows to offset this shortfall.

The following is a description of pool payment under the system that has been in place since SBA began to issue Pool Certificates in 1985:

1. The first payment to a Registered Holder is interest only.

2. Beginning with the second payment and continuing over the life of the pool, payments to the Registered Holder consist of principal and interest.

3. When a loan in a pool is prepaid in full (whether through voluntary borrower prepayment or SBA guaranty payment upon the loan's default), the amount that is passed through to Registered Holders is the principal and interest that was received at the time of prepayment. Thus, if a seven year loan in a 10-year pool is prepaid in year three, the Registered Holder receives only that borrower's prepayment. The amortization excess that had accumulated on that loan in years one through three remains in the MRF and is paid out in years seven through ten or when the pool expires, whichever is earlier.

4. If a borrower makes a partial prepayment, the amount paid is deposited in the MRF and, like the amortization excess, is paid to the Registered Holders over the life of the pool. (In the case of the above example, payout would be in years seven through ten or when the pool expires if earlier.)

In order to ensure that this program can be maintained on a self funding basis, SBA is making the following three changes to the program: (1) The first payment to Registered Holders will now consist of principal and interest instead of being interest only; (2) SBA will now pass through with a prepayment in full all funds related to the prepaid loan, including the amortization excess from the loan if it has a shorter maturity than the pool; (3) partial prepayments made during the life of the loan will be passed through on the next scheduled payment date. SBA is making these changes pursuant to its authority under section 5(g)(2) of the Small Business Act, 15 U.S.C. 634(g)(2).

Thus, effective for all pools with an issue date on or after October 1, 2004, the following will be the procedures used to govern payments to Registered Holders:

1. The first payment to a Registered Holder will consist of principal and interest.

2. All subsequent payments made to the Registered Holder will also consist of principal and interest.

3. When a loan in a pool is prepaid in full, the amount that is passed through to Registered Holders will be the principal and interest that was received at the time of prepayment plus any amortization excess associated with that loan that has accumulated in the MRF. Thus, if a seven year loan in a 10-year pool is prepaid in year three, the prepayment will be passed through to Registered Holders along with the amortization excess on that loan that had accumulated in the MRF. The timing of the pass through of the prepayment funds will not change.

4. If a borrower makes a partial prepayment, the principal and interest prepaid will be passed through to Registered Holders with the next scheduled payment. Any amortization excess will remain in the pool to term or expiration.

These program changes will be incorporated as necessary into the appropriate secondary market documents. The language above will supercede any previous description of pool payments, including that in the SBA Secondary Market Program Guide.

It is important to note there is absolutely no question or doubt that SBA will honor its obligation to guaranty the timely payment of amounts owed to Registered Holders under the full faith and credit of the United States on those pools issued prior to October 1, 2004 and any subsequent pools. SBA has modeled the pre-FY2005 pools and, based on current assumptions and predictions, determined that there are sufficient funds in the MRF to meet the timely payment obligation through 2017 for the pools originated through FY 2004. However, SBA projects that after 2017 the MRF will be short in meeting this obligation by about $105 million, in current dollars, or about .8% of the total obligation. Because the program is under FCRA, this shortfall will be covered by money advanced from the U.S. Treasury. If any shortfall were to occur in a pool issued after October 1, 2004, it would also be covered by funds from the U.S. Treasury, per the FCRA.

Authority: 15 U.S.C. 634(g)(2).

Dated: September 15, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–21126 Filed 9–20–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15818]

Exemption To Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) grants to Werner Enterprises, Inc. (Werner) an exemption from the requirement that drivers of commercial motor vehicles (CMVs) operating in interstate commerce prepare handwritten records of duty status (RODS). The exemption allows Werner to document its drivers' hours of service through the use of GPS technology and complementary computer software programs. The terms and conditions for the exemption are the same as those proposed in the agency's December 11, 2003, notice and request for comments, with the exception of the elimination of requirements for quarterly status reports and driver-specific violation reports. FMCSA has monitored closely Werner's use of the GPS technology and complementary computer software programs since June 1998. Based on this experience, the agency believes the terms and conditions of the exemption achieve a level of safety equivalent to, or greater than, that provided by complying with the current RODS requirements.

DATES: The exemption is effective on September 21, 2004. The exemption expires on September 21, 2004.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1998, FMCSA published a notice of interpretation (63 FR 16697, Apr. 6, 1998) and a request for motor carriers to participate in a "pilot demonstration project" (the Project). The Project was a voluntary program under which motor carriers with GPS technology and related safety management computer systems could enter into an agreement with the agency to use such systems to record and monitor drivers' hours of service in lieu of complying with the handwritten RODS requirement of 49 CFR 395.8. The agency indicated that it believes GPS technology and many of the complementary safety management computer systems being used by the motor carrier industry provide at least the same degree of monitoring accuracy as automatic on-board recorders allowed by 49 CFR 395.15. The original deadline for submitting applications was October 5, 1998, with subsequent extensions to June 30, 1999 (63 FR 71791, Dec. 30, 1998) and December 31, 1999 (64 FR 37689, Jul. 13, 1999). The extensions were provided because numerous motor carriers contacted the agency to express an interest in participating in the Project. Although participation in the Project was open to all interested motor carriers, Werner was the only company to sign a memorandum of understanding (MOU) with the agency to allow the use of GPS technology.

Status of Werner's Participation in the Project

On June 10, 1998, Werner entered into an MOU with the agency to use GPS technology and related safety management computer systems as an alternative to handwritten driver RODS. A copy of the MOU is included in the docket referenced at the beginning of this notice. Over the course of the pilot demonstration project, FMCSA conducted onsite reviews and investigated a complaint. The reviews and complaint investigation identified potential improvements to Werner's system that would increase the accuracy of the electronic RODS and thereby raise the level of hours-of-service compliance.

In March 2002, Werner and FMCSA entered into a revised MOU to amend the terms of the June 1998 agreement. A copy of the revised MOU is in the docket. The revised MOU contains specific provisions related to system modifications and internal hours-of-service compliance monitoring reports agreed to by Werner and FMCSA.

FMCSA Notice of Intent To Grant Exemption

On December 11, 2003, FMCSA published a notice of intent to grant Werner an exemption from the requirement that drivers of CMVs prepare handwritten RODS (68 FR 69117, Dec. 11, 2003). The agency indicated that it believes it is appropriate to make a transition from a pilot demonstration project to an exemption, as authorized by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381. We explained that although Werner expressed an interest in using GPS technology and complementary computer systems to monitor and record its drivers' duty status on a permanent basis, FMCSA cannot permit this without initiating a notice-and-comment rulemaking proceeding to amend 49 CFR 395.8. The agency does not believe it is appropriate to amend the safety regulations based on a technology that is currently being used by only one motor carrier. Therefore, the agency proposed to exercise its authority under 49 U.S.C. 31315(b) to make a transition from the Project to an exemption that can be renewed through a notice-and-comment process every two years.

The agency proposed that the terms and conditions for the exemption be the same as those used for the Project, with a few exceptions based on discussions between FMCSA and Werner. FMCSA made a preliminary determination that, used in lieu of the "record of duty status" required by 49 CFR 395.8, Werner's GPS technology and complementary safety management computer systems would achieve the requisite level of safety under 49 U.S.C. 31315(b), provided certain conditions are satisfied.

Discussion of Comments

FMCSA received comments from Advocates for Highway and Auto Safety (Advocates), Mr. William J. Alexander, Mr. Mark Benja, the Insurance Institute for Highway Safety (IIHS), J. B. Hunt, Mr. Chuck Mosqueda, Mr. Timothy G. Trotter, and Werner Enterprises (Werner).

J.B. Hunt, Chuck Mosqueda, and Werner commented in support of FMCSA's proposed exemption. However, J. B. Hunt and Werner expressed concern about certain terms and conditions of the proposed exemption.

IIHS did not comment specifically on the proposed exemption. Rather, it requested that FMCSA publish a summary of the results of the pilot demonstration project with Werner, including an assessment of the benefits and costs of the technology.

Advocates and the three remaining individuals who submitted comments to the docket were opposed to granting the exemption to Werner for various reasons, most of which were discussed in greatest detail by Advocates. Advocates believes the GPS technology-based RODS system used by Werner allows drivers operating for several hours at very low speeds in congested traffic conditions to regard such driving time as off-duty time. Advocates believes this practice promotes sleep-deprived, fatigued drivers who are a risk to themselves and other motorists, and that it also provides Werner with productivity advantages over motor carriers relying on handwritten RODS.

Advocates argues that FMCSA has not demonstrated that Werner's use of GPS-based technology achieves a level of safety equivalent to or greater than the level that would be achieved through compliance with 49 CFR 395.8. Advocates believes that inaccurate recording of prolonged low-speed operations of CMVs as off-duty time permits drivers to exceed maximum driving hours. Therefore, Advocates asserts the proposed exemption has no safety basis in the administrative record fulfilling the statutory safety test for exemptions under 49 U.S.C. 31315 and 31136(e).

Advocates also believes the merits of the Werner exemption should be evaluated only after a decision has been issued in the current Federal court case concerning the hours-of-service rulemaking and the agency has taken any necessary action in response to the court ruling.

Finally, Advocates argues that FMCSA's December 11, 2003, notice does not explain how GPS data are converted to RODs, or whether the agency seeks and evaluates the actual GPS data to compare with RODs from Werner. For example, there is no information on the extent to which FMCSA independently verifies that actual driving times of Werner's drivers match information from the GPS-based records.

FMCSA Response to Comments Opposed to Granting the Exemption

FMCSA believes Advocates' concerns about flaws in the programming algorithms or assumptions about drivers' duty status under certain circumstances have been adequately resolved as a result of the agency's oversight of Werner during the pilot demonstration project. Werner has cooperated completely in working with FMCSA to evaluate its use of GPS-related technology.

It is true that the original programming algorithms made it possible for certain routine driving and work activities to be inaccurately recorded as off-duty time. However, we believe this flaw in programming or assumptions was simply an error. While the error resulted in inaccurate RODS, there is no basis for concluding it was an intentional effort to violate the applicable Federal hours-of-service regulations. The terms and conditions in the March 2002 MOU between FMCSA and Werner required system modifications to correct the programming algorithms. Based on the agency's continued oversight and monitoring of Werner, we have verified that the corrections have been implemented and the issue resolved.

Furthermore, the new hours-of-service regulations published on April 28, 2003 (68 FR 22456, Apr. 28, 2003) and implemented on January 4, 2004, counter the most likely motive for falsely recording off-duty periods of less than 10 hours. Whether the CMV operator is driving the CMV; on duty, not driving; off duty; or otherwise moving very slowly in the CMV, the driver is prohibited from operating the vehicle for any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty [49 CFR 395.3(a)]. Miscellaneous off-duty periods do not extend the 14-hour limit.

The pilot demonstration project concerned the use of technology to document drivers' RODS. No aspect of the project signified that drivers would be allowed to exceed hours-of-service limits in effect during the project. The proposed exemption likewise should not be construed as involving consideration of alternatives to the new hours-of-service regulations for drivers of property-carrying commercial motor vehicles. The exemption concerns an alternative to handwritten RODS, not a compromise to the minimum safety performance requirements.

FMCSA believes the exemption satisfies the statutory test that the level of safety be equivalent to or greater than the level that would be achieved by complying with the regulation in question, 49 CFR 395.8. In the case of RODS, what matters is whether the GPS technology-based RODS system provides accurate documentation of drivers' duty status. There is no discernible reason to conclude that safety would be compromised by allowing the use of GPS technology-based RODS as implemented by Werner. Since the exemption follows the requirements concerning maximum driving or on-duty time and minimum off-duty periods, the safety performance criteria under the exemption are essentially the same as for all other motor carriers of property. Therefore, FMCSA believes the exemption satisfies the statutory safety test.

Advocates' request to defer the decision on the exemption until after a ruling on the legal challenge to the new hours-of-service regulations has been granted. On July 16, 2004, the U.S. Circuit Court of Appeals for the D.C. Circuit held that the new rules were arbitrary and capricious because the agency failed to consider their effect on the physical condition of drivers, as required by 49 U.S.C. 31136(a)(4). The court therefore vacated the new regulations [*Public Citizen, et al.*, v. *Federal Motor Carrier Safety Administration*, No. 03–1165]. For purposes of the Werner exemption, however, the court's decision is largely irrelevant. The hours-of-service rules applicable to motor carriers and drivers—whether the old regulations or the new rules vacated by the court—have no bearing on the question whether Werner should be allowed to use advanced technology to document compliance with those limits. For purposes of the exemption, the question is the accuracy and reliability of Werner's GPS-based RODS system, not the content of the hours-of-service regulations.

With regard to Advocates' questions about the operation of the GPS technology-based RODS system used by Werner, and whether the agency reviews "raw" data to verify drivers' duty status, the agency believes there is sufficient information in the public domain to inform interested parties about the basic operating principles of GPS technology. Furthermore, converting location and time data from points A and B to the distance between points A and B, the average speed required to travel between points A and B, and the total driving time between points A and B requires only the most basic calculations. Although the programming algorithms did not adequately address situations in which small deviations between GPS location information were automatically—and incorrectly—recorded as off-duty time rather than on-duty or driving time, this did not diminish the accuracy of basic time-of-day, location, and distance-between-locations information. Nor did it mean that the basic methods for

performing certain calculations were inappropriate.

Werner's programming algorithms included certain assumptions about drivers' duty status for vehicle movements that occur between data collection cycles, or "polling intervals" (instances when vehicle location information is captured, along with the date and time). If, based upon a comparison of location information gathered at the beginning and end of the polling intervals, the vehicle appeared not to have moved (or to have moved only a very short distance) between these data collection cycles, the system automatically recorded the driver's duty status as off duty rather than as driving. Under these circumstances the driver would need to provide input to ensure documentation of the correct duty status. In the absence of input from the driver, the system failed to automatically and accurately record driving and on-duty time information. FMCSA believes this programming issue has been resolved satisfactorily. System defaults now record truck stationary time as on duty, not driving and vehicle movements greater than two miles as driving time.

FMCSA has reviewed raw data from Werner's system, compared RODS information with supporting documents, and had Federal safety investigators ride with Werner drivers for certain trips to verify the accuracy of its RODS system. The agency believes the information it reviewed is sufficient proof that Werner's GPS technology-based RODS accurately document drivers' duty status.

Finally, as requested by IIHS, we will prepare a report on the results of the pilot demonstration project with Werner.

Discussion of Comments About the Terms and Conditions of the Exemption

As mentioned earlier in this notice, J. B. Hunt and Werner commented about the specific terms and conditions of the exemption. Werner indicated it has worked closely with FMCSA during the design, implementation and testing phases of its paperless log project. Werner explained that it has been subject to various onsite reviews of its paperless RODs system, which resulted in numerous changes in the program design. Werner argues that these efforts have enabled it to develop an efficient paperless RODS system that exceeds the capabilities of a handwritten system. Werner believes the proposed reporting requirements under the headings "Quarterly Reports," "Reporting of Violations of Hours-of-Service Rules," and "FMCSA Access to Safety Management Information System" place unnecessary burdens on Werner. Werner believes these recordkeeping burdens would discourage other motor carriers from participating in similar pilot programs or developing their own paperless RODS system. J. B. Hunt expressed similar concerns.

FMCSA Response to Comments About the Terms and Conditions of the Exemption

FMCSA agrees with Werner that the proposed requirements for quarterly reports and reporting of violations of hours-of-service rules (68 FR 69117, at 69118 and 69119, respectively) are unnecessary, given the transition from a demonstration project to an exemption program.

We included the quarterly reporting requirement in the March 2002 MOU between FMCSA and Werner to compensate for the inaccurate reporting of drivers' duty status caused by the programming algorithms or assumptions discussed earlier in this document. Also, there were instances when drivers did not accurately input their duty status when loading and unloading vehicles. Werner used the information from these quarterly reports to make appropriate changes to its programming algorithms and its supervision of certain drivers. Since Werner has essentially resolved the problems that the quarterly reports were intended to address, we no longer believe it is necessary to impose this requirement under the exemption. FMCSA retains full authority to conduct investigations and compliance reviews of Werner's operations and to take enforcement action against violations.

For essentially the same reasons, FMCSA believes the driver-specific report of hours-of-service violations is no longer necessary. The proposed requirement was intended to address a problem that has been resolved, and is unrelated to FMCSA's exercise of its enforcement authority.

However, FMCSA is retaining under the terms and conditions of the exemption the requirement that Werner allow FMCSA enforcement personnel reasonable access to its safety management information systems. This provision requires Werner to provide driver dispatch message histories and detailed position histories associated with their RODS. This information is essential for independent verification of hours-of-service information by FMCSA. Although the agency has the statutory authority to request that Werner provide such information regardless of whether it is required under the exemption, we are including an explicit provision to make this authority clear and ensure timely responses to any such information requests.

FMCSA Decision

FMCSA has considered all the comments received in response to its December 11, 2003, notice of intent to grant an exemption, and has decided to grant Werner an exemption from the requirements of 49 CFR 395.8. As a result of this exemption, Werner may use its GPS technology and complementary safety management computer systems to document drivers' duty status in lieu of pen-and-paper RODS. FMCSA has determined Werner's GPS technology-based RODS will achieve the requisite level of safety under 49 U.S.C. 31315(b), provided the terms and conditions in this notice are satisfied.

Terms and Conditions of the Exemption

System Operation

(a) System defaults must record truck stationary time as "on duty, not driving."

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if its GPS provider improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as "on duty, not driving" when the driver's fuel card is inserted into the card reader, no system defaults are authorized for routine stops (i.e., deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

Documentation of System Failures

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time

periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its records of duty status for the current day and the previous seven days for the driver(s) affected by the failure. In the event Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver record of duty status for the current day and reconstruct his or her duty hours for the previous seven (7) days. When the system becomes operational, a fax of the missing records of duty status must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

Information Required on All CMVs Operated by Werner

Werner must ensure that each commercial motor vehicle it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the on-board GPS equipment;

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the "record of duty status" required by 49 CFR 395.8.

FMCSA Access to Safety Management Information System

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

(a) Driver records of duty status created by Werner's GPS and related safety management computer systems;

(b) Driver-dispatch "message histories" and detailed position histories associated with driver records of duty status;

(c) Driver payroll records associated with driver records of duty status;

(d) Driver shipping document records; and

(e) Miscellaneous trip expense records.

Reporting of Corrections or Amendments To Records

Werner must furnish upon request information indicating the number of times the "driving" time on driver records of duty status was changed for each driver, and identifying who authorized each altered record.

Documenting Distance Traveled

Werner must ensure the system for monitoring and recording drivers' hours of service has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations that may underestimate the distance traveled.

Enforcement of Hours of Service While the Exemption Is in Effect

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8. FMCSA will, to the greatest extent practicable, communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption. FMCSA will continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA will review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA reserves the right to sample records in accordance with FMCSA policies applicable to all motor carriers, and Werner retains the right to contest the validity of the sample used.

The agency does not intend to hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting complaint investigations or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. The exemption does not preclude States from continuing to enforce applicable State requirements concerning on-duty and driving-time limits. Werner must ensure that its drivers cooperate with Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

Authority: 49 U.S.C. 31136 and 31315; 49 CFR 1.73.

Issued on: September 13, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–21139 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2004–19141]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: 49 U.S.C. 5309 and 5307 Capital Assistance Programs.

DATES: Comments must be submitted before November 22, 2004.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of

comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Bottoms, Office of Program Management, (202) 366–1632.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: U.S.C. Sections 5309 and 5307 Capital Assistance Programs.

OMB Number: 2132–0543.

Background: 49 U.S.C. Sections 5309 Capital Program and Section 5307 Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State and local governments and public transportation authorities for financing mass transportation projects. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments."

Respondents: State and local governments and non-profit institutions.

Estimated Annual Burden on Respondents: 54 hours for each of the 3,675 respondents.

Estimated total Annual Burden: 198,466 hours.

Frequency: Annual.

Issued: September 15, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 04–21140 Filed 9–20–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME AND DATE: 10 a.m., September 24, 2004.

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE CONSIDERED:

STB Docket No. 42056, *Texas Municipal Power Agency* v. *The Burlington Northern and Santa Fe Railway Company.*

STB Docket No. 42083, *Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc.* v. *Boston and Maine Corporation and Springfield Terminal Railway Company.*

STB Docket No. 42075, *Engelhard Corporation—Petition for Declaratory Order—Springfield Terminal Railway Company and Consolidated Rail Corporation.*

STB Finance Docket No. 34486, *Ohio Valley Railroad Company—Acquisition and Operation Exemption—Harwood Properties, Inc.*

STB Finance Docket No. 34395, *City of Peoria IL, d/b/a Peoria, Peoria Heights and Western Railroad—Construction of Connecting Track Exemption—in Peoria County, IL.*

STB Docket No. 42085, *Climate Master Inc. and International Environmental, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Trans Tech Solutions, Inc., F&M Bank, and Midland Transportation Co.*

STB Ex Parte No. 542 (Sub-No. 11), *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update.*

STB Ex Parte No. 638, *Procedures to Expedite Resolution of Rate Challenges to be Considered Under the Stand-Alone Cost Methodology.*

STB Ex Parte No. 652, *Revision of Exemption Authority Citations.*

STB Ex Parte No. 536 (Sub-No. 17), *Semiannual Regulatory Agenda.*

FOR FURTHER INFORMATION CONTACT: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565–1596 FIRS: 1–800–877–8339.

Dated: September 16, 2004.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21288 Filed 9–17–04; 1:00 pm]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Treasury

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a proposed information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its proposed information collection titled, "OCC Communications Questionnaire."

DATES: You should submit written comments by November 22, 2004.

ADDRESSES: You should direct written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0226, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission 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.

FOR FURTHER INFORMATION CONTACT: You can request additional information from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to collect the following information from national banks:

Title: OCC Communications Questionnaire.

OMB Number: 1557–0226.

Description: The OCC is proposing to collect information from national banks regarding the quality, timeliness, and effectiveness of OCC communications products, such as booklets, issuances, CDs, and Web site. Completed questionnaires will provide the OCC

with information needed to properly evaluate the effectiveness of its paper and electronic communications products. The OCC will use the information to identify problems and to improve its service to national banks.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 2,100.

Estimated Total Annual Responses: 2,100.

Frequency of Response: One time.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden: 1,050 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techiques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 14, 2004.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04–21125 Filed 9–20–04; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register
Vol. 69, No. 182
Tuesday, September 21, 2004

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 DEFENSE

Department of the Army

Availability for Non–Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Applications Concerning Identification of Small Molecule Inhibitors of Anthrax Lethal Factor

Correction

In notice document 04–20521 appearing on page 54769 in the issue of Friday, September 10, 2004, make the following correction:

In the second column, in the **SUMMARY** section, in the eighth line, after "Identification of Small Molecule Inhibitors of Anthrax Lethal Factor," and before "filed December 24, 2003" insert the following, "filed January 6, 2004; and U.S. Provisional Patent Application Serial No. 60/533,375 entitled, "Identification of Small Molecule Inhibitors of Anthrax Lethal Factor,"."

[FR Doc. C4–20521 Filed 9–20–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7813–5]

Potential Stakeholder Process for Detection and Quantitation Procedures

Correction

In proposed rule document 04–20795 appearing on page 55547 in the issue of Wednesday, September 15, 2004, make the following correction:

On page 55547, in the first column, in the **ACTION** heading, "Notice of proposed rule." should read "Notice of potential stakeholder process.".

[FR Doc. C4–20795 Filed 9–20–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19017; Directorate Identifier 2004–NM–144–AD; Amendment 39–13782; AD 2004–18–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11, MD–11F, and 717–200 Airplanes

Correction

In rule document 04–20015 beginning on page 53794 in the issue of Friday, September 3, 2004, make the following correction:

§39.13 [Corrected]

On page 53795, in the second column, in §39.13(c), in the third line "MD–11F" should read "MD–11, MD–11F".

[FR Doc. C4–20015 Filed 9–20–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–23–AD; Amendment 39–13772; AD 2004–17–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

Correction

In rule document 04–18554 beginning on page 50056 in the issue of Friday, August 13, 2004, make the following corrections:

§39.13 [Corrected]

1. On page 50060, in § 39.13(e), in the table, under the column titled "Actions", in entry (2)(ii), "P/N 262281–1" should read "P/N 2622281–1".

2. On the same page, in the same section, in the same table, in the same column, in entry (4)(vi), "P/N 2622091–28" should read "P/N 2622091–18".

3. On the same page, in the same section, in the same table, in the same column, in entry (5)(1), "(1)" should read "(i)".

4. On page 50061, in § 39.13(f), in the table, in the column titled "Actions", in entry (2)(i), the second line should read as follows: "2622281–2, 2622281–12, 2692001–2 or FAA-".

5. On the same page, in the same section, in the same table, in the same column, in entry (2)(ii), in the first line, "P/M 262231–7" should read "P/N 2622311–7".

[FR Doc. C4–18554 Filed 9–20–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 21, 2004

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 5, 10, 41, and 104
Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 5, 10, 41, and 104

[Docket No.: 2003–P–020]

RIN 0651–AB64

Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. The noteworthy changes in this final rule are: Providing for an alternative signature on a number of submissions; adjusting the fees for a number of patent-related petitions to reflect the actual cost of processing these petitions; codifying the current incorporation by reference practice and also providing the conditions under which a claim for priority or benefit of a prior-filed application would be considered an incorporation by reference of the prior-filed application; expanding the submissions that can be filed on a compact disc; eliminating the requirement for copies of U.S. patents or U.S. patent application publications cited in an information disclosure statement for all applications; providing that a request for information may contain interrogatories or requests for stipulations seeking technical factual information actually known by the applicant; providing that supplemental replies will no longer be entered as a matter of right; providing for the treatment of preliminary amendments present as of the filing date of an application as part of the original disclosure; and eliminating the requirement in a reissue application for the actual physical surrender by applicant of the original Letters Patent.

DATES: Effective October 21, 2004, except that: The changes to 37 CFR 1.4, 1.6, 1.10, 1.27, 1.57(a), 1.78, 1.84, 1.115, 1.137, 1.178, and 1.311, and new 37 CFR 1.57(a)(1) and (a)(2) are effective September 21, 2004; and the changes to 37 CFR 1.12, 1.14, 1.17, 1.19, 1.47, 1.53, 1.57(a)(3), 1.59, 1.84(a)(2), 1.103, 1.136, 1.182, 1.183, 1.291, 1.295, 1.296, 1.377, 1.378, 1.550, 1.741, 1.956, 5.12, 5.15, 5.25, and 41.20 are effective November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein, Senior Legal Advisor, by telephone at (703) 305–8713 or Robert J. Spar, Director, Office of Patent Legal Administration (OPLA), at (703) 308–5107, or by facsimile to (703) 305–1013, marked to the attention of Mr. Bernstein, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office has conducted a "top to bottom" review of the patent application and examination process (among other processes) as part of the 21st Century Strategic Plan. The 21st Century Strategic Plan is available on the Office's Internet Web site (*www.uspto.gov*). While many of the changes to the patent application and examination process necessary to support the 21st Century Strategic Plan require enabling legislation (and implementing rule changes), the Office has determined that a number of initiatives can be implemented under the Office's current rulemaking and patent examination authority set forth in 35 U.S.C. 2(b)(2), 131, and 132. This final rule revises the rules of practice in title 37 of the Code of Federal Regulations (CFR) to improve the patent application and examination process by promoting quality enhancement, reducing patent pendency, and using information technology to simplify the patent application process.

This final rule specifically makes changes to the following sections of title 37 CFR: 1.4, 1.6, 1.8, 1.10, 1.12, 1.14, 1.17, 1.19, 1.27, 1.47, 1.52, 1.53, 1.57, 1.58, 1.59, 1.63, 1.69, 1.76, 1.78, 1.83, 1.84, 1.85, 1.91, 1.94, 1.98, 1.102, 1.103, 1.105, 1.111, 1.115, 1.121, 1.131, 1.136, 1.137, 1.165, 1.173, 1.175, 1.178, 1.179, 1.182, 1.183, 1.215, 1.291, 1.295, 1.296, 1.311, 1.324, 1.377, 1.378, 1.550, 1.741, 1.956, 5.12, 5.15, 5.25, 10.18, 41.20, and 104.3. This final rule also amends title 37 CFR by adding new § 1.57 and removing § 1.179. The Office is not proceeding with the proposed changes to §§ 1.55, 1.116, 1.138, 1.502, 1.530, 1.570, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997 in this final rule. In addition, the Office adopted proposed changes §§ 1.704 and 1.705 in a separate rule making. *See Revision of Patent Term Extension and Patent Term Adjustment Provisions,* 69 FR 21704 (Apr. 22, 2004), 1282 *Off. Gaz. Pat. Office* 100 (May 19, 2004) (final rule).

The following legal advisors and staff of the Office of Patent Legal Administration may be contacted directly for the matters indicated:

Hiram Bernstein (703) 305–8713: § 1.136 and 1.324.

Joni Chang (703) 308–3858: §§ 1.8, 1.10, 1.91, 1.94, 1.98 and 1.111.

Jeanne Clark (703) 306–5603: §§ 1.55 and 1.98.

Terry Dey (703) 308–1201: § 1.178.

Elizabeth Dougherty (703) 306–3156: § 1.121.

James Engel (703) 308–5106: §§ 1.12, 1.14, 1.17, 1.53, 1.59, 1.102, 1.103, 1.131, 1.182, 1.183, 1.291, 1.295, 1.296, 1.377, 1.378, 1.741, 5.12, 5.15, 5.25, 41.20, 104.3.

Karin Ferriter (703) 306–3159: §§ 1.6, 1.19, 1.47, 1.52 (other than (e)(1)(iii) and (e)(3)), 1.58(a) and (c) (other than landscape), 1.63, 1.69, 1.83, 1.84, 1.85, and 1.165.

Anton Fetting (703) 305–8449: §§ 1.17, 1.53, 1.59, 1.103, 1.105, 1.182, 1.183, 1.295, 1.296, 1.377, 1.378, 1.741, 5.12, 5.15, 5.25, 41.20, 104.3.

Kery Fries (703) 308–0687: §§ 1.76, 1.704, and 1.705.

Eugenia Jones (703) 306–5586: §§ 1.8, 1.10, 1.27, 1.55, 1.57(a), 1.78, 1.91, and 1.94.

Michael Lewis (703) 306–5585: §§ 1.4, 1.19, 1.52(e)(1)(iii) and (e)(3), 1.57(b)–(f), 1.58(b) and (c) (landscape), and 10.18.

Cynthia Nessler (703) 305–0271: § 1.311.

Mark Polutta (703) 308–8122: §§ 1.213, and 1.215.

Kenneth Schor (703) 308–6710: §§ 1.137, 1.173, 1.175, 1.179, 1.550, and 1.956.

Fred Silverberg (703) 305–8986: § 1.115.

The Office published a proposed rule proposing changes to the rules of practice to improve the patent application and examination process by promoting quality enhancement, reducing patent pendency, and using information technology to simplify the patent application process. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 68 FR 53816 (Sept. 12, 2003), 1275 *Off. Gaz. Pat. Office* 23 (Oct. 7, 2003) (proposed rule). The Office received thirty written comments (from intellectual property organizations, law firms, businesses, and patent practitioners) in response to this notice of proposed rule making. The comments and the Office's responses to those comments are included in the discussion of the specific rule to which the comment relates. Comments generally in support of a change are not discussed.

Discussion of Specific Rules

Section 1.4: Existing § 1.4(d)(1) sets forth the requirements for personal signatures (meaning handwritten signatures) for most correspondence with the Office and indicates that original signatures, or direct or indirect copies of such signatures, are permitted.

Section 1.4(d)(1) is amended to specifically indicate that the signatures covered under § 1.4(d)(1) are all handwritten signatures (except for the type of correspondence submitted pursuant to paragraph (e) of § 1.4) and that dark ink or its equivalent must be used. Section 1.4(d)(2) is rewritten to provide for the signing of correspondence by use of an S-signature, which is defined as a signature between forward slash marks, but not a handwritten signature as defined in §§ 1.4(d)(1) or (e) depending on the type of correspondence the signature is applied to. An S-signature includes any signature made by electronic or mechanical means, and any mode of making or applying a signature not covered by either a personally signed handwritten signature permitted under §§ 1.4(d)(1) or (e), or an Electronic Filing System (EFS) character coded signature permitted under § 1.4(d)(3). The S-signature of § 1.4(d)(2) can be utilized with correspondence filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), or via the Office Electronic Filing System as an EFS Tag(ged) Image File Format (TIFF) attachment, for a patent application, patent, or a reexamination proceeding. Paragraphs (d)(2)(i) through (d)(2)(iii) of § 1.4 set forth the specific requirements for S-signatures. Paragraph (d)(3) of § 1.4 sets forth the requirements for electronic signatures on correspondence filed via the Office Electronic Filing System in character coded form. Thus, any signature other than a personally applied handwritten signature (which is covered by paragraphs (d)(1) or (e) of this section) is covered by the provisions of (d)(2) and (d)(3) of § 1.4. Former paragraph (d)(2) has been redesignated as new paragraph (d)(4)(i) of § 1.4 in view of the provision of new paragraphs (d)(2) and (d)(3) of § 1.4 for S-signature and EFS character coded signature signed documents. Paragraph (d)(4)(ii), certifications as to the signature, has been added to include paragraphs (d)(4)(ii)(A) (Of another), (d)(4)(ii)(B) (Self certification), and (d)(4)(ii)(C) (Sanctions). Paragraph (d)(4)(ii)(A) requires that a person submitting a document signed by another under paragraphs (d)(2) or (d)(3) of this section is obligated to have a reasonable basis to believe that the signature of the person present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature. Paragraph (d)(4)(ii)(B) requires that a person inserting a signature under paragraphs (d)(2) or (d)(3) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature. Paragraph (d)(4)(ii)(C) provides that violations of the certifications as to the signature of another or a person's own signature, set forth in paragraphs (d)(4)(ii)(A) and (B) of this section, may result in the imposition of sanctions under §§ 10.18(c) and (d). Section 1.4(e) has a conforming amendment based on the changes made for § 1.4(d)(1) regarding a signature that is handwritten and the use of permanent ink that is dark or its equivalent. Provision is also made, § 1.4(h), for the requirement of ratification or confirmation (which includes submission of a duplicate document) or evidence of authenticity of a signature where the Office has reasonable doubt as to its authenticity or where it does not clearly identify the person signing.

Requirements of Signatures: Section 1.4(d)(1) has always been defined to cover all handwritten signatures, except for the signatures on the type of correspondence submitted under paragraph (e) of § 1.4. *See Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office*, 57 FR 36034, 36035 (Aug. 12, 1992), 1142 *Off. Gaz. Pat. Office* 8, 9 (Sept. 1, 1992). Section 1.4(d)(1) has been amended to confirm this definition and to make it clear that handwritten signatures are not covered by §§ 1.4(d)(2) or (d)(3). The term "handwritten" has been added both as a title for, and in the text of, § 1.4(d)(1) to specifically indicate the type of signature covered by the paragraph. Additionally, the permanent ink requirement of the paragraph has been clarified by reference to "dark ink or its equivalent" in accord with § 1.52(a)(1)(iv). Section 1.4(d)(1) has additionally been amended to indicate (by specifically excluding §§ 1.4(d)(2) and (d)(3)) that a handwritten signature may not be provided under the S-signature provisions of new paragraph (d)(2) of § 1.4 and the EFS character coded signature provisions of new paragraph (d)(3) of § 1.4.

Section 1.4(d)(2) creates an S-signature, which is defined as a signature inserted between forward slash marks, but not a handwritten signature as defined by §§ 1.4(d)(1) or (e). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by either a personally signed handwritten signature permitted under §§ 1.4(d)(1) or (e), or an Electronic Filing System (EFS) character coded signature permitted under § 1.4(d)(3). The S-signature of § 1.4(d)(2) can be utilized with correspondence filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), or via the Office Electronic Filing System as an EFS Tag(ged) Image File Format (TIFF) attachment, for a patent application, patent, or a reexamination proceeding. The S-signature must be in permanent dark ink or its equivalent.

Section 1.4(d)(2)(i) requires that an S-signature must be in letters, or Arabic numerals, or both. Appropriate spaces and punctuation (*i.e.*, commas, periods, apostrophes, or hyphens) may be used with the letters and numbers. The person signing must personally insert the S-signature between two forward slashes (/* * */).

Section 1.4(d)(2)(ii) requires that if the S-signature is that of a registered practitioner of record signing pursuant to § 1.33(b)(1), or a registered practitioner not of record signing pursuant to § 1.33(b)(2), the practitioner must provide his or her registration number as part of, or adjacent to, the S-signature. A number character (#) may only be used as part of the S-signature when appearing before a practitioner's registration number; otherwise, the number character may not be used in an S-signature.

Section 1.4(d)(2)(iii)(A) requires that in addition to the S-signature, a printed or typed name of a signer must be provided preferably immediately below or adjacent to the person's S-signature.

Section 1.4(d)(2)(iii)(B) requires that the printed or typed name must be reasonably specific enough so it can readily be ascertained who has made the S-signature.

Section 1.4(d)(3) establishes the use of an EFS character coded signature, which is an electronic signature, for correspondence submitted via EFS in character coded form for a patent application, or an assignment cover sheet signed consistent with § 3.31. The electronic signature must consist only of letters of the English alphabet, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, and hyphens as punctuation. Letters of the English alphabet are the upper and lower case letters A through Z.

Section 1.4(d)(4)(i) establishes that the presentation to the Office (whether by signing, filing, submitting, or later

advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter.

Section 1.4(d)(4)(ii)(A) establishes certifications as to the signature of another for a person submitting a document signed by another under paragraphs (d)(2) or (d)(3) of this section. Thus, the submitting person is obligated to have a reasonable basis to believe that the person whose signature is present on the document actually inserted the signature on the document, and the submitting person should retain evidence of authenticity of the signature.

Section 1.4(d)(4)(ii)(B) establishes that a person inserting a signature under paragraphs (d)(2) or (d)(3) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.

Section 1.4(d)(4)(ii)(C) establishes that violations of the certifications as to the signature of another or a person's own signature, set forth in paragraphs (d)(4)(ii)(A) and (B) of this section, may result in the imposition of sanctions under §§ 10.18(c) and (d).

Section 1.4(e) has been amended to clarify that "personally signed" refers to a handwritten signature and that permanent dark ink or its equivalent is required.

Paragraph 1.4(h) provides for a ratification, confirmation, or evidence of authenticity of a signature handwritten pursuant to §§ 1.4(d)(1) and (e), and S-signature pursuant to § 1.4(d)(2) and an EFS character coded signature pursuant to § 1.4(d)(3)), such as where the Office has reasonable doubt as to the authenticity (veracity) of the signature.

Correspondence which is filed using the EFS TIFF image form is defined to be a black and white image at 300 dots per inch (dpi), either uncompressed or with CCITT Group 4 compression.

Discussion of signature requirements: The rule change is intended to facilitate movement of documents between practitioners, applicants, and the Office. The rule change does *not* create the ability to file Official correspondence by electronic mail messages (*e.g.*, e-mail) over the Internet to the Office. Pilot programs such as the program at the Board of Patent Appeals and Interferences (BPAI) are not affected by this rule change (see standing orders at the URL: *http://www.uspto.gov/web/offices/dcom/bpai/standing2003May.pdf).*

Although the Office will now accept correspondence with S-signatures or EFS character coded signatures, the Office can only authenticate what is in the Office records. Applicants and practitioners must be cognizant of the issues of changed document appearance and content and take appropriate steps to ensure that their records, if in electronic form, can be rendered and authenticated at some later time as being the unaltered S-signature or EFS character coded signed original document.

Section 1.4(d)(1) covers all handwritten signatures, except for the handwritten signatures on the types of correspondence covered by § 1.4(e). The requirement in § 1.4(d)(1) of permanent dark ink or its equivalent relates to whether a handwritten signature is compliant and is not limiting on the type of handwritten signature that is covered by § 1.4(d)(1). Thus, § 1.4(d)(1) would cover handwritten signatures in red ink or in pencil; although, under § 1.4(d)(1) neither would be acceptable since red ink is not dark, and pencil is not permanent. A scanned image of a handwritten signature filed via the Office's EFS is permitted as a copy under § 1.4(d)(1)(ii).

A signature applied by an electric or mechanical typewriter directly to paper is not a handwritten signature, which is applied by hand. Accordingly, if a typewriter applied signature is used, it must meet the requirements of § 1.4(d)(2). Adding forward slashes to a handwritten (or hand-printed) ink signature that is personally applied will not cause the signature to be treated under § 1.4(d)(2). Thus, such a signature will be treated under §§ 1.4(d)(1) or (e) with the slashes ignored. The end product from a manually applied hand stamp or from a signature replication or transfer means (such as by pen or by screen) appears to be a handwritten signature, but is not actually handwritten, and would therefore be treated under § 1.4(d)(2).

Paragraph 1.4(d)(2)(i) defines the content of an S-signature for correspondence submitted to the Office in paper or by facsimile transmission or via the Office EFS as a TIFF attachment. The Office is adopting a standard of only letters, Arabic numerals, or both, with appropriate spaces and punctuation (*i.e.*, commas, periods, apostrophes, or hyphens) as the S-signature. "Letters" include English and non-English alphabet letters, and text characters (*e.g.*, Kanji). Non-text, graphic characters (*e.g.*, a smiley face created in the True Type Wing Dings font) are not permitted. "Arabic numerals" are the numerals 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9, which are the standard numerals used in the United States.

The Office recognizes that commas, periods, apostrophes, and hyphens are often found in names and will therefore be found in many S-signatures. These punctuation marks and appropriate spaces may be used with letters and Arabic numerals in an S-signature. A sample S-signature including punctuation marks and spaces, between two forward slashes, is: /John P. Doe/. Punctuation marks, per se, are not punctuation and are not permitted without proper association with letters and Arabic numerals. An S-signature of only punctuation marks would be improper (*e.g.*, /-----/). In addition, punctuation marks, such as question marks (*e.g.*, /???/), are often utilized to represent an intent not to sign a document and may be interpreted to be a non-bona fide attempt at a signature, in addition to being improper.

The S-signature must be placed between two forward slashes. This is consistent with the rule adopted in the Trademark Office, and the international standard. *See* PCT Annex F, section 3.3.2. The S-signature between two forward slashes cannot contain any additional forward slashes. The presentation of just letters and Arabic numerals as an S-signature without the S-signature being placed between two forward slashes will be treated as an unsigned document. Script fonts are not permitted for any portion of a document except the S-signature. *See* § 1.52(b)(2)(ii). Presentation of a typed name in a script font without the typed name being placed between the required slashes does not present the proper indicia manifesting an intent to sign and will be treated as an unsigned document.

To avoid processing delays, the Office needs to readily determine whether a document has been signed. The filing of a document does not imply that the document has been signed. The Office does not want to investigate as to whether a mark (*e.g.*, extraneous marks or a non-permanent ink presentation of a name) comprises a signature. Therefore, the Office will only interpret the data presented between two forward slashes as an S-signature. Hence, documents intended to be unsigned should be very clear that any data presented between forward slashes is not intended to be a signature and must avoid placement of any letters or Arabic numerals between two forward slashes in a signature area.

To accommodate as many varieties of names as possible, a signer may select any combination of letters, Arabic numerals, or both, for his or her S-signature under § 1.4(d)(2)(i).

Paragraph 1.4(d)(2)(i) also defines who can insert an S-signature into a document. Section 1.4(d)(2)(i) requires that a person, which includes a practitioner, must insert his or her own signature using letters and/or Arabic numerals, with appropriate commas, periods, apostrophes, or hyphens as punctuation and spaces. The "must insert his or her own signature" requirement is met by the signer directly typing his or her own signature on a keyboard. The requirement does not permit one person (*e.g.*, a secretary) to type in the signature of a second person (*e.g.*, a practitioner) even if the second person directs the first person to do so. A person physically unable to use a keyboard, however, may, while simultaneously reviewing the document for signature, direct another person to press the appropriate keys to form the S-signature.

The person signing the correspondence must insert his or her own S-signature with a first single forward slash mark before, and a second single forward slash mark after, the S-signature (*e.g.*, /Dr. John P. Doe, Jr./). Additional forward slashes are not permitted as part of the S-signature.

For consistency purposes, and to avoid raising a doubt as to who has signed, the same S-signature should be utilized each time, with variations of the signature being avoided. The signer should review any indicia of identity of the signer in the body of the document, including any printed or typed name and registration number, to ensure that the indicia of identity in the body of the document is consistent with how the document is S-signed. Knowingly adopting an S-signature of another is not permitted.

While an S-signature need not be the name of the signer of the document, the Office strongly suggests that each signer use an S-signature that has his or her full name. The Office expects that where persons do not sign with their name it will be because they are using an S-signature that is the usual S-signature for that person, which is his or her own signature, and not something that is employed to obfuscate or misidentify the signer. Titles may be used with the signer's S-signature and must be placed between the slash marks (*e.g.*, /Dr. John Doe/), or with the printed or typed version of the name.

Paragraph 1.4(d)(2)(ii) requires that a practitioner signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2) of this part must place his or her registration number, either as part of, or adjacent, his or her S-signature. A number character (#) may only be used in an S-signature if it is prior to a practitioner's registration number that is part of the S-signature. When a practitioner is signing as an assignee, or as an applicant (inventor) pursuant to §§ 1.33(b)(3) or 1.33(b)(4), a registration number is not required and should not be supplied to avoid confusion as to which basis the practitioner is signing, *e.g.*, as a practitioner or as the assignee.

The requirement that an S-signature for practitioners be accompanied by a registration number is consistent with Article 9(1) of the Patent Law Treaty (June 1, 2000) (PLT) and § 1.34.

The space provided for a registration number and a printed/typed signer's name on some Office (fillable) forms is above the space provided for a signature. The space provided for the registration number and printed/typed signer's name is compliant with the "adjacent" requirements of § 1.4(d)(2)(ii) discussed above, and § 1.4(d)(2)(iii) discussed below.

To ensure that it will always be clear who has made the S-signature, § 1.4(d)(2)(iii) requires that the signer's printed or typed name (*i.e.*, William Jones) always must be presented adjacent or below (preferred) the S-signature (§ 1.4(d)(2)(iii)(A)), and that it be reasonably specific enough so that the identity of the signer can be readily recognized (§ 1.4(d)(2)(iii)(B)).

Paragraph 1.4(d)(2)(iii)(A) sets forth the requirement that the signer's name must be presented in printed or typed form either immediately below (preferred) or adjacent to the S-signature. The printed or typed name requirement is intended to describe any manner of applying the signer's name to the document, including by a typewriter or machine printer. It could include a printer (mechanical, electrical, optical, etc.) associated with a computer or a facsimile machine but would not include manual or hand printing. *See* § 1.52(a)(1)(iv). The printed or typed name may be inserted before or after the S-signature is applied, and it does not have to be inserted by the S-signer.

A printed or typed name appearing in the letterhead or body of a document is not acceptable as the presentation of the name of the S-signer. To accommodate as many S-signatures as possible, a signer may select any combination of letters, Arabic numerals, or both for his or her signature. The flexibility in selecting combinations of letters and/or Arabic numerals for S-signatures means that the identity of the signer may not be clear from the S-signature if it is not a name. For example, a collection of letters/numbers when presented for the first time without a full printed or typed name that does not appear to be a person's name (*e.g.*, /123456XYZ/) does not identify any person as the signer. This is so even where the signer has submitted a previous document with such S-signature and an identification of the name of the signer. Similarly, where the S-signature, if it is not the signer's name, appears to represent an identifiable person with a name different in some respect from the signer, the identity of the signer would not be known. For example, a practitioner named "William Jones" S-signs an amendment "/B. Jones/" which also has a certificate of transmission signed by a paralegal with the name and signature "Bob Jones." In this situation, the S-signature on the amendment would not clearly identify "William Jones" as the S-signer.

In view of the flexibility allowed by the S-signature, the requirement of § 1.4(d)(2)(iii)(B), that the printed or typed name of § 1.4(d)(iii)(A) must be reasonably specific enough so that the identity of the signer can be readily recognized, becomes very significant. While the § 1.4(d)(2)(iii)(B) requirement is also intended to provide some flexibility (*e.g.*, Bob may possibly be used instead of Robert), the ultimate issue is whether the Office can clearly identify who S-signed the document and, if not, § 1.4(h) may be triggered.

The proposed requirements relating to the usage of a signer's actual name, or complete name, or the capitalization of only the family name have not been included in the final rule because the underlying requirement relating to the presentation of a name is already addressed in the existing rules dealing with the document that is being signed, and therefore, such requirements are not necessary in § 1.4. For example, the requirements for a declaration under § 1.63 have not been changed, nor are any changes in § 1.4 intended to supersede the requirements of § 1.63. An S-signature may be used to sign a declaration under § 1.63 if all of the requirements of § 1.63 are met.

As with signatures to be treated under § 1.4(d)(2), signatures to be treated under § 1.4(d)(3) must be placed within forward slash marks.

In § 1.4(d)(3), the "Character coded" form is the terminology of PCT Annex F used to describe an EXtensible Markup Language (XML) document created by filling in an EFS menu. The reason that the Office is limiting the electronic signature for correspondence in character-coded text form submitted via the EFS to only letters of the English alphabet, or Arabic numerals, or both (with appropriate spaces and commas, periods, apostrophes, and hyphens as punctuation) is that if the correspondence containing non-English

letters or characters is opened by the Office, these non-English letters or characters when rendered may appear as a "box" or translated to a character in a different font and language if the character setting used by the author of the correspondence is not compatible with the character setting used by the Office.

Thus, the content requirements that letters in an electronic signature for correspondence submitted via the EFS in character coded text form under § 1.4(d)(3) (must be in the English language) is more stringent than the letter requirements (letters in any language are permitted) under § 1.4(d)(2). Note that S-signatures on attachments in TIFF images submitted via the EFS are governed by § 1.4(d)(2) rather than § 1.4(d)(3).

The electronic signature permitted for EFS in § 1.4(d)(3), however, does not have a requirement for the presentment of the signer's name in printed or typed form as set forth in § 1.4(d)(2)(iii)(A) and is therefore less stringent in that respect. This is because the EFS preparation protocol for creating a document in EFS requires one to insert information (an electronic signature) into a data field on a screen but there may be no accompanying data field for inserting a name either "adjacent or immediately below" the electronic signature, and therefore such a requirement has not been made. There is a field in a screen in EFS, however, for typing in the name of the electronic signature signer so it is not necessary to include a separate requirement for it in the rule.

Documentation about the EFS and a description of electronically signing an EFS document is in the *EFS Submission User Manual—ePAVE for New Utility* which is available at: *http://www.uspto.gov/ebc/efs/downloads/document.htm.*

Section 1.4(d)(4)(i) contains the previous reference to § 10.18 certifications regarding certifications made on presenting a paper to the Office.

For paper documents utilizing an S-signature, the previous mode of authenticating handwritten signatures, such as by comparing handwritten signatures, is not available.

The question may be raised as to whether a person's S-signature was in fact inserted in a document by that person or some other person. To address this authentication concern, the rule has been revised to include §§ 1.4(d)(4)(ii)(A) and (B) which set out certifications that apply to persons inserting an S-signature, or an EFS character coded signature, as well as to persons who submit documents with such signatures inserted by another person. Section 1.4(d)(4)(ii)(A) also includes a provision for retention of evidence of authenticity.

Section 1.4(d)(4)(ii)(A) adds the requirement that a person submitting a document signed by another under §§ 1.4(d)(2) and (3) is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person. Such reasonable basis does not require an actual knowledge but does require some reason to believe the signature is appropriate. For example, where a practitioner e-mails a § 1.63 declaration to an inventor for signature by the inventor and receives an executed declaration by the inventor in return from the inventor, reasonable basis would exist. Where an assignee was involved in the transmission of the declaration form and/or the executed declaration, an additional showing of chain of custody (*e.g.*, e-mail chain with attached documents from the inventor to the assignee to the practitioner filing the declaration) involving the assignee would be required. Additionally, evidence of authenticity should be retained. This may involve retaining the e-mails sent to the inventor and any cover letter or e-mail (with the signed document as an attachment) back to the practitioner from the inventor in the example relating to execution of a § 1.63 declaration.

Section 1.4(d)(4)(ii)(B) adds the requirement that the person inserting a signature under paragraphs (d)(2) or (d)(3) certifies that the inserted signature appearing in the document is his or her own signature. This is meant to prohibit a first person from requesting a second person to insert the first person's signature in a document. While the certification is directed at the person inserting another's signature, the person requesting the inappropriate insertion may also be subject to sanctions.

Section 1.4(d)(4)(ii)(C) provides that violations of the certification as to the signature set forth in paragraphs (d)(4)(ii)(A) and (B) of this section, may result in the imposition of sanctions under §§ 10.18(c) and (d).

Section 1.4(e) has been amended to conform to the changes made to § 1.4(d)(1) in regard to the signature being handwritten and the permanent ink being a dark ink or its equivalent.

Pursuant to § 1.4(h), the Office may additionally inquire in regard to a signature so as to identify the signer and clarify the record where the identity of the signer is unclear. The inquiries concerning evidence of authenticity (veracity) of a signature are consistent with PLT Article 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6), and 18(4). An example of when ratification or confirmation of a signature may be required is when there are variations in a signature or whenever a name in an S-signature is not exactly the same as the name indicated as an inventor, or a practitioner of record. Hence, whatever signature is adopted by a signer, that signature should be consistently used on all documents. Also addressed is the treatment of variations in a signature or where a printed or typed name accompanies the S-signature or the EFS character coded signature but the identity of the signer is unclear. In such cases, the Office may require ratification or confirmation of a signature. Ratification requires the person ratifying to state he/she personally signed the previously submitted document as well as, if needed, the submission of a compliant format of the signature. Confirmation includes submitting a duplicate document, which is compliantly signed if the previous signature was noncompliant (as opposed to unclear).

In lieu of ratification, the Office may require a resubmission of a properly signed duplicate document. Resubmission of a document may be required, for example, where ratification alone is inappropriate, such as where the image of the signature is of such poor quality (*e.g.*, illegible font) that the Office is unable to store or reproduce the document with the signature image.

Ratification or confirmation alone does not provide a means for changing the name of a signer. For example, when an inventor changes her/his name and the inventor desires to change her/his name in the application, such change must be accompanied by a petition under § 1.182 and, preferably, an Application Data Sheet (ADS). *See Manual of Patent Examining Procedure* § 605.04(c)(8th. ed. 2001) (Rev. 2, May 2004) (MPEP) and *Advance Notice of Change to MPEP 605.04(b), (c) and (f)—Application Data Sheets Are Strongly Recommended When Inventor Information is Changed*, 1281 *Off. Gaz. Pat. Office* 54 (Apr. 13, 2004).

In addition, the Office may require evidence of authenticity where the Office has reasonable doubt as to the authenticity (veracity) of the signature. Evidence of authenticity may include evidence establishing a chain of custody of a document from the person signing the document to the person filing the document. Proper evidence of a chain of custody will aid in avoiding the impact of repudiation of a signature.

Where there has been a bona fide attempt to follow the rule, but where there is some doubt as to the identity of

the signer of a signed document, the Office may require ratification of the signature. Note, ratification would only be an effective remedy if the signer was a proper party to have executed the document to be ratified. For example, a practitioner of record may ratify his or her signature on an amendment, but not the signature of a secretary who is not a practitioner or inventor in the application. A registered practitioner may, however, ratify the amendment made by another registered practitioner but may not ratify a document required to be signed by an inventor, such as a § 1.63 declaration. Similarly, an inadvertent typographical error or simple misspelling of a name will be treated as a bona fide attempt to follow the rule, which would require ratification only where there is some doubt as to the identity of the signer rather than be treated as an unsigned paper requiring resubmission. Where there is an obvious typographical error so that the Office does not have some doubt as to the identity of the signer (and therefore notification to applicant is not needed), further action by applicant would not be required and, where appropriate, the obvious error will be noted in the record.

The inadvertent failure to follow the format and content of an S-signature will be treated as a bona fide attempt at a signature but the paper will be considered as being unsigned correspondence. Examples of correspondence that will be treated as unsigned are: (1) the S-signature is not enclosed in forward slashes; (2) the S-signature is composed of non-text graphic characters (*e.g.*, a smiley face) and not letters and numerals; and (3) the S-signature is not a name and there is no other accompanying name adjacent or below the S-signature so that the identity of the signer cannot be readily recognized.

Treating the document as being unsigned could have varying results dependent on the nature of the document. For example, in new applications, treating an improperly signed § 1.63 oath or declaration as a missing part could result in the imposition of a surcharge and a two-month period for reply (with extensions of time possible) to supply a properly signed new oath or declaration. Ratification, in this instance, would not be appropriate. *See* § 1.53(f)(1). Other correspondence, such as amendments, could be treated under the procedures for unsigned amendment documents set forth in MPEP §§ 714.01 and 714.01(a) and a one-month time period for reply be given for either ratification or submission of a duplicate amendment which is properly signed.

If the signer, after being required to ratify or resubmit a document with a compliant signature, repeats the same S-signature in reply without appropriate correction, the reply will not be considered to be a bona fide attempt to reply, and no additional time period will be given to submit a properly signed document.

Existing § 10.18(a) directed towards certifications made upon the signing of a document submitted to the Office is focused narrowly on the "personally signed" documents containing the handwritten signature defined in § 1.4(d)(1). As the intent of the Office is to provide an equivalent alternative means for signing a document by the use of S-signatures and EFS character coded signatures, the Office is herein promulgating a conforming change to § 10.18(a) to cover S-signatures.

Comment 1: One comment suggested broadening the rule to permit additional documents to be electronically signed.

Response: The comment is not adopted. The comment is interpreted to mean that electronic mail messages should be permitted as a mode of correspondence with the Office, which is not a signature issue. Electronic mail messages are not generally permitted, but this is for a number of reasons, with the requirement for signature not being a significant factor. Among the issues which remain unresolved with respect to accepting electronic mail messages are secure transmission, compatible character/font sets and file formats for proper rendering of the message and receipt of documents infected with a virus. Documents that are required by statute to be in a particular form, such as an oath, cannot be authorized by a rule change to be in a different form, *e.g.*, a notarized oath changed to an electronic signature. Because § 1.4 makes no provision for an electronic notarization, an oath will not be able to be executed as a result of these changes to § 1.4. A declaration that does not require notarization, however, can be electronically signed.

Comment 2: One comment suggests that the Office allow for electronic mail message submissions with simultaneous verification by postal mail.

Response: The comment is not adopted. The manner of submitting correspondence such as by electronic mail message, is not addressed by this rule. Electronic submission of documents is being addressed in guidelines related to the electronic filing system. In any event, having to match and compare duplicate submissions (paper and electronic mail) would create a significant processing and analysis burden on the Office.

Comment 3: One comment suggests clear demarcation of electronic signature (now referred to as an S-signature) by statement rather than use of back-slashes, etc.

Response: The comment is not adopted. The comment proposal requires analysis of text beyond simple inspection of a document for the presence or absence of a signature. It is not clear from the comment what is a "clear" statement of signature or how typing a statement that a typed name is a signature can be less burdensome than typing slashes. Further, the signature format employing slash characters is the standard adopted by the PCT and the Office intends to be consistent with international standards.

Comment 4: One comment suggests the Office should afford the public more flexibility with respect to the format and content of an electronic signature (now referred to as an S-signature).

Response: The comment is adopted in-part. The comments requested more flexibility in the format (*e.g.*, not being limited to slashes, capitalization), and less onerous consequences for deviations from the specified format. The Office will not adopt any changes with respect to permitting a format that does not include slashes so as to be consistent with the PCT standard for electronic signatures and which can be readily identified as an S-signature. The final rule, however, does not contain a requirement for the identification of first and family names, and capitalization will not be required to indicate the family name, even though what is a family name may vary in different cultures. Also, the format of providing the signer's name is made less restrictive (*e.g.*, there will not be a requirement to separately indicate the actual name when typed or printed) to also reduce the possibility for format errors.

The final rule also adopts a more flexible approach that allows both practitioners and non-practitioners to sign any combination of letters and Arabic numerals. The flexibility for practitioners to deviate from their registered name will be permitted. Similarly, the requirement for the signature to contain an actual complete name has not been adopted, just like there will not be a requirement to identify the first and family names by capitalization as discussed for format in the previous comment. The less restrictive content requirements reduce the possibility for content errors.

Comment 5: One comment suggests the Office should allow a time period to

correct an incorrect electronic signature (now referred to as a S-signature) without penalty. There is a concern that failure to adhere to an electronic signature format will result in treatment as an unsigned paper.

Response: The comment is adopted in-part. The comments expressed the concern that an S-signature that was made with a good faith effort but fails to conform to an actual or complete name may be treated as unsigned with significant adverse consequences. The final rule has been modified to permit deviations from an actual or complete name where the identity of the signer can still be readily determined. Examples of such deviations are where a first name of "Bob" is substituted for an actual name of "Robert," "Peggy" for an actual name of "Margaret," "Mike" for an actual name of "Michael." In the absence of some other source of confusion, the mere transposition of letters, or the presence or absence of a letter in a name will not be treated as a nonconforming signature. Similarly, where a practitioner's registration number contains a transposition of numerals or a single erroneous digit, and the identity of the practitioner can be determined from the name and the balance of the registration number, the S-signature will not be treated as an improper S-signature..

Where a document is treated as being unsigned, the granting of any period for curing the defect will be handled under existing Office practices for unsigned documents.

Comment 6: One comment suggests that "actual name" versus "complete name" in proposed § 1.4(d)(1)(iv)(A) is confusing.

Response: The comment is adopted. The rule is clarified by removing "actual" and "complete" from the name requirement. Any special requirements for the presentation of a name are already addressed by the underlying document and rules pertaining thereto, *e.g.*, oath or declaration, *see* § 1.63(a)(2).

Comment 7: One comment suggests the requirement to "personally insert" electronic signature (now referred to as an S-signature) should permit insertion under practitioner's direction/control.

Response: The comment is not adopted. The requirement that the person signing must insert his or her own S-signature is essentially the same as the "personally insert" requirement of Rule 10.18 (which is not being amended by this rule making) and § 1.4(d)(1) for handwritten signatures.

Comment 8: One comment suggests that the USPTO should dictate order of names not capitalization. Another comment suggests that the USPTO should set a standard for the presentation of a name as a preference not a requirement.

Response: The comment is adopted in part. The capitalization requirement is not included in the final rule and any requirement for the order of names is addressed by the rules pertaining to the underlying document, *e.g.*, oath or declaration under § 1.63.

Comment 9: One comment suggests that the proposed rule is detailed, burdensome, and easily inadvertently violated, having draconian penalties. The rule should merely require applicant to make certain that the document has been signed.

Response: The comment is adopted in part. As explained in the response to the comments above, the detailed requirements for family name and capitalization have not been included in the final rule to reduce the possibility of inadvertent violation. The signature is not required to be the signer's name and the printed or typed name need only be reasonably specific enough to identify the signer. The comment that "applicant make certain that the document has been signed" is more burdensome on an applicant than the proposed rule and final rule. The final rule includes certification requirements as to the signature but does not require an investigation as to the actual signing where there is reasonable basis to believe the document has been signed appropriately by the person whose signature is on the document. For example, a practitioner receiving an electronic mail message from an inventor with a declaration S-signed by the inventor attached to the e-mail may satisfy the certification requirements in the final rule, whereas if the comment were adopted (in whole), the attorney would have needed to investigate further before it could be submitted.

Comment 10: One comment suggests that in some countries individuals do not have both a family and a given name, *e.g.*, India.

Response: The comment is adopted. The requirements with respect to specifying the first and family names is not included in the final rule. Any special requirements for the presentation of a name are already addressed by the underlying document and rules pertaining thereto, *e.g.*, oath or declaration, *see* § 1.63(a)(2).

Comment 11: One comment suggests a more detailed procedure is necessary for the inventor to change his/her name on the record.

Response: The comment is not adopted. The rule change does not affect current practice with respect to name changes, which are addressed in MPEP §§ 605.04(c), 719.02(b).

Comment 12: One comment suggests opposition to all e-initiatives.

Response: The comment is not adopted. The change is in support of the Administration's e-government initiatives and principles espoused in the Government Paperwork Elimination Act (GPEA) to promulgate procedures for electronic signatures. *See* Pub. L. 105–277, §§ 1701 through 1710, 112 Stat. 2681, 2681–749 through 2681–751 (1998).

Section 1.6: Section 1.6(d)(4) is amended to provide that black and white drawings in patent applications may be transmitted to the Office by facsimile in order to provide more flexibility to applicants for filing individual papers in applications that contain drawings. Although the rules of practice will now permit the submission of black and white drawings by facsimile, photographs or drawings with detail should not be transmitted by facsimile. Furthermore, color drawings must continue to be hand-carried or mailed to the Office instead of being submitted by facsimile. In addition, the Office will publish drawings that are received as long as they can be scanned, and will not, in general, require replacement drawings to replace drawings transmitted by facsimile, even if the facsimile transmission process results in the drawings being less sharp than the original drawings. Applicants should note that the use of facsimile submission of drawings will not cause the submission to be processed faster than the Office would process a paper drawing received on the same day as the facsimile submission. The facsimile submission must first be rendered into paper form and then processed as would a submission initially made in paper.

Section 1.6(e) is removed and reserved because the provisions of § 1.6(e) are deemed more appropriately placed in § 1.10. This is because the "Express Mail" provisions of § 1.10 are the only means by which correspondence can be accorded a filing date other than the actual date of receipt in the Office. Thus, the provisions of § 1.6(e) have been transferred to § 1.10 along with some changes. Situations in which "Express Mail" is returned or refused by the United States Postal Service (USPS) have been specifically addressed in § 1.10(g) and (h). Section 1.10(i) is similar to § 1.6(e) and addresses situations where there is a designated interruption or emergency in "Express Mail" service.

Comment 13: Several comments asked the Office to identify what drawings would be acceptable when transmitted

by facsimile, whether applicants would be informed when a facsimile transmission of a drawing was unacceptable, and whether there would be any adverse term adjustment consequences of transmitting a drawing with too much detail to the Office.

Response: The Office cannot predict what drawings will be acceptable when transmitted by facsimile, but can provide applicants with a simple self test. If an applicant is not certain that a drawing submitted by facsimile will be of an acceptable quality, the applicant can test the quality of the drawing either by transmitting by facsimile the drawing to themselves, or by photocopying the drawing. If the facsimile-transmitted or copier drawing looks the same as the original, and the original was legible, then the drawing is extremely likely to be acceptable when transmitted by facsimile to the Office. Facsimile-transmitted and photocopied photographs generally bear little resemblance to the document intended to be submitted, and transmitting photographs by facsimile should be avoided. Drawings such as flow charts, on the other hand, generally do reproduce well, and may be accurately transmitted by facsimile.

If the Office receives drawings that do not have satisfactory reproduction characteristics (§ 1.84(l)), or that are illegible once scanned, the Office will inform the applicant that the drawings do not comply with § 1.84. If the Office action in which applicant is required to supply corrected drawings is a Notice of Allowability, and drawings are filed after the mailing date of the Notice of Allowance (which is generally mailed with the Notice of Allowability), any patent term adjustment will be reduced pursuant to § 1.704(c)(10).

Comment 14: One comment noted that the proposed rule contained text that had been previously removed from § 1.6(d)(4) (*Reorganization of Correspondence and Other Provisions,* 68 FR 48286 (Aug. 13, 2003), 1274 *Off. Gaz. Pat. Office* 59 (Sept. 9, 2003) (final rule)), and suggested that "Drawings submitted under §§ 2.51, 2.52, or 2.72 and" be deleted.

Response: The suggestion has been adopted.

Section 1.8: Section 1.8(a) is amended to clarify that the provisions of this section do not apply to time periods or situations set forth in sections that have been expressly excluded from § 1.8 as well as situations enumerated in § 1.8(a)(2). The amendment to § 1.8(a) clarifies that the list enumerated in § 1.8(a)(2) is not exhaustive, and the provisions of § 1.8 do not apply to the time periods or situations that have been explicitly excluded from § 1.8. For example, provisions of § 1.8(a) do not apply to time periods and situations set forth in §§ 1.217(e) and 1.703(f) because the exceptions are provided explicitly in § 1.217(e), "[t]he provisions of § 1.8 do not apply to the time periods set forth in this section" and § 1.703(f), "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in [patent term adjustment] calculation."

Section 1.8(b) is also amended to permit notifying the Office of a previous mailing, or transmitting, of correspondence, when "a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence." Recently, many applicants experienced substantial delays in delivery of their correspondence by the USPS to the Office. These applicants did not wish to wait until the application was held to be abandoned before notifying the Office of the previous mailing of the correspondence and supplying a duplicate copy of the correspondence and requisite statement in accordance with § 1.8(b)(3).

With the amendment to § 1.8(b), in the event that correspondence may be considered timely filed because it was mailed or transmitted in accordance with § 1.8(a), but was not received in the Office after a reasonable amount of time had elapsed (*e.g.,* more than one month from the time the correspondence was mailed), applicants would not be required to wait until the end of the maximum extendable period for reply set in a prior Office action (for the Office to hold the application to be abandoned) before informing the Office of the previously submitted correspondence, and supplying a duplicate copy and requisite statement attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission. Such a statement should be filed promptly after the person becomes aware that the Office has not received the correspondence. Thus, although a statement attesting to the previous timely mailing or transmission of the correspondence is required, filing a petition to withdraw the holding of abandonment would not be necessary in such circumstance. The amendment to § 1.8(b) provides applicants an expedited procedure to resolve delayed mail problems.

Before notifying the Office of a previously submitted correspondence that appears not to have been received by the Office, applicants are encouraged to check the private Patent Application Information Retrieval (PAIR) System (which can be accessed over the Office's Internet Web site) to see if the correspondence has been entered into the application file. The private PAIR system is a system which enables applicants to read the Office's electronic records, including the Image File Wrapper (IFW), for a patent application or patent. Private PAIR is available to applicants who have a customer number associated with the correspondence address for an application and who have acquired the access software (Entrust Direct Software and a PKI certificate). Applicants may contact the Electronic Business Center (EBC) at (703) 305–3028 for more information on private PAIR.

The Office proposed to amend §§ 1.8(b), 1.17, 1.116, 1.137, 1.502, 1.570, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997 (and relevant subheadings) to make clear the distinction between termination of a reexamination proceeding and the conclusion or limiting of prosecution in a reexamination proceeding and to make other technical changes to the reexamination rules. The Office is not proceeding with these changes in this final rule; however, these changes continue to be considered as to a future final rule making directed to miscellaneous technical reexamination rule changes.

Comment 15: One comment asked what date would be used as the date of receipt, when a duplicate copy of the paper was filed with a showing under § 1.8. The comment continued to ask what date would be used if the original paper was subsequently found. In addition, the Office was asked how the applicant would know whether the paper was received.

Response: The date of receipt that would be entered into Office records would be the actual date of receipt of the duplicate paper, unless applicant established that the papers were actually received on an earlier date with a post card receipt or other evidence. If the Office accepts a paper pursuant to § 1.8, and the original paper later is located (as where the original paper was originally placed in the wrong application file), then the original paper will be treated as a duplicate paper and will not control the timing of subsequent actions such as the timing of the filing of an appeal brief. Any applicant having a doubt about the due date of an appeal brief should either assume that the brief is due on the

earlier date, or confirm with the examiner that a later date is appropriate. When applicants use private PAIR to view the image file wrapper, applicants will have generally the same information about the patent application that the examiner has. Accordingly, an applicant can know about the same time as an examiner when a paper has been received. Applicants can also include post card receipts or use facsimile transmissions in order to obtain additional information about when a paper is received by the Office. The procedure of § 1.8 is available not just when the Office did not receive a paper, but when the paper has not been received in the appropriate location (*e.g.*, where applicant transposes digits in the application number on the application papers, and the Office does not recognize the error).

Section 1.10: Section 1.10 is amended to add paragraphs (g), (h), and (i) to address the effects of interruptions or emergencies in USPS "Express Mail" service. For example, Friday, November 16, 2001, the USPS issued a memorandum temporarily and immediately suspending "Express Mail" service to Washington, DC zip codes 202xx through 205xx. The suspension included service to the zip code for certain correspondence mailed to the Office (20231).

Applicants frequently rely on the benefits under § 1.10 to obtain a particular filing date for a new application. The filing date accorded to an application is often critical. For example, applicants who do not file their applications in the United States within one year from when their invention was first described in a printed publication or in public use or on sale in this country are not entitled to a patent. *See* 35 U.S.C. 102(b). Furthermore, to be able to claim the benefit of a provisional application or to claim priority to a foreign application, the nonprovisional application claiming benefit or priority must be filed within one year from the filing of the provisional application or foreign application. Therefore, the procedures by which applicants may remedy the effects of an interruption or emergency in USPS "Express Mail" service, which has been so designated by the Director, should be specifically addressed in the rules of practice.

The Office published a notice on October 9, 2001, that provides procedures for the situation in which a post office refuses to accept the deposit of mail for delivery by "Express Mail" Service and the situation in which "Express Mail" is deposited into an "Express Mail" drop box and given an incorrect "date-in." *See United States Postal Service Interruption and Emergency*, 1251 *Off. Gaz. Pat. Office* 55 (Oct. 9, 2001). The procedure for remedying the situation where the United States Postal Service (USPS) refuses to accept the deposit of mail for delivery by "Express Mail" as contained in the notice has now been incorporated into § 1.10(h).

The Office's prior framework to address postal emergencies was detailed in § 1.6(e), "Interruptions in U.S. Postal Service." Section 1.6(e) provided that if interruptions or emergencies in the USPS which have been so designated by the Director occur, the Office will consider as filed on a particular date in the Office any correspondence which is: (1) promptly filed after the ending of the interruption or emergency; and (2) accompanied by a statement indicating that the correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the USPS.

The provisions of § 1.6(e) are more appropriate in § 1.10 since "Express Mail" is the only means by which correspondence filed in accordance with § 1.1(a) can be accorded a filing date other than the actual date of receipt in the Office. Thus, the provisions of § 1.6(e) are transferred to § 1.10 along with some changes. Sections 1.10(g) and (h) specifically address situations in which "Express Mail" is returned or refused by the USPS due to an interruption or emergency in "Express Mail." Section 1.10(i), as revised, is similar to § 1.6(e) and addresses situations where there is a Director designated interruption or emergency in "Express Mail" service.

Section 1.10(g) is added to provide that any person who mails correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but has the correspondence returned by the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider the correspondence as filed on a particular date in the Office. This procedure does not apply where the USPS returned the "Express Mail" for a reason other than an interruption or emergency in "Express Mail" service such as the address was incomplete or the correspondence included insufficient payment for the "Express Mail" service. The petition must be filed promptly after the person becomes aware of the return of the correspondence and the number of the "Express Mail" mailing label must have been placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail." The petition must also include the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon and a copy of the "Express Mail" mailing label showing the "date-in." Furthermore, the petition must include a statement, which establishes to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or the copy is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was returned by the USPS due to an interruption or emergency in "Express Mail" service. For example, the Office may require a letter from the USPS confirming that the return was due to an interruption or emergency in the "Express Mail" service.

Section 1.10(h) is added to provide that any person who attempts to mail correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but has the correspondence refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider the correspondence as filed on a particular date in the Office. This procedure does not apply where the USPS refused the "Express Mail" for a reason other than an interruption or emergency in "Express Mail" service such as the address was incomplete or the correspondence included insufficient payment for the "Express Mail" service. In addition, this procedure does not apply because an "Express Mail" drop box is unavailable or a Post Office facility is closed. The petition must be filed promptly after the person becomes aware of the refusal of the correspondence and the number of the "Express Mail" mailing label must have been placed on the paper(s) or fee document(s) that constitute the correspondence prior to the attempted mailing by "Express Mail." The petition must also include the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon. In addition, the petition must include a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the

correspondence or the copy is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service. For example, the Office may require a letter from the USPS confirming that the refusal was due to an interruption or emergency in the "Express Mail" service.

Section 1.10(i) is added to provide that any person attempting to file correspondence by "Express Mail" that was unable to be deposited with the USPS due to an interruption or emergency in "Express Mail" service which has been so designated by the Director may petition the Director to consider such correspondence as filed on a particular date in the Office. This material is transferred from § 1.6. The petition must be filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in "Express Mail" service. The petition must also include the original correspondence or a copy of the original correspondence, and a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service. In addition, the petition must indicate that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

Section 1.10(i) applies only when the Director designates an interruption or emergency in "Express Mail" service. It is envisioned that in the notice designating the interruption or emergency the Director would provide guidance on the manner in which petitions under § 1.10(i) should be filed. When "Express Mail" was suspended in November of 2001, applicants were advised that if the USPS refused to accept correspondence for delivery to the Office by "Express Mail" they should mail the correspondence by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by "Express Mail" and any future postal emergencies will be handled similarly, with the Office providing procedures for applicants to follow.

Comment 16: One comment suggested that the Office amend § 1.10(i) to read "Any person attempting to file correspondence by Express Mail who was unable to deposit the correspondence due to any emergency or interruption of "Express Mail" service may petition the Director to consider such correspondence as filed on the date applicant attempted to file."

Response: The suggestion has not been adopted. 35 U.S.C. 21(a) provides that the "Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director." The Director previously designated an emergency or interruption in the "Express Mail" service by publishing a notice in the Official Gazette Notices, and by posting the announcement on the Office's Internet Web site (*www.uspto.gov*). *See, e.g., United States Postal Service Interruptions and Emergency Terminated*, 1274 *Off. Gaz. Pat. Office* 105 (Sept. 16, 2003), *United States Postal Service Interruptions*, 1251 *Off. Gaz. Pat. Office* 55 (Oct. 9, 2001), *United States Postal Service Interruption and Emergency in Connecticut*, 1245 *Off. Gaz. Pat. Office* 16 (Apr. l 3, 2001), *United States Postal Service Interruption and Emergency in the State of California*, 1176 *Off. Gaz. Pat. Office* 74 (July 18, 1995), and *United States Postal Service Interruption and Emergency in Los Angeles*, 1160 *Off. Gaz. Pat. Office* 39 (Mar. 8, 1994). The Office is amending § 1.10 to provide that the Director is designating certain events as a postal service interruption or emergency by rule (§ 1.10(g) or (h)). The Director will also continue to designate any other emergency or interruption in the "Express Mail" service on a case-by-case basis by publishing a notice in the Official Gazette Notices (§ 1.10(i)), and by posting the announcement on the Office's Internet Web site (*www.uspto.gov*). The Office does not consider amending the rules as suggested to be appropriate because 35 U.S.C. 21(a) requires that the postal service interruption or emergency be designated by the Director.

Section 1.12: Section 1.12(c)(1) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17. This amendment to § 1.12 was omitted from the notice of proposed rule making; however, the Office proposed to amend § 1.17 to make the petition fee specified in § 1.17(g) applicable to petitions under § 1.12 for access to an assignment record in the notice of proposed rule making. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan*, 68 FR at 53822, 53847, 1275 *Off. Gaz. Pat. Office* at 28, 50.

Section 1.14: Section 1.14(h)(1) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Comment 17: One comment did not respond to the change proposed for § 1.14, but instead proposed that the rule be amended to provide that an application that is incorporated by reference be available to the public rather than become available to the public only once abandoned.

Response: A copy of the originally filed application papers of a pending application that has been incorporated by reference is available to the public pursuant to § 1.14(a)(1)(vi), although the file contents of such an application are not available to the public. The Office currently has systems that permit a copy of the application as originally filed to be made available to the Office of Public Records for sale to the public without interference with the examination of the patent application. Copying of the entire application file contents will, unless the application has an image file, interfere with examination or printing of the application as a patent, unless the application has become abandoned. As a result, the Office does not permit the file of an application that has been incorporated by reference to be made available to the public. Once the Office's computer systems provide for access to the public at the same time that the patent application is being examined, the Office may provide access to the entire application file, however, the Office does not currently have a mechanism to provide the public with access to the image file wrapper of an application that has been incorporated by reference.

Section 1.17: Section 1.17 is amended to adjust petition fees required to be established under 35 U.S.C. 41(d) to more accurately reflect the Office's cost of treating petitions. The Office is directed by 35 U.S.C. 41(d) to set fees for services not set under 35 U.S.C. 41(a) or (b) so as to recover the average costs of performing the processing or service. Under amended § 1.17, petition fees established pursuant to 35 U.S.C. 41(d) are provided for in new § 1.17(f) ($400) and (g) ($200) and amended § 1.17(h) ($130). Paragraphs (f), (g) and (h) of amended § 1.17 replace former § 1.17(h).

The Office conducted an activity-based-accounting cost (ABC) analysis of

the Office's cost of treating the various petitions previously enumerated in former § 1.17(h), which petitions are now enumerated in § 1.17(f) through (h). The Office determined that a single $130.00 petition fee does not recover the Office's costs of treating many of these types of petitions. The Office also determined that there is a significant difference in the Office's costs for treating these types of petitions. Therefore, § 1.17(f) through (h) separate petition types into three groups, and provide separate petition fees for each of the three groups to more accurately reflect the cost of treating petitions within these three groups. In those instances in which a petition seeks action under more than one rule, the petition fee will be that of the rule with the highest fee under which the petition seeks action.

The highest cost group of petitions is covered by new § 1.17(f), which specifies a petition fee of $400. The petitions in this group are: (1) Petitions under § 1.53(e) to accord a filing date; (2) petitions under § 1.57(a) to accord a filing date; (3) petitions under § 1.182 for decision on a question not specifically provided for; (4) petitions under § 1.183 to suspend the rules; (5) petitions under § 1.378(e) for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent; (6) petitions under former § 1.644(e) in an interference; (7) petitions under former § 1.644(f) for requesting reconsideration of a decision on petition in an interference; (8) petitions under former § 1.666(b) for access to an interference settlement agreement; (9) petitions under former § 1.666(c) for late filing of an interference settlement agreement; and (10) petitions under § 1.741(b) to accord a filing date to an application under § 1.740 for extension of a patent term. Petitions in this first group incur the highest costs because they require analysis of complex and unique factual situations and evidentiary showings. Often a petition in this group will involve an issue of first impression requiring review and approval of a course of action by senior Office officials.

The intermediate cost group of petitions is covered by new § 1.17(g), which specifies a petition fee of $200. The petitions in this group are: (1) Petitions under § 1.12 for access to an assignment record; (2) petitions under § 1.14 for access to an application; (3) petitions under § 1.47 for filing by persons other than all the inventors or a person not the inventor; (4) petitions under § 1.59 for expungement of information; (5) petitions under § 1.103(a) to suspend action in an application; (6) petitions under § 1.136(b) to review requests for extension of time when the provisions of § 1.136(a) are not available; (7) petitions under § 1.295 for review of a refusal to publish a statutory invention registration; (8) petitions under § 1.296 to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued; (9) petitions under § 1.377 for review of a decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent; (10) petitions under § 1.550(c) for patent owner requests for extension of time in *ex parte* reexamination proceedings; (11) petitions under § 1.956 for patent owner requests for extension of time in *inter partes* reexamination proceedings; (12) petitions under § 5.12 for expedited handling of a foreign filing license; (13) petitions under § 5.15 for changing the scope of a license; and (14) petitions under § 5.25 for a retroactive license. Petitions in this second group incur intermediate costs because, although they also require analysis of factual situations and evidentiary showings, the factual situations and evidentiary showings for this second group of petitions often fall into recognizable patterns. On occasion, however, a petition in this second group will involve an issue of first impression requiring review and approval of a course of action by senior Office officials.

The remaining group of petitions is covered by § 1.17(h), which continues to specify the current petition fee of $130. The petitions in this group are: (1) Petitions under § 1.19(g) to request documents in a form other than that provided in this part; (2) petitions under § 1.84 for accepting color drawings or photographs; (3) petitions under § 1.91 for entry of a model or exhibit; (4) petitions under § 1.102(d) to make an application special; (5) petitions under § 1.138(c) to expressly abandon an application to avoid publication (6) petitions under § 1.313 to withdraw an application from issue; and (7) petitions under § 1.314 to defer issuance of a patent. Petitions in this third group incur the least costs, as they require review for compliance with the applicable procedural requirements, but do not often require analysis of varied factual situations or evidentiary showings.

Section 1.17(i) is also amended to reflect the required processing fee of § 1.291(c)(5) for a second or subsequent protest by the same real party in interest.

Comment 18: One comment objected to the proposed change in that switching from one petition fee to three petition fees under § 1.17(f), (g) and (h) will cause applicants unfamiliar with the three new petition fees to make petition fee payment errors that will lead to additional work.

Response: The Office has determined that the benefits of recovering the costs of responding to petitions, in a stratified scheme, outweigh the costs of potential errors in administration of the fees. The fees for the petitions grouped under § 1.17(f) through (h) are not set by 35 U.S.C. 41(a) and (b). Rather, the fees for these petitions are among the fees required to be established under 35 U.S.C. 41(d) in order to recover the estimated average cost to the Office. The Office conducted an activity-based-accounting cost (ABC) analysis of the Office's cost of treating the petitions grouped under § 1.17(f) through (h) and determined that there is a significant difference in the Office's costs for treating these petitions. A less administratively burdensome approach would have been for the Office to have simply raised the fee under former § 1.17(h) based on a lump sum average cost of treating all the petition fees which must be established pursuant to 35 U.S.C. 41(d). The Office decided against lumping all these petitions together due to the significant cost difference for treating these petitions. The Office determined that actual costs could be fairly recovered based on three groups of petition fees without overly complicating petition fee payment and processing, particularly because each rule section for which a petition fee is associated has a single fee assigned. It is noted that 35 U.S.C. 41(a) and (b) set different fees for various other types of petitions including three groups of petition fees for extensions of time. Furthermore, the various patent fees specified in 35 U.S.C. 41(a) and (b) are generally changed each fiscal year. The Office minimizes any confusion resulting from fee changes and fee groupings by publishing fee changes under 35 U.S.C. 41(a) and (b) in the Official Gazette for Patents, on the Office's Internet Web site, and in various communications sent to practitioners and applicants. In keeping with this practice, the Office will similarly publish the petition fees under § 1.17(f) through (h) which have been established pursuant to 35 U.S.C. 41(d).

Comment 19: Some comments argued that the $400 fee for petitions under § 1.17(f) is excessive, noting that this amount is comparable to the basic small entity patent application filing fee.

Response: The $400 fee is based on an activity-based-accounting cost analysis of the Office's cost of treating the petitions grouped under new § 1.17(f). The argument that comparing the basic small entity filing fee to the § 1.17(f) petition fee suggests the § 1.17(f) petition fee to be excessive fails to recognize that filing fees set under 35 U.S.C. 41(a) do not recover the cost of patent application processing and examination. A larger portion of this cost recovery is attributable to patent maintenance fees, as well as the other fees provided under 35 U.S.C. 41, rather than the filing fee alone.

Comment 20: One comment stated that the fee under new § 1.17(f) is satisfactory for petitions to accord a filing date provided the Office will refund the fee when the failure to originally accord the requested filing date was the result of Office error (*e.g.*, lost papers in the Office). Another comment which argued that the fee under new § 1.17(f) is excessive, also stated that the petition fee should be refunded when a granted petition was required to correct an Office error.

Response: In keeping with Office practice when former § 1.17(h) applied to filing date petitions, the petition fee under new § 1.17(f) will be refunded where a petition to accord an application filing date was required to correct solely an Office error. In addition, for an application filed in accordance with § 1.10, there is no fee required to accord the application a filing date under § 1.10(c), (d) or (e).

Comment 21: One comment suggested that the petition fees under § 1.17(f) through (h) apply only to large entities and that no petition fee be charged to any small entity.

Response: This suggestion cannot be adopted. As set forth in 35 U.S.C. 41(h), small entity fee reduction only applies to fees charged under 35 U.S.C. 41(a) or (b). As the petition fees under § 1.17(f) through (h) are required to be established under 35 U.S.C. 41(d), small entity fee reduction does not apply. Further, where small entity fee reduction is available, it is only available for a fifty percent reduction of fees.

Comment 22: One comment suggested that petitions for express abandonment to avoid patent application publication under § 1.138(c) should fall under § 1.17(h) where the petition fee is $130.00, rather than under § 1.17(g) where the petition fee is $200.00.

Response: The suggested change has been adopted.

Section 1.19: Section 1.19 is amended to rewrite former paragraph (b) in order to provide for different fees for copies of patent application documents, according to the medium or means by which the copy is provided. In paragraph (b) of § 1.19, "certified and uncertified" has been removed as unnecessary since all copies provided under this paragraph will be certified. Lastly, paragraph (g) is added to require a petition to obtain copies of documents in a form other than provided for in the patent rules. Such a petition was originally proposed as paragraph (h), and paragraph (g) was proposed to provide for at cost copies of documents. The previously proposed paragraph (g) has been determined to be unnecessary in view of § 1.21(k). Accordingly, the paragraph proposed as (h) will be designated as paragraph (g).

Section 1.19 is amended to clarify that copies of documents may be provided to the public in whole, or in part, in electronic image form at the Office's option. In view of the ever-increasing size of submissions, many of the Office official records need to, and will, be received, stored and maintained in electronic form. As a result of the Office's migration to electronic storage of documents and the IFW system, § 1.19 has been amended to reflect that the Office may, at its option, provide copies of documents in an electronic form (*e.g.*, on compact disc, or other physical electronic medium, or by electronic mail, if an electronic mail address is given). A request for a document in another form (*e.g.*, a voluminous document on paper) that would impair service to other users would be complied with on a case-by-case basis as provided in new § 1.19(g). Hence, although the rule provides a fee for ordering copies of Office documents in various forms, the Office, at its option, may elect to supply the requested copies on paper, or in an electronic form, as determined to be appropriate by the Director, depending upon which is most expedient and cost-effective from an Office perspective.

In amending § 1.19(b), former paragraphs (b)(1) through (b)(3) have been rewritten as paragraphs (b)(1) and (b)(2), while removing the seven-day requirement of former § 1.19(b)(1) for processing copy requests.

Paragraph (b)(1) of § 1.19 sets forth the fees for a copy of a patent application as filed, or a patent-related file wrapper and contents, that is stored in paper in a paper file wrapper, or in an image format in an image file wrapper. In paragraph (b)(1) of § 1.19, three sets of fees are set forth. Paragraph § 1.19(b)(1)(i) sets forth the fees for documents supplied on paper, with different fees for an application as filed, a file wrapper and contents of a patent application up to 400 pages, an additional fee for each set of additional pages of a file wrapper and contents, and an individual document. Paragraph 1.19(b)(1)(ii) sets forth the fees for documents supplied on compact disc, or on another physical electronic medium, with different fees for an application as filed, and for a file wrapper and contents of a patent application. Pursuant to § 1.19(b)(1)(ii)(C), if the file wrapper and contents or the individual document requires more than a single electronic medium (*e.g.*, a compact disc) to hold all the pages in a single order, then a fee of $15.00 will be required for each continuing electronic medium. Paragraph 1.19(b)(1)(iii) sets forth the fees for documents supplied electronically other than on compact disc or other physical electronic medium. Paragraph 1.19(b)(1)(iii) fees would apply to copies supplied by electronic mail, or otherwise over the Internet. Lengthy documents, however, will not be transmitted electronically. For example, a document over one hundred megabytes, or a document that will take longer than twenty minutes to transmit over a slow speed transfer, will not be transmitted, but will, instead, be provided on physical electronic media, by mail.

The addition of § 1.19(b)(1)(ii)(B) permits the Office to supply the file wrapper and contents including the prosecution history of an application on a compact disc for $55 rather than on paper for the paper rate of $200 for the first 400 pages and additional amounts for extra pages.

A "document" according to paragraph 1.19(b)(1)(i)(D) would include the transmittal paper for an Information Disclosure Statement (IDS) and the list of references cited (*e.g.*, PTO–SB08 or 1449 form), but the individual references included with the IDS would be separate documents. Also, each individual volume of a multi-volume reference would be a separate document. U.S. patent and U.S. patent application publication references are not stored in the IFW as part of the application file and would not be included with an order for a copy of the file contents, but can be purchased separately, with the fee set forth in § 1.19(a). Individual documents maintained in the electronic file, other than the patent application as filed, are not available to be purchased electronically because individual documents in the electronic file may be different, and much smaller, documents than in the paper file (an amendment would be one document in paper, but separated into different documents, "Remarks", "spec" and "claims", *e.g.*,

in the electronic file), and the different definition of the documents would lead to confusion. In addition, since the fees charged for electronic documents are much smaller than for paper documents, requiring the entire file wrapper to be purchased for $55.00 is more efficient than allowing one or two documents to be purchased from a large file.

Paragraph 1.19(b)(2) sets forth the fees for patent-related file wrapper contents that were submitted on compact disc, or in electronic form, and not stored in paper in a paper file wrapper, or in an image format in an IFW. Such patent-related file wrapper contents that are not stored in paper, or in an image format, include a Computer Readable Form (CRF) of a Sequence Listing, a table, or a computer program listing submitted on a compact disc pursuant to § 1.52(e)(1). Such items are stored in an Artifact Folder which is associated with a patent application. In paragraph 1.19(b)(2)(i) a fee is set forth for a copy of such an item if provided on a compact disc, and in paragraph 1.19(b)(2)(ii) a fee is set forth for a copy of such an item is provided electronically (*e.g.*, by electronic mail) other than on a physical electronic medium. Paragraph 1.19(b)(2) does not apply to other documents that are stored in an Artifact Folder, and not stored in an IFW in image form, such as documents (blueprints and other oversized documents, or documents that are illegible) that could not be scanned. The fee for such documents is set forth in § 1.21(k).

Prior §§ 1.19(b)(1) and (2) did not provide for supplying copies of the non-paper (or image) portion of a file wrapper (*e.g.*, compact discs or electronically filed applications). Under prior practice, for example, copies of compact discs associated with a file wrapper would have been ordered under prior § 1.19(b)(3) and were not provided with an order for the paper portion of a file wrapper under prior §§ 1.19(b)(1) or 1.19(b)(2). Nothing in these rule changes will change the practice of a separate order being required for documents or materials not maintained in the paper file wrapper or IFW, except that the fee is now set forth in § 1.19(b)(2). Paragraph (D) is added to § 1.19(b)(1)(i) to provide for copies of an individual document instead of an entire file wrapper. The fee for copies of other items not in the IFW portion of a file wrapper (*e.g.*, blueprints or documents that cannot be scanned, microfiche, and video cassettes) is an at-cost fee as set forth in § 1.21(k). In the event the Office cannot fill an order solely from the IFW, and must complete an order in part by copying a document in an Artifact Folder or paper file, the fee under § 1.21(k) (*e.g.*, at cost for blueprints) will apply, except that the fee for compact disc copies under § 1.19(b)(2) will apply to any copies of compact discs maintained in the Artifact Folder corresponding to the IFW, or paper application file.

Patent applications and patents should reference any compact discs that are a part of the application specification. The public should therefore review the specification to determine if an order for compact discs should be included with an order to obtain the contents of an application or file wrapper. Other items or materials associated with a file wrapper (*e.g.*, blueprints, video cassettes, compact discs, or exhibits which are not part of the specification) may not be referenced in the specification of an application or patent. Apart from an Artifact Sheet, the Office does not maintain an index of other items or materials associated with any specific file wrapper. Accordingly, the public should carefully review the contents of a file wrapper to determine if other items or materials associated with a file wrapper need to be separately ordered. If the application is maintained in the IFW system, then documents that cannot be scanned will be maintained in an Artifact Folder, and the fee for obtaining copies of such documents is set forth in either § 1.19(b)(2) (copies of compact discs) or § 1.21(k). For example, an application that is not filed on the appropriate size paper, or that cannot be scanned, will not be added to the IFW and will be treated as an artifact, and maintained in a separate "Artifact Folder." The fee for obtaining a copy of such a document that could not be scanned is set forth in § 1.21(k) (at cost). In order to avoid significant delays and expense in obtaining a certified copy of an application as originally filed, applicants should ensure that application papers are legible and may be accurately reproduced.

Although neither paragraph (b)(1)(iii) nor paragraph (b)(2)(ii) of § 1.19 expressly contains a size limitation for high speed transmission, *e.g.*, DSL or cable connectivity, or a time limitation for slower connectivity, the Office is concerned about the ability to maintain a connection for a larger file size or longer transmission period. Currently, 100 MB is the limit adopted for the Office's EFS software. Accordingly, if the document has a file size of, for example, 100 MB or greater, the document will not be transmitted electronically, and instead will be copied onto a compact disc or other physical electronic media and mailed to the requester. The Office does not want to tie up Office resources for long unreliable file transfer transmissions.

The subject matter of former paragraph 1.19(b)(3) has been moved to paragraph (b)(2)(i), except that a copy provided on a physical medium such as a compact disc is no longer limited to information that was originally submitted on a compact disc. Former paragraph 1.19(b)(4) has been reworded as "Copy of Office records, except copies available under (1) or (2) of this paragraph" to clarify that records such as a part of an application's image file wrapper that can be purchased pursuant to paragraph 1.19(b)(1) or (2) must be ordered pursuant to those paragraphs, and renumbered as paragraph 1.19(b)(3). Paragraph 1.19(b)(5) has been renumbered as paragraph 1.19(b)(4).

Section 1.19(g) had been proposed to be added to provide for copying items or material that is not image scanned, but the new paragraph has not been added because the fee has been determined to already be set forth in § 1.21(k). Items such as large blueprints, microfiche, and video cassettes cannot be scanned as electronic image equivalents, and an average cost for pricing cannot be computed in advance, because the demand for such copies is so infrequent. Furthermore, documents that were too light to be scanned or that provide insufficient contrast to be scanned will not be added to the IFW system because they would not be useful in the IFW system. In addition, the Office will not conduct special processing of documents to put the documents into IFW, but will instead require applicants to resubmit the documents in compliance with Office rules. The Office will charge the actual cost of the special processing required to copy these items or materials pursuant to § 1.21(k).

Section 1.19(g) provides for a mechanism for requesting copies of documents in a form other than that normally provided by the Office. The copies are provided at cost. For example, the Office will normally provide copies of documents that are over 20 pages, if the application has an IFW, on an electronic medium such as a compact disc, even if paper was requested. If the Office-stored documents are in paper, rather than image form, paper will generally be provided unless the document is voluminous. A petition would be required for the order to be filled in paper, and in such an instance either an at cost fee, or the fee set forth in 35 U.S.C. 41(d)(2), would be required, as appropriate. Another example is the instance where a copy of an application

is so voluminous that many boxes of compact discs are required to fill the order. If compact discs are the normal electronic medium in which such an order would be filled, a requester could petition that the order be filled on another media such as a DVD media. Such petitions would be decided under § 1.19(g) based upon the ability of the Office to provide the requested service and the adverse impact to the Office and the public from diverting resources to fulfilling the order.

Comment 23: A comment noted that the rule change preamble indicates that this is a clarification that the Office will provide copies of documents in electronic image form at the Office's option but that the rule itself fails to reflect this.

Response: The comment has been adopted and § 1.19(b) now explicitly provides that documents are to be provided in paper or in electronic form as determined by the Director.

Comment 24: A comment noted that the Office was considering eliminating additional page fees and adopting a single fee concept for copies but the comment refused to endorse the idea without a numerical analysis of the costs and fees.

Response: Since the Office did not receive support for eliminating the additional page fees for copies of application files provided on paper that exceed 400 pages, the additional fee was retained.

Comment 25: One comment requests that the contents of applications be available on the Office's Internet Web site at no cost.

Response: The Office now provides free electronic access to many electronic records for published applications, and applications that have issued as patents through the public PAIR system. In the summer of 2004, this access will be expanded to include access to the IFW (excluding non-patent literature) of any application that is available through public PAIR. A private version of this tool already provides access to IFW applications.

Comment 26: One comment observes that the rule making does not provide the cost basis for the fees and contends that fees should be lower for making copies from IFW.

Response: The fee provisions have been revised to base the fee on how the copy is supplied instead of how the copy is obtained from Office records. Thus, the provisions of § 1.19(b) are linked to supplying copies on paper (§ 1.19(b)(1)(i)), or electronically (§§ 1.19(b)(1)(ii) or 1.19(b)(1)(iii)). This is because the Office expects to have converted most of its pending paper application files to IFW by September 2004. As indicated, the Office intends to supply a copy in electronic or paper form based upon the factors of expediency and cost-effectiveness, and applicants are expected to, on the whole, be paying lower fees for copies as copies will generally be supplied in electronic form, which have lower fees than paper copies. In addition, since the fee for certification of a document has been eliminated, customers will be spared that fee as well. All documents provided pursuant to § 1.19(b) will be certified.

Comment 27: One comment urged a trial period for the electronic form of documents and methods of reducing costs by changing the way documents are stored.

Response: The comment was not adopted. As the Office becomes more experienced with the IFW system, and accustomed to providing documents electronically, the Office does not object to revising the rules and practices to reflect any reduced costs.

Comment 28: One comment stated that electronic files are unusable.

Response: The Office experience is that electronic image files are usable provided that the user employs appropriate hardware and software which is readily available in the marketplace. Users who attempt to use electronic files with hardware and software not adapted to the task of viewing electronic image files will of course have difficulty.

Section 1.27: Section 1.27 is amended to make certain clarifying changes. The changes clarify that: (1) a security interest held by a large entity is not a sufficient interest to bar entitlement to small entity status unless the security interest is defaulted upon; (2) the requirements for small business concerns regarding non-transfer of rights and the size standards of the Small Business Administration are additive; and (3) business concerns are not precluded from claiming small entity status merely because they are located in or operate primarily in a foreign country.

Section 1.27(a) is amended to add a new paragraph (a)(5) which states that a security interest does not involve an obligation to transfer rights in the invention unless the security interest is defaulted upon. Questions have arisen as to whether a security interest held by a large entity in a small entity's application or patent is a sufficient interest to prohibit claiming small entity status. For example, an applicant or patentee may take out a loan from a large entity banking institution and the loan may be secured with rights in a patent application or patent of the applicant or patentee, respectively. The granting of such a security interest to the banking institution is not a currently enforceable obligation to assign, grant, convey, or license any rights in the invention to the banking institution. Only if the loan is defaulted upon will the security interest permit a transfer of rights in the application or patent to the banking institution. Thus, where the banking institution is a large entity, the applicant or patentee would not be prohibited from claiming small entity status merely because the banking institution has been granted a security interest, but if the loan is defaulted upon, there would be a loss of entitlement to small entity status. Pursuant to § 1.27(g), notification of the loss of entitlement due to default on the terms of the security interest would need to be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which small entity status is no longer appropriate.

Section 1.27 was proposed to be amended to revise paragraphs (a)(1), (a)(2)(i), and (a)(3)(i) to change "obligation" to "currently enforceable obligation." In view of a comment that was received, § 1.27 is not being amended to revise paragraphs (a)(1), (a)(2)(i), and (a)(3)(i) to change "obligation" to "currently enforceable obligation." Instead, § 1.27(a) is amended to add new paragraph (a)(5) which states that a security interest does not involve an obligation to transfer rights in the invention unless the security interest is defaulted upon. The addition of paragraph (a)(5) is intended to clarify that a security interest in an application or patent held by a large entity would not be a sufficient interest to bar entitlement to small entity status unless the security interest is defaulted upon. The change does not result in any change to the standards for determining entitlement to small entity status.

A few additional examples will further clarify when small entity status is or is not appropriate.

Example 1: On January 2, 2002, an application is filed with a written assertion of small entity status and the small entity filing fee is paid. Applicant is entitled to claim small entity status when the application is filed. Thereafter, the application is allowed and the small entity issue fee is timely paid on October 1, 2002. On October 2, 2002, applicant signs a license agreement licensing rights in the invention to a large entity. On October 1, 2002, applicant had not transferred any rights in the invention, and was

under no obligation to transfer any rights in the invention, to any other party who would not qualify for small entity status.

Analysis: The payment of the small entity issue fee would be proper as long as the applicant was under no obligation on October 1, 2002, to sign the license agreement with the large entity.

Example 2: An applicant, who would otherwise qualify for small entity status, executes an agreement with a large entity. The agreement requires the applicant to assign a patent application to the large entity sixty days after the application is filed. Thereafter, the application is filed.

Analysis: Since the applicant is under an existing obligation to assign the application to a large entity, the applicant would not be entitled to claim small entity status. The applicant would need to pay the large entity filing fee even though the actual assignment of the application to the large entity may not occur until after the date of payment of the filing fee.

Section 1.27(a)(1) is amended to omit the comma after "invention)" in the first sentence. The second sentence of § 1.27(a)(1) has been amended to add the phrase "in the invention to one or more parties" after the first occurrence of "rights."

Furthermore, § 1.27 is amended to change the period at the end of paragraph (a)(2)(i) to "; and" to clarify that paragraphs (a)(2)(i) and (a)(2)(ii) are additive requirements and a party seeking to qualify as a small business must meet the requirement as to transfer of rights as well as the Small Business Administration size standards.

Section 1.27(a)(2)(ii) is amended to change "[m]eets the standards set forth in 13 CFR part 121" to "[m]eets the size standards set forth in 13 CFR 121.801 through 121.805 to be eligible for reduced patent fees."

Questions have also arisen as to whether a small business concern must have a place of business located in the United States, and operate primarily within the United States, or make a significant contribution to the United States economy through the payment of taxes or use of American products, materials or labor (13 CFR 121.105) to be eligible to pay reduced patent fees under 35 U.S.C. 41(h). When the provisions of 35 U.S.C. 41(h) (Public Law 97–247, 96 Stat. 317 (1982)) were implemented in 1982, a suggestion that foreign concerns not be eligible to pay reduced patent fees under 35 U.S.C. 41(h) was considered and rejected because excluding foreign concerns would violate United States treaties in the patent area. *See Definition of Small Business for Paying Reduced Patent Fees Under Title 35, United States Code,* 47 FR 43272 (Sept. 30, 1982), 1023 *Off. Gaz. Pat. Office* 27 (Oct. 19, 1982) (final rule). Specifically, a provision that foreign concerns are not eligible to pay reduced patent fees under 35 U.S.C. 41(h) would violate Article 2 of the Paris Convention for the Protection of Industrial Property, which provides that nationals of any Paris Convention country shall, as regards the protection of industrial property, enjoy in all the other Paris Convention countries the advantages that their respective laws grant to nationals of that country. Therefore, a business concern which meets the small business size standards set forth in 13 CFR 121.801 through 121.805 and complies with applicable Office procedures is and continues to be eligible to pay reduced patent fees under 35 U.S.C. 41(h), even if the business concern is located in or operates primarily in a foreign country.

Comment 29: One comment stated that the Office should draft its own rules for small business concerns so that they would be easier to find and follow and thus allow for a clearer understanding of the qualifications and standards that are required.

Response: Public Law 97–247 gave the Small Business Administration (SBA) the authority to establish the definition of a small business concern. 35 U.S.C. 41(h)(1) states that "[f]ees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director." Thus, the Office does not have the statutory authority to draft its own rules for small business concerns. Reproducing the pertinent SBA regulations in patent materials would be unduly burdensome upon the Office, particularly as it would need to constantly monitor SBA rule changes.

Comment 30: One comment stated that the change from "standards" to "size standards" should be made retroactive to the effective date of the first small entity regulations. The comment stated that if the amendment is not made retroactive, "it would imply that the amendment is a change of law, not a clarification of the existing law."

Response: This rule change is a clarification of existing practice regarding the requirements to claim small entity status, and is not a change in practice.

Comment 31: One comment requested that the Office explicitly confirm that it is not necessary for a business entity that does not operate primarily within the United States to make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor as set forth in 13 CFR 121.105(a) in order to be considered a small business concern.

Response: As indicated above, a business concern only has to meet the small business requirements set forth in 13 CFR 121.801 through 121.805 and comply with applicable Office procedures. Therefore, it is not necessary for a business entity that does not operate primarily within the United States to make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor as set forth in 13 CFR 121.105(a) in order to be considered a small business concern.

Comment 32: One comment stated that the Office should waive for a limited time the three-month time limit in § 1.28(a) for refund requests made by an applicant who transferred U.S. rights to a foreign business entity that met the size standards in 13 CFR 121.801 through 121.805, but who did not claim small entity status because the foreign business entity was not a business concern as defined in 13 CFR 121.105(a). The waiver is deemed justified since whether a foreign business concern made a significant contribution to the U.S. economy never did affect eligibility to pay reduced patent fees and applicants may have been misled by previous statements by the Office to the contrary. *See Changes to Implement the Patent Business Goals,* 65 FR 54603, 54612 (Sept. 8, 2000), 1238 *Off. Gaz. Pat. Office* 77, 85 (Sept. 19, 2000) (final rule).

Response: The suggestion is not adopted. If an applicant disagreed with the Office's interpretation of the small business provisions, the applicant should have challenged it at the time of fee payment. By paying the fees in the large entity amount, applicant acquiesced in the position that was held by the Office at that time.

Comment 33: One comment stated that adding the phrase "currently enforceable obligation" appears to have consequences beyond removing a security interest from being an obligation to transfer rights. As an example, the comment stated that an agreement that provided that an employee was obligated to assign the entire right, title and interest in the invention to an employer on or after the date of issue of the patent would not be enforceable before the patent was issued, and thus the inventor would be

able to claim small entity status regardless of whether the employer was a small business concern.

Response: The comment has been adopted. The Office only intends to address the issue of security interests and does not want to unintentionally cover other situations. Therefore, as indicated above, § 1.27(a) has not been amended to include the phrase "currently enforceable obligation" as was originally proposed. Instead, a new paragraph (a)(5) has been added which states that a security interest does not involve an obligation to transfer rights in the invention for the purposes of paragraphs (a)(1) through (a)(3) unless the security interest is defaulted upon. In the example provided in the comment, the inventor would not be able to claim small entity status if the employer was a large business concern. This is because the employee would be under an existing obligation to assign the entire right, title and interest in the invention to the employer, even though the employee would not have to do so until after the patent has issued.

Comment 34: One comment suggested that the comma after "invention)" in the first sentence of § 1.27(a)(1) should be omitted since the comma appears out of place.

Response: The suggestion has been adopted.

Comment 35: One comment stated that the punctuation of the second sentence of proposed § 1.27(a)(1) seems awkward. Alternative suggestions to reword the sentence were made. One suggestion was to place the second comma after the second occurrence of "rights." The other suggestion was to add the phrase "in the invention to one or more parties" after the first occurrence of "rights."

Response: The suggestion to reword the second sentence has been adopted. The phrase "in the invention to one or more parties" has been added after the first occurrence of "rights" in the second sentence.

Comment 36: Two comments requested that the Office clarify whether or not an applicant is entitled to small entity status where the invention is software and applicant licenses the software to a large entity through shrink-wrap licenses or otherwise. One of these comments also asked whether "rights in the invention" only constitute the exclusionary rights that a patent provides or whether it also includes a right to use the embodiments of the invention.

Response: As stated in MPEP § 509.02, "[r]ights in the invention include the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States." MPEP § 509.02 also states that "[i]mplied licenses to use and resell patented articles purchased from a small entity * * * will not preclude the proper claiming of small entity status." Thus, a distinction exists between rights in the application or patent and the use of the patented product. The use of a patented product by a large entity does not affect small entity status. On the other hand, rights in an application or patent by a large entity would preclude the claiming of small entity status. If the shrink-wrap license only licenses the use of a patented product by a large entity and does not grant any ownership rights in the patent to the large entity, then it would not preclude the claiming of small entity status.

Section 1.47: Section 1.47(a) and (b) are amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the changes in the petition fees.

Section 1.52: Section 1.52, paragraphs (b)(2)(ii) and (e), are amended.

Section 1.52, paragraphs (b)(1)(ii) and (d)(1) were proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation, but these proposed changes have not been included in the final rule as the changes are not deemed to be necessary in view of the requirements of § 10.18, as explained below. *See also* §§ 1.55(a)(4), 1.69(b) and 1.78(a)(5)(iv).

Section 1.52(e)(1)(iii) is amended to allow greater flexibility in filing tables on compact disc, so that compact disc files may be used instead of paper where the total number of pages collectively occupied by all the tables in an application exceeds one hundred. Also, § 1.52(e)(1)(iii) is clarified to be consistent with tables submitted on paper as to what constitutes a page. Section § 1.52(e)(3)(i) is amended to recite that CD–R discs should be finalized so that they are closed to further writing. Finally, § 1.52(e)(3)(ii) is clarified to indicate that landscape orientation of a table is an example of special information needed to interpret a table that is to be provided on a transmittal letter.

Section 1.52(b)(2)(ii) is revised to recommend that the font size of text be at least a font size of 12, which is approximately 0.166 inches or 0.422 cm. high. Section 1.52(b)(2)(ii) requires that the text be in a lettering style that is at least 0.08 inches high, which is the font size set forth in Patent Cooperation Treaty (PCT) Rule 11.09. A font size of only 0.08 inches, however, leads to difficulty in capturing text with optical character recognition technology and may not be reproducible as required by § 1.52(a)(1)(v) (and PCT Rule 11.2(a)). A font size of 12 (0.422 cm. or 0.166 inch high) is significantly more reproducible. Accordingly, § 1.52(b)(2)(ii) is amended to indicate a preference for a larger font size. See § 1.58(c) for a similar change.

Section 1.52(e)(1)(iii) is amended to allow tables of any size when there are multiple tables on compact disc if the total number of pages of tables exceeds one hundred pages. Since permitting the filing of tables on compact disc, the Office has received voluminous applications having large numbers of tables, each of which are under 50 pages in length. Applicants have indicated that it would be less burdensome filing these small tables on compact disc (CD). Accordingly, the rule is being liberalized while balancing the convenience of the Office and the public to view the document with the least burden imposed by dual media (*i.e.*, paper specification and tables on compact disc). The extra bulk of a few extra pages of paper specification is usually less burden than having to go to a CD for the additional pages.

Section 1.52(e)(1)(iii) is also amended to clarify what constitutes an electronic page so as to determine compliance with the fifty- and one hundred-page requirement for submission of tables on compact disc.

Further clarification is provided in § 1.52(e)(3)(i) as to what is a permanent CD. Recordable CDS can be made for recording in a single recording session or in multiple recording sessions. To further assure the archival nature of the discs, the requirement that recordable CDS be finalized so that they are closed to further recording is added to § 1.52(e)(3)(i). Further, many older CD–ROM drives and audio CD players have compatibility problems with un-finalized CDS. This change will ensure that the public and the Office will be able to use identical copies of any CDS filed with older CD–ROM drives.

The Office is actively investigating allowing the submission of other file formats, such as the Continuous Acquisition and Life-Cycle Support (CALS) XML format, in addition to the current ASCII format. Before allowing the use of a particular file format, the Office must verify that applicants will have the tools to create files easily that are of archival format and quality, and can be rendered to be viewable both by the Office users and later by the public when the application is published. Problems involving file size limitations,

software display, and availability of adequate table creation software are delaying implementation at this time. The Office intends to broaden § 1.52 to allow at least CALS format tables when these problems are resolved. Technical specifications and a discussion of operability issues for the CALS table format may be found at the OASIS, *i.e.*, Organization for the Advancement of Structured Information Standards, Web site pages *http://www.oasis-open.org/cover/tr9502.html* and *http://www.oasis-open.org/specs/a501.htm*.

The Office is also reviewing the acceptability of DVD media. At present, there are several different types of recordable DVD media and it is unclear which, if any, will become a standard archival format. Also, the Office is upgrading its capabilities to include the ability to read at least some types of DVD media. It does not appear, however, that any DVD readers can be procured that will be able to read all of the different types of DVD media that are now in the marketplace. The Office is considering allowing submissions on at least some types of DVD media when it becomes clear which types of DVD media are to be recognized as being an archival quality and are compatible with Office hardware and software.

Section § 1.52(e)(3)(ii) is clarified to indicate that landscape orientation of a table is an example of special information needed to interpret a table that should be provided on a transmittal letter. The Office has received several patent applications which had tens of thousands of pages of a landscape table that was inaccurately rendered in portrait mode because the page orientation was not identified. Most tables filed with patent applications are intended to be rendered in portrait mode. Accordingly, filings without an identification of landscape mode will continue to be rendered as portrait mode tables.

Comment 37: Many comments indicated the proposed requirement was unnecessary and impractical, particularly where the translation is of an oath or declaration form, and the person who made the original translation is no longer available.

Response: The suggestion to not include the proposed revision to § 1.52(b)(1)(ii) and (d)(1) has been adopted. On reconsideration, the Office determined that the existing requirement that the statement that the translation is accurate is subject to the provisions of § 10.18, and as a result, such a statement would only be made if the statement was known to be true, or believed to be true, and such a conclusion would only be made after an inquiry, reasonable under the circumstances, was made.

Comment 38: One comment stated that there is much confusion between correlating font size in points to size of capital letters in inches. When a font is referred to in points, the points measure the height from the top of the ascenders to the bottom of the descenders. Often, this can be measured by printing "fg" and measuring the height in inches from the top of the "f" to the bottom of the "g". Thus, a capital A in Times New Roman in 12 point font has a height of about 0.125, not 0.166 in.

Response: The suggestion has been adopted and 0.166 has been changed to 0.125, and 0.422 changed to 0.3175. The Office agrees that there is much confusion about how to measure font sizes and notes that the ascenders and descenders rule is not always followed. A point in font size corresponds to 1/72 of an inch (Webster's Ninth New Collegiate Dictionary defines point as "a unit of measurement of about 1/72 inch used especially to measure the size of the type"). The comment is correct in that the measurement is generally taken from the top of an "f" to the bottom of a "g," and that for a 12-point font this measurement should be 12/72 of an inch or 0.166 inch. A 12-point font is a font size that can be chosen on most word processing software, and will result in a reproducible specification, whereas 5- and 6-point fonts are generally not legible.

Comment 39: It was requested that the Office encourage the submission of tables in electronic form by eliminating the page length requirement of § 1.52(e)(1)(iii) since they cannot be accurately scanned.

Response: The comment was not adopted. The final rule page limits apply to tables submitted on compact disc as part of a paper application. Tables submitted electronically via the Office's EFS are not subject to the page limits of the final rule.

The proposed lower page limit was carried forward in the final rule for compact disc filings to encourage filing of tables in electronic form when the overall size of the filing is large. A complete elimination of a lower page limit was not adopted for several reasons. First, certain small tables in paper, such as an index to the tables on a compact disc, make patent documents and the electronic files more usable than if all tables are on the compact disc. Second, it is difficult to quantify a benefit that justifies forcing the public to incur the additional cost and effort to review an application with a small number of tables stored as electronic tables on compact disc. Similarly, there is an additional cost with no apparent savings for the Office to process and store the compact discs when an application contains only a few small tables.

Comment 40: One comment indicated that the proposed clarification of page size does not give guidance as to whether the table is intended for landscape or portrait rendering. It was suggested that the few landscape tables that are filed be identified in the transmittal letter.

Response: The comment was adopted. The existing rule in § 1.52(e)(3)(ii) requires the transmittal letter to contain any special information necessary to interpret the tables. This section has been clarified to give landscape orientation as an example of special information needed to interpret the tables, that may be required by the Office if not initially supplied.

Section 1.53: Section 1.53(e)(2) is amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.57: Section 1.57 is added to provide for incorporation by reference. Section 1.57(a) provides that, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or § 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the filing date of the application, and the inadvertently omitted portion of the specification or drawing(s) is completely contained in the prior-filed application, the claim for priority or benefit would be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification or drawings. Sections 1.57(b) through (e) treat incorporation by reference into an application of essential and nonessential material by: (1) providing a definition of essential and nonessential material; (2) defining specific language that must be used to trigger an incorporation by reference; (3) codifying the incorporation by reference practice as set forth in MPEP § 608.01(p), with a few changes to reflect the eighteen-month publication of applications. Section 1.57(f) treats how any insertion of previously incorporated by reference material must be added to the specification or drawings of an application. Section 1.57(g) codifies the treatment of a noncompliant incorporation by reference.

It has been held that the mere reference to another application is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure under 35 U.S.C. 112, ¶ 1. *See* MPEP §§ 201.06(c) and 608.01(p), and *In re de Seversky*, 474 F.2d 671, 177 USPQ 144 (CCPA 1973). Newly added § 1.57(a), however, now allows for all or a portion of the specification or drawings that is inadvertently omitted from an application containing a priority claim for a prior-filed foreign application, or a benefit claim for a prior-filed provisional, nonprovisional, or international application, to be added to the application by way of a later filed amendment if the inadvertently omitted portion of the specification or drawings is completely contained in the prior-filed application even though there is no explicit incorporation by reference of the prior-filed application. The phrase "completely contained" in § 1.57(a) requires that the material to be added to the application under § 1.57(a) must be expressly (as opposed to implicitly) disclosed in the prior application. *Cf.* PLT Rule 2(4)(iv). The claim for priority or benefit must be present on the filing date of the application in order for it to be considered an incorporation by reference of the prior-filed application under § 1.57(a). Furthermore, the material to be added to the application under § 1.57(a) must be completely contained in the prior-filed application as filed since it is the prior application as filed which is being incorporated under § 1.57(a). The nonprovisional application claiming benefit can be a continuation, divisional, or continuation-in-part of the prior application for which benefit is claimed. The purpose of § 1.57(a) is to provide a safeguard for applicants when a page(s) of the specification, or a portion thereof, or a sheet(s) of the drawing(s), or a portion thereof, is inadvertently omitted from an application, such as through clerical error.

Section 1.57(a)(1) provides that, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, the application must be amended to include the inadvertently omitted portion of the specification or drawing(s) within any time period set by the Office (should the omission first be noticed by the Office and applicant informed thereof), but in no case later than the close of prosecution as defined by § 1.114(b), or the abandonment of the application, whichever occurs earlier (should applicant be the first to notice the omission and the Office informed thereof). The phrase "or the abandonment of the application" is included in § 1.57(a)(1) to address the situations where an application is abandoned prior to the close of prosecution, *e.g.*, the situation where an application is abandoned after a non-final Office action, as well as, the situation where an international application is abandoned without entering the national stage in favor of a continuing application under 35 U.S.C. 111(a) claiming the benefit under 35 U.S.C. 120 of the international application, and thus prosecution was never closed in the international application as defined by § 1.114(b) prior to abandonment of the international application. In order for the omitted material to be included in the application, and hence considered to be part of the disclosure, the application must be amended to include the omitted portion. While an amendment to include inadvertently omitted material may be submitted in reply to a final Office action or rejection which first raises the issue of the omitted material, such an amendment does not have a right of entry as it would be considered as an amendment under § 1.116.

In addition, § 1.57(a)(1) also requires the applicant to supply a copy of the prior-filed application, except where the prior-filed application is an application filed under 35 U.S.C. 111; to supply an English-language translation of any prior-filed application that is in a language other than English; and to identify where the inadvertently omitted portion of the specification or drawings can be found in the prior-filed application.

Section 1.57(a)(2) provides that any amendment to an international application pursuant to § 1.57(a) would be effective only as to the United States and shall have no effect on the international filing date of the application. In addition, no request to add the inadvertently omitted portion of the specification or drawings in an international application designating the United States will be acted upon by the Office prior to the entry and commencement of the national stage (§ 1.491) or the filing of an application under 35 U.S.C. 111(a) which claims benefit of the international filing date. This language in § 1.57(a)(2) as to when the Office may act upon an amendment under § 1.57(a) is necessary in order to provide for timely processing of the amendment by the Office in the event that commencement of the U.S. national phase occurred prior to the expiration of the time limit under PCT Article 22(1) of (2), or Article 39(1)(a), pursuant to 35 U.S.C. 371(f), or that an application claiming benefit of the international application was filed well prior to such time limit.

Section 1.57(a)(3) provides that, if an application is not entitled to a filing date under § 1.53(b), the amendment must be by way of a petition accompanied by the fee set forth in § 1.17(f). 35 U.S.C. 363 provides that "[a]n international application designating the United States shall have the effect, from its international filing date under Article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office * * *" Accordingly, the international filing date of an international application is its international filing date under PCT Article 11. Consequently, the language of § 1.57(a) makes it clear that the incorporation by reference relief provided therein shall have no effect on the international filing date of the international application and cannot be relied upon to either accord an international filing date to an international application that is not otherwise entitled to a filing date under PCT Article 11, or to alter the international filing date under Article 11 of an international application.

Section 1.57(a) is similar to the practice under MPEP § 201.06(c), where there is an explicit incorporation by reference of a prior U.S. application contained in the specification, or in the application transmittal letter of a continuation or divisional application filed under § 1.53(b). *See* MPEP § 201.06(c). Section 1.57(a) is also consistent with Patent Law Treaty (PLT) Article 5(6)(b) and Rule 2(3) and (4).

Of course, applicants may continue to explicitly incorporate by reference a prior application or applications by including, in the body of the specification as filed, a statement that the prior application or applications is "hereby incorporated by reference." Such an explicit incorporation by reference would not be limited to inadvertent omissions as in § 1.57(a). Accordingly, applicants are encouraged to explicitly incorporate by reference a prior application or applications by including such a statement in the body of the specification, if incorporation is desired and appropriate.

Sometimes applicants intentionally omit material from a prior-filed application when filing an application claiming priority to, or benefit of, a prior-filed application. As discussed, § 1.57(a) only permits material that was inadvertently omitted from the application to be added to the application if the omitted material is completely contained in the prior-filed application. Therefore, applicants can

still intentionally omit material contained in the prior-filed application from the application containing the priority or benefit claim without the material coming back in by virtue of the incorporation by reference of § 1.57(a). Applicants can maintain their intent by simply not amending the application to include the intentionally omitted material. Thus, there should be no impact from § 1.57(a) in continuing applications where material from the prior application has been intentionally omitted. Therefore, under § 1.57(a), the application claiming benefit of a prior U.S. application could be a continuation-in-part application (as well as a continuation or divisional) depending upon the effect of omitting the material.

Example 1: A nonprovisional application was filed after the effective date of § 1.57 with a specification that refers to Figures 1–4, but only Figures 1, 2, and 4 were submitted on filing. Figure 3 was inadvertently omitted from the application on filing due to a clerical error. The nonprovisional application contained a claim for the benefit of an application filed prior to the effective date of § 1.57 (under either § 1.55 or § 1.78) that was present on the filing date of the nonprovisional application, and the prior-filed application contains omitted Figure 3.

Analysis: Applicant may rely on the incorporation by reference provided by § 1.57(a) to amend the nonprovisional application to add Figure 3, but must do so within the time period set forth in § 1.57(a)(1).

Example 2: A continuing application is filed which included a claim for the benefit of a prior U.S. application on filing. The continuing application refers to Figures 1–3 and corresponding Figures 1–3 were submitted on filing. The prior-filed application contained Figures 1–4. In filing the continuing application, the specification and drawings of the prior application were changed by omitting Figure 3 and renumbering Figure 4 as Figure 3 and omitting the portion of the specification that described Figure 3 of the prior application.

Analysis: If applicant submits an amendment in the continuing application to add Figure 3, and its corresponding description, from the parent application relying on the incorporation by reference provisions of § 1.57(a), it should be expected that the Office would question whether the omission was inadvertent.

Example 3: A continuation application is filed with a benefit claim in the first sentence of the specification to the prior application that acts as an incorporation by reference by virtue of § 1.57(a) as to inadvertently omitted material. Inadvertently omitted material is submitted in the continuation by a preliminary amendment filed subsequent to the filing date of the continuation application.

Analysis: A § 1.67 supplemental oath or declaration specifically referring to the preliminary amendment would not be required.

Section 1.57(a) does not apply to any applications (having inadvertently omitted material) filed before the effective date of the instant rule. Section 1.57(a) is prospective only since to apply the rule retroactively would result in changing the expectations regarding incorporation by reference by applicants when the applications were filed. Thus, an application that inadvertently omits material must have been filed on or after the effective date of the rule in order for the rule to apply. Applicants may, however, rely on prior-filed applications filed before the effective date of the rule to supply inadvertently omitted material to applications filed on or after the effective date of the rule.

Section 1.57(b) clarifies what is acceptable language that perfects an incorporation by reference for essential and non-essential matter, as opposed to incorporation by reference of material as the result of a priority or benefit claim under §§ 1.55 and 1.78 as set forth in § 1.57(a). Applicants sometimes refer to other applications, patents, and publications, including patent application publications, using language which does not clearly indicate whether what is being referred to is incorporated by reference or is just an informational reference. Section 1.57(b)(1) limits a proper incorporation by reference (except as provided in § 1.57(a)) to instances only where the perfecting words "incorporated by reference" or the root of the words "incorporate" (*e.g.*, incorporating, incorporated) and "reference" (*e.g.*, referencing) appear. The Office is attempting to bring greater clarity to the record and provide a bright line test as to where something being referred to is an incorporation by reference. The Office intends to treat references to documents that do not meet this "bright line" test as noncompliant incorporations by reference and may require correction pursuant to § 1.57(g). If a reference to a document does not clearly indicate an intended incorporation by reference, examination will proceed as if no incorporation by reference statement has been made and the Office will not expend resources trying to determine if an incorporation by reference was intended.

The Office considered the alternative of making any mention of a document an automatic incorporation by reference of the document. Patent applications frequently contain a discussion of prior art documents when discussing the background of the invention, wherein the prior art documents are not intended to be incorporated by reference. The necessity for § 1.57(b) is that applicants who fail to clearly link certain disclosures to means-plus-function language risk having their claims interpreted too narrowly or held unenforceable. Clarifying when material is incorporated by reference during examination by use of specific trigger language is considered an aid to applicants when they invoke 35 U.S.C. 112, ¶ 6. Applicants would be aided by avoiding narrowed claim construction as a result of a number of court decisions which would not look for equivalents outside of the application. *See Atmel Corp.* v. *Info. Storage Devices Inc.*, 198 F.3d 1374, 53 USPQ2d 1225 (Fed. Cir. 1999), and *B. Braun Medical Inc.* v. *Abbott Lab*, 124 F.2d 1419, 43 USPQ2d 1896 (Fed. Cir. 1997). Treating these documents as automatically incorporated might result in unintended consequences such as when a claim contains a means-plus-function limitation under 35 U.S.C. 112, ¶ 6.

Although the final rule permits incorporation by reference of material for 35 U.S.C. 112, ¶ 6 purposes, it does not relieve an applicant from providing a written description within an application that an element disclosed in the document is an equivalent for the purpose of 35 U.S.C. 112, ¶ 6. To the extent that applicants must provide a written description within an application, the final rule is considered consistent with *Atmel Corp.*

Similarly, applicants would be aided by not having their claims found unpatentable by a mere reference to outside material unintentionally incorporating material that contained equivalents that would broaden their claims to encompass the prior art. Automatic incorporation by reference would create a trap for applicants and practitioners by creating unintentional equivalents for 35 U.S.C. 112, ¶ 6, thus causing language broadening claims to be unpatentable. Additionally, as claims are generally read in light of the specification, what is actually incorporated into the specification can affect the scope of the claims independent of 35 U.S.C. 112, ¶ 6.

The Office considered expanding language that would be suitable for a bright line test but no other language that did not have the root of the words

"incorporate" and "reference" was identified.

Paragraph (b)(2) of § 1.57 requires that an incorporation by reference include a clear identification of the referenced patent, application, or publication. *See* § 1.98(b)(1) through (b)(5) and MPEP § 602 for examples of ways to clearly identify a patent, application, or publication. The Office recommends that particular attention be directed to specific portions of referenced documents where the subject matter incorporated may be found if large amounts of material are incorporated. Guidelines for situations where applicant is permitted to fill in a number for Application No. _____ left blank in the application as filed can be found in *In re Fouche*, 439 F.2d 1237, 169 USPQ 429 (CCPA 1971). Commonly assigned abandoned applications less than 20 years old can be incorporated by reference to the same extent as copending applications; both types are available to the public upon the referencing application being published as a patent application publication or issuing as a patent. *See* § 1.14(a)(1)(iv) and (vi).

Section 1.57(c) codifies the practice in MPEP § 608.01(p), except that § 1.57(c) is limited to U.S. patents or U.S. patent application publications. According to past practice, an attempt to incorporate by reference essential material found in a foreign patent or non-patent literature is improper. The Office has eliminated the practice of incorporating by reference essential material found in unpublished applications in which the issue fee has been paid but the application has not yet issued as a patent. Delays in issuance or the possibility of withdrawal from issue of an allowed unpublished application put in doubt that an application incorporated by reference will be available to the public when a patent incorporating the other application issues. The Office now permits incorporating by reference essential material found in a U.S. patent application publication. This provision permitting only the incorporation of the publication document of an application is intended to preclude incorporation by reference of material found only in the original patent application used to produce a redacted portion of a published patent application, as well as where the subject matter has been cancelled by amendment prior to publication, and as a result, such subject matter is not reflected in the patent application publication.

The effect of § 1.57(c) is to change the prior practice of permissible incorporation by reference in two situations. First, prior practice permitted holding in abeyance correction of material incorporated by reference from unpublished U.S. applications that have not issued as patents until allowance of the application containing the incorporation by reference. Publication of such applications which contain an incorporation by reference, however, means that the public will need access to the material incorporated by reference prior to an application being issued as a patent. Where the incorporation is from an unpublished application that has not issued as a patent, such application may not be readily available and thus would impair the public's access to the needed information. Therefore, holding the correction of an incorporation by reference in abeyance until allowance will no longer be permitted. Applicants should, therefore, correct any ineffective incorporation(s) by reference prior to publication of their applications. Second, the Office considered but rejected including unpublished abandoned applications which are open to the public under § 1.14(a)(iv) as acceptable documents to incorporate by reference since the text of abandoned applications is not published on the Internet after abandonment in a text searchable form.

The Office is considering how to make previously unpublished applications to which the public is currently permitted access or a copy pursuant to: (1) § 1.14(a)(iv) (*i.e.*, unpublished abandoned application that are identified), or (2) § 1.14(a)(vi) (*i.e.*, pending applications that are incorporated by reference), available through the public PAIR system in the Office's Internet Web site. The Office may reconsider this position in the two situations when the text of such applications is made available on the Office's Internet Web site.

Section 1.57(c)(1) through (c)(3) defines essential material as those items required by 35 U.S.C. 112, ¶¶ 1, 2, and 6.

Section 1.57(d) defines the scope of incorporation by reference practice for other (nonessential) subject matter. The Director has considerable discretion in determining what may or may not be incorporated by reference in a patent application. *See General Electric Company* v. *Brenner*, 407 F.2d 1258, 159 USPQ 335 (D.C. Cir. 1968). Through the Office's incorporation by reference policy, the Office ensures that reasonably complete disclosures are published as U.S. patents and U.S. application publications. An incorporation by reference by hyperlink or other form of browser executable code is not permitted. Hyperlinked sources are not a reliable source for material due to the constant changes in links and linked contents. Similarly, executable code is not a reliable source for material to be incorporated by reference. As computers and operating systems change, executable code may not function on computers of the future and the material incorporated by reference would be inaccessible, or improperly interpreted. Executable code also poses security issues with respect to automated systems that the Office cannot control.

The limits on incorporation of essential or nonessential material under §§ 1.57(c) or (d) do not extend to other requirements for incorporation by reference set forth by the Office, such as under § 1.52(e)(5).

Other Office requirements for incorporation by reference, such as § 1.52(e)(5) for compact discs containing computer program listings or sequence requirements, are independent of the incorporation by reference requirements under §§ 1.57(c) or (d).

Additionally, the information added by the Office to its database for patents, for example, noting that for a particular patent a lengthy sequence listing is not reproduced in the text search database but can be found at a web link, is not governed by the prohibition in § 1.57(d). As the Office controls the content and the link addresses of the database, the problems associated with applicant supplied URLs are averted.

Section 1.57(e) is added so that it is clear that a copy of the incorporated by reference material may be required to be submitted to the Office even if the material is properly incorporated by reference. The examiner may require a copy of the incorporated material simply to review and to understand what is being incorporated or to put the description of the material in its proper context. Another instance where a copy of the reference may be required is where the material is being inserted by amendment into the body of the application to replace an improper incorporation by reference statement so that the Office can determine that the material being added by amendment in lieu of the incorporation is the same material as was attempted to be incorporated.

Section 1.57(f) addresses corrections of incorporation by reference by inserting the material previously incorporated by reference. A noncompliant incorporation by reference statement may be corrected by an amendment per § 1.57(f). Nothing in

§ 1.57(f) authorizes the insertion of new matter into an application and a statement that any amendment contains no new matter is required. Incorporating by reference material that was not incorporated by reference on filing of an application may be introducing new matter. The Office is concerned that improper incorporation by reference statements and late corrections thereof require the expenditure of unnecessary examination resources and slows the prosecution process. Applicants know (or should know) whether they want material incorporated by reference, and must timely correct any incorporation by reference errors. Corrections must be done within the time period set forth in § 1.57(g). Improper incorporations such as where a document cannot be identified cannot be corrected. See the discussion of § 1.57(g)(2).

Section 1.57(g) states that an incorporation by reference that does not comply with paragraph (b), (c), or (d) of this section is not effective to incorporate such material unless corrected within any time period set by the Office (should the noncompliant incorporation by reference be first noticed by the Office and applicant informed thereof), but in no case later than the close of prosecution as defined by § 1.114(b) (should applicant be the first to notice the noncompliant incorporation by reference and the Office informed thereof), or abandonment of the application, whichever occurs earlier. The phrase "or the abandonment of the application" is included in § 1.57(g) to address the situations where an application is abandoned prior to the close of prosecution, *e.g.*, the situation where an application is abandoned after a non-final Office action.

Section 1.57(g)(1) authorizes the correction of noncompliant incorporation by reference statements that do not use the root of the words "incorporate" and "reference" in the incorporation by reference statement. This correction cannot be made when the material was merely referred to and there was no clear specific intent to incorporate it by reference. Incorporating by reference material that was not incorporated by reference on filing of an application may be new matter.

Section 1.57(g)(2) states that a citation of a document can be corrected where the document is sufficiently described to uniquely identify the document. Correction of a citation for a document that cannot be identified as the incorporated document may be new matter and is not authorized by this paragraph. An example would be where applicant intended to incorporate a particular journal article but supplied the citation information for a completely unrelated book by a different author, and there is no other information to identify the correct journal article. Since it cannot be determined from the citation originally supplied what article was intended to be incorporated, it would be improper (*e.g.*, new matter) to replace the original incorporation by reference with the intended incorporation by reference. A citation of a patent application by attorney docket number, inventor name, filing date and title of invention may sufficiently describe the document, but even then correction should be made to specify the application number.

A petition under § 1.183 to suspend the time period requirement set forth in § 1.57(g) will not be appropriate. After the application has been abandoned, applicant must file a petition to revive under § 1.137 for the purpose of correcting the incorporation by reference. After the application has issued as a patent, applicant may correct the patent by filing a reissue application. Correcting an improper incorporation by reference with a certificate of correction is not an appropriate means of correction because it may alter the scope of the claims. The scope of the claims may be altered because § 1.57(g) provides that an incorporation by reference that does not comply with paragraph (b), (c), or (d) is not an effective incorporation. For example, an equivalent means omitted from a patent disclosure by an ineffective incorporation by reference would be outside the scope of the patented claims. Hence, a correction of an incorporation by reference pursuant to this section may alter the scope of the claims by adding the omitted equivalent means. Changes involving the scope of the claims should be done via the reissue process. Additionally, the availability of the reissue process for corrections would make a successful showing required under § 1.183 unlikely. The following examples show when an improper incorporation by reference is required to be corrected:

Example 4: The Office of Initial Patent Examination (OIPE) noticed that Figure 3 was omitted from the application during the initial review of the application although the specification included a description on Figure 3. The application as originally filed contained a claim under § 1.78 for the benefit of a prior-filed application that included the appropriate Figure 3. OIPE mailed a Notice of Omitted Items notifying the applicant of the omission of Figure 3 and providing a two-month period for reply.

Analysis: Applicant may rely on the incorporation by reference provided by § 1.57(a) to amend the application to add Figure 3. Applicant, however, must file the amendment to add the inadvertently omitted drawing figure in compliance with § 1.57(a) within the time period set forth in the Notice of Omitted Items.

Example 5: Upon review of the specification, the examiner noticed that the specification included an incorporation by reference statement incorporating essential material disclosed in a foreign patent. In a non-final Office action, the examiner required the applicant to amend the specification to include the essential material.

Analysis: In reply to the non-final Office action, applicant must correct the incorporation by reference by filing an amendment to add the essential material disclosed in the foreign patent in compliance with § 1.57(f) within the time period for reply set forth in the non-final Office action.

Example 6: Applicant discovered that the last page of the specification is inadvertently omitted after the prosecution of the application has been closed (*e.g.*, a final Office action, an *Ex Parte Quayle* action, or a notice of allowance has been mailed to the applicant). The application, as originally filed, contained a claim under § 1.78 for the benefit of a prior-filed application that included the last page of the specification.

Analysis: If applicant wishes to amend the specification to include the inadvertently omitted material, applicant must reopen the prosecution by filing a Request for Continued Examination (RCE) under § 1.114 accompanied by the appropriate fee and an amendment in compliance with § 1.57(a) within the time period for reply set forth in the last Office action (*e.g.*, prior to the payment of issue fee, unless applicant also files a petition to withdraw the application from issue).

Example 7: Upon review of the specification, the examiner determined that the subject matter incorporated by reference from a foreign patent was "nonessential matter" (see § 1.57(d)) and, therefore, did not object to the incorporation by reference. In reply to a non-final Office action, applicant filed an amendment to the claims to add a new limitation that was supported only by the foreign patent. The amendment filed by the applicant caused the examiner to re-determine that the incorporated subject matter was "essential matter" under § 1.57(c). The

examiner rejected the claims that include the new limitation under 35 U.S.C. 112, ¶ 1, in a final Office action.

Analysis: Since the rejection under 35 U.S.C. 112, ¶ 1, was necessitated by the applicant's amendment, the finality of the Office action is proper. If the applicant wishes to overcome the rejection under 35 U.S.C. 112, ¶ 1, by filing an amendment per § 1.57(f) to add the subject material disclosed in the foreign patent into the specification, applicant may file the amendment as an after final amendment in compliance with § 1.116. Alternatively, applicant may file an RCE under § 1.114 accompanied by the appropriate fee, and an amendment per § 1.57(f) within the time period for reply set forth in the final Office action.

Example 8: Applicant filed a (third) application that includes a claim under § 1.78 for the benefit of a (second) prior-filed application and a (first) prior-filed application. The second application was a continuation application of the first application and the second application was abandoned after the filing of the third application. Subsequently, the applicant discovered the last page of the specification was inadvertently omitted from the third application and the second application.

Analysis: If the benefit of the filing date of first application for the omitted subject matter is required (for example, the omitted material is required to provide support for the claimed subject matter of the third application and there is an intervening reference that has a prior art date prior to the filing date of the third application, but after the filing date of the first application), applicant must amend the specification of the second application and the specification of the third application to include the inadvertently omitted material in compliance with § 1.57(a) (**note:** the second and third applications must be filed on or after the effective date of § 1.57(a)). Since the second application is abandoned, applicant must file a petition to revive under § 1.137 in the second application only for the purpose of correcting the specification under § 1.57(a) along with the amendment in compliance with § 1.57(a).

Comment 43: Several comments suggested that the rule should not be limited to inadvertent omissions but instead should be available for any material that was omitted.

Response: The suggestion is not adopted. If the rule were not limited to inadvertent omissions, then applicants would not be able to intentionally omit material contained in a prior-filed application from an application claiming benefit or priority to that prior application since the material would be automatically incorporated into the later filed application by virtue of the incorporation by reference provided by the rule. Furthermore, if any material contained in a prior-filed application were considered as being automatically incorporated, it would be extremely burdensome on the examiner and on members of the public to determine what was included in the disclosure of the application as well as what was encompassed by any means-plus-function claims, particularly when benefit or priority of many prior-filed applications was being claimed. Additionally, if the provision was not limited to inadvertent omissions it could lead to submarining of subject matter. Specifically, applicants could intentionally mislead third parties into thinking that patent protection was no longer being pursued for subject matter found in a prior application by intentionally omitting that subject matter from a later filed application, or a series of later filed applications, and then reinstating that subject matter and any claims pertaining thereto at a later date.

Comment 44: One comment requested clarification regarding whether applicant must prove that a particular omission was inadvertent at the time of filing of the application. Another comment asked whether a declaration must accompany the amendment which states that the omission was inadvertent.

Response: There is no requirement for applicant to submit a declaration stating that the omission was inadvertent or to submit proof that a particular omission was inadvertent at the time of filing of the application. Of course, if applicant submits an amendment to add the omitted material pursuant to § 1.57(a), it would constitute a certification under § 10.18(b) that the omission was inadvertent. The Office, however, may inquire as to inadvertence where the record raises such issue.

Comment 45: One comment asked how far back in the chain of priority can one reach to find the omitted matter. The comment noted that there is no limit in the rule and this opens the possibility of obtaining patent protection for something disclosed but not claimed in a patent that issued many years ago.

Response: There is no limit in the rule as to how far back in a chain one may go. The rule, however, is not retroactive to any applications having inadvertently omitted material filed before the effective date of the rule. An application that inadvertently omits material must have been filed on or after the effective date of the rule in order for the rule to apply but applicants may rely on prior-filed applications filed before the effective date of the rule to add inadvertently omitted material to applications filed on or after the effective date of the rule. Even though it may be possible for an applicant to rely on an application that was patented many years ago for material that was inadvertently omitted from an application claiming benefit of that prior-filed application through a chain of applications, it should be noted that if the omitted material is not present in any of the intervening applications, then the later-filed application is only entitled to the filing date of the later-filed application for the inadvertently omitted subject matter. The claimed subject matter in the later-filed application is only entitled to the benefit of the filing date of an earlier application if that subject matter is disclosed in every intervening application relied upon to establish a chain of copendency. *See In re de Seversky,* 474 F.2d 671, 177 USPQ 144 (CCPA 1973), and *In re Schneider,* 481 F.2d 1350, 179 USPQ 46 (CCPA 1973). Where, however, intervening applications are filed after the effective date of the rule, it may be possible to correct a gap in the intervening chain if the intervening application(s) that also inadvertently omitted the material are pending and prosecution is not closed. A petition to revive an application under § 1.137 and/or a request for continued examination under § 1.114 may be filed, as appropriate, in order to restore the application to pending status and/or reopen prosecution in the application. If, however, an application has been patented, a certificate of correction or a reissue application could not be used to add inadvertently omitted material to that patent via § 1.57(a).

Comment 46: One comment stated that the restriction that the omitted material must be "completely contained" in the prior application, which is defined as material that is "expressly (as opposed to implicitly) disclosed in the prior application," is unnecessary and that applicant should be able to rely on any material that is explicitly, implicitly, or inherently disclosed in the prior-filed application. It was also argued that this requirement is inappropriate since the requirements of 35 U.S.C. 112 are satisfied by explicit and implicit disclosure in the application and such inconsistent treatment of 35 U.S.C. 112 issues would lead to confusion, inequity, and added burden to the Office and applicants.

Response: The purpose of the rule is to provide a safeguard for applicants

when a page(s) of the specification (or portion thereof) or a sheet(s) of drawing(s) (or a portion thereof) is inadvertently omitted from an application. For example, sometimes, as a result of a clerical error, a page of the specification or a page of drawing(s) is omitted from the application when it is filed or a portion of a page or a portion of a drawing is omitted due to a copying error. This is the type of error that the rule is intended to remedy. The rule is not intended to permit applicants to bring in any material for which there may arguably be support for in a prior-filed application. It would be a burden on the Office if applicants were permitted to bring in material that was implicitly disclosed in the prior application. Therefore, the rule is limited to inadvertently omitted material that is expressly, as opposed to implicitly, disclosed in the prior application.

Comment 47: One comment asked whether the deadline specified in § 1.57(a)(1) is the close of prosecution before an RCE is filed or whether it includes the close of prosecution after the last RCE in an application has been filed.

Response: Section 1.57(a)(1) merely relies on the definition of the close of prosecution provided in § 1.114(b). If a proper RCE is filed, it reopens prosecution in the application. The rule permits the application to be amended to include the omitted material even after the filing of an RCE as long as prosecution in the application is still open.

Comment 48: One comment stated that it would appear to be possible to convert an inherent incorporation by reference under paragraph (a) into an explicit incorporation by reference under paragraph (b) by amending the application to include an explicit incorporation by reference statement since a prior filed application would be inherently incorporated by reference when the provisions of § 1.57(a) are satisfied.

Response: It would not be possible to convert an inherent incorporation by reference under paragraph (a) to an explicit incorporation by reference under paragraph (b). The incorporation by reference provided by paragraph (a) is limited to inadvertently omitted material. Furthermore, such inadvertently omitted material is not included in the application, and thus not considered part of the disclosure, unless the application is amended to include the omitted material. As stated in MPEP § 201.11, under the heading "Reference To Prior Application(s)," "when a benefit claim is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See Dart Indus.* v. *Banner,* 636 F.2d 684, 207 USPQ 273 (D.C. Cir. 1980)." This is because no new matter can be added to an application after its filing date. Therefore, an explicit incorporation by reference statement cannot be added to an application after filing, even if material was inadvertently omitted from the application and § 1.57(a) is applicable.

Comment 49: One comment asked for clarification as to whether § 1.57(a) would allow for correction of translational and/or typographical errors which are not obvious when looking only at the application that contains the error and which distinguish the subject matter disclosed in that application from the priority document.

Response: The comment has been adopted in that it is explained that in certain situations it may be possible to correct translational and/or typographical errors via § 1.57(a). For example, if a particular word is explicitly disclosed in the prior foreign application for which priority is claimed, but the translation of the foreign application resulted in the U.S. application being filed with a different word in its place, it would be permissible to correct this error via § 1.57(a). It must be clear on its face that the error was a translational or typographical error in order for the error to be corrected by this procedure. It would not be permissible to argue over the interpretation of a particular word or expression used in the foreign application or to argue that language in the foreign application that is directed to a species provides support for the genus.

Comment 50: One comment questioned the Office's authority to bind courts by § 1.57. The comment noted that 35 U.S.C. 2 only gives the Office authority to make procedural rules.

Response: The Office has the authority to promulgate § 1.57 since the rule is a procedural rule. The Office already has a similar procedure in place. *See* MPEP § 201.06(c). The Office's transmittal form for filing a utility patent application includes an incorporation by reference statement for continuation or divisional applications that can be relied upon when a portion has been inadvertently omitted from the application. The rule is merely an extension of the existing procedure.

Comment 51: One comment asked what would be the effect of adding a priority claim after initial filing.

Response: The rule requires the priority claim or benefit claim to be present on the filing date of the application. Therefore, if a priority claim is added after the application is accorded a filing date, there would be no incorporation of the prior application provided by § 1.57. Furthermore, as noted above, if a benefit claim is submitted after the filing date of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application.

Comment 52: One comment asked whether this issue would be better resolved by bilateral negotiations.

Response: The Office does not think that this issue would be better resolved by bilateral negotiations since relief via the new rule is more immediate and was generally supported.

Comment 53: One comment suggested that a priority claims section be added to the Office's application transmittal letter (PTO/SB/05) that allows an applicant to list all "parent" applications (foreign, U.S., or provisional) and include an "incorporated by reference" check box for each "parent" application.

Response: The suggestion is not adopted. A check box on the transmittal letter is unnecessary for purposes of § 1.57(a) since the rule operates as an automatic incorporation by reference for inadvertently omitted material completely contained in a prior-filed application for which priority or benefit is claimed. If applicants were required to affirmatively check a box on a form in order for a prior application to be considered as being incorporated by reference, it would result in many applicants not being able to bring in material that was inadvertently omitted because they failed to check the box on the form or because they used their own transmittal form which did not contain any check boxes. The automatic incorporation provided by § 1.57(a) is a more superior safeguard than if applicants were required to affirmatively check a box on the transmittal letter. Furthermore, if applicants want to incorporate by reference any prior applications for more than inadvertently omitted material, they would need to include a proper incorporation by reference statement in the specification of the application as provided in § 1.57(b), not in the application transmittal letter, and thus a check box on the transmittal letter would not accomplish this objective.

Comment 54: One comment requested that the Office indicate that when applicants intentionally omit material

from a prior-filed application when filing an application claiming priority to, or benefit of, the prior-filed application, the continuing application should be designated as a continuation-in-part application.

Response: The omission of material from a prior-filed application may or may not be considered new matter relative to the prior-filed application depending on what is being claimed. Therefore, the Office cannot indicate that such continuing applications should be designated as continuation-in-part applications since it is possible that some of these applications would be properly considered continuation applications.

Comment 55: One comment stated that § 1.57(a) should be expressly made effective only for applications filed on or after the effective date of the rule.

Response: The comment has been adopted to the extent that the preamble to the rule does indicate that the rule does not apply to add inadvertently omitted material to any applications filed before the effective date of the rule. The effective date of a rule is generally not included in the text of the rule itself.

Comment 56: Many comments stated that § 1.57(b) should not preclude the use of other language to make an incorporation by reference. Variations of this comment suggest that the Office provide guidance on language which it considers acceptable, but accept any language where applicant manifests an intent to incorporate the content of a document by reference; clear intent.

Response: The comment is adopted in part. While many commentators requested more flexibility, none suggested any equivalent phrase that did not have the root words "incorporate" and "reference." The language of the final rule will allow variations that contain the words at least as stem words "incorporate" and "reference." Some of the comments included an example of a reference to a document as being an incorporation by reference of the document. Mere reference to a document is not under existing law or practice an incorporation by reference. Whether the examples of the comment demonstrate a clear intent to incorporate a document by reference is a matter of substantive law that is fact dependent and not addressed by the final rule. The language of the rule is not intended to change existing law or practice in this respect and would permit, where there is clear intent to incorporate a document by reference, correction of incorrect incorporation language. The procedure in paragraph (f) is intended to ensure that any issue with respect to whether the material is incorporated by reference is timely resolved.

Comment 57: A comment stated that the requirements set forth in proposed § 1.57(f) are too restrictive and the consequences of a failed incorporation by reference are too severe (*i.e.*, any post filing corrections are new matter).

Response: The comment is adopted in part. The correction required, which is now set forth in paragraph (g), has been liberalized in the final rule to permit insertion of the incorporated material and clarifies that the improper terminology can be corrected, *e.g.*, no loss of filing date. Paragraph (g) is not intended to preclude any correction where there is a clear intent to incorporate a document by reference but incorrect incorporation language was used or a reference was made to a document that is not a suitable type for incorporation by reference. This provision is merely a codification of existing law. The courts have long held an improper incorporation must be corrected in a timely manner, *e.g.*, prior to the issuance of a patent to be effective. Similarly, a patentee trying to enforce rights emanating from a patent application publication is expected to have corrected these problems prior to publication to be timely. *See also Atmel Corp.* (improper incorporation is noted as being of no effect).

Comment 58: A comment stated that the rule is rigid and inflexible. The comment recommended that each document listed below be presumed to be incorporated by reference unless the applicant states that it is not incorporated by reference: (1) All disclosure in provisional, utility, PCT and foreign applications from which the application in question descends; (2) all disclosure in U.S. and foreign patents referred in the specification of the application in question and all other documents identified in the specification and in existence at the time of filing; and (3) all disclosure in references included in an Information Disclosure Statement filed at the same time as the application in question.

Response: The comment is not adopted. The majority of references in an application today, especially when including references cited in an IDS, are not incorporated by reference. With respect to presuming all identified references be incorporated by reference unless positively disclaimed would appear to create a larger burden on patent applicants than the converse. Similarly, the automatic addition of all these additional sources of potential equivalents for means-plus-function claims would greatly increase the examination burden and prolong prosecution of an application. While it is stated in the comments that the incorporation by reference will make applications smaller and require less time for examiners to review, it is not stated how much additional time will be required for examiners to find and review the incorporated references for equivalents. The suggested change would also require a change in the oath/declaration practice, since an IDS is not part of the application. An applicant would have to review and understand all of the IDS materials in addition to the specification to understand the scope of the application and claims at the time the applicant signed an oath or declaration. This is a more difficult standard for an applicant to meet than is required by § 1.56.

Comment 59: The comment viewed post filing corrections to incorporation by reference language as new matter.

Response: The comment is adopted in part. The correction provision of § 1.57(g) is not intended to change the current law with respect to what is new matter. Material that is merely referenced under current law is not incorporated by reference. If changing a referenced document to an incorporation by reference under existing law would be new matter, changing the reference to an incorporation by reference statement under § 1.57(g) would be new matter and paragraph (g) is not applicable. Where, however, there is a clear intent to incorporate material but a formal problem with the language or identification of the document, utilization of remedial paragraph (g) will not make the correction "new matter."

Section 1.57(g) has been clarified to remove any confusion as to what corrections are contemplated. Where there is a clear specific intent to incorporate by reference paragraph (f) will permit correction of language of incorporation, and document identity corrections that do not involve new matter.

Comment 60: The comment suggested that an explicit statement that simply identifying an incorporated patent or publication does not necessarily "immunize" any future amendment of the disclosure against new matter, particularly when subject matter is selectively incorporated from the cited document on the basis of a generic or "blanket" incorporation statement.

Response: The comment is not adopted. The proposed changes are intended to address the format of an incorporation by reference claim, not substantive law regarding "new matter." Mere reference to a document under

existing case law is not an incorporation by reference. Hence, what was not incorporated by reference before the rule change will not be treated differently under the rule change. Where there was clear specific intent to attempt to incorporate an identifiable document for which a correction was not new matter before the rule change will not be new matter after the rule change.

Comment 61: Some comments favored the restrictions in § 1.57(c) while there were other sets of comments that had three criticisms. The first criticism was that by eliminating the ability to incorporate commonly owned unpublished applications by reference, the usefulness of incorporation by reference practice will be severely curtailed. The comment states that access is available under the access rules or can be obtained from applicant. The second criticism was that § 1.57(c)(2) is confusing and appears to say claims can be incorporated by reference. The third criticism was that it is unwise to further confuse 35 U.S.C. 112, ¶ 6, by making a specific rule allowing language supporting a means-plus-function element to be incorporated by reference. The comments suggested that the Office should limit rule implementation to MPEP language.

Response: The comment is not adopted. The Office recognizes that the usefulness of incorporation by reference will be reduced by barring unpublished applications, and will reconsider this position when access to these applications is generally available on the Office's Internet Web site. Access to pending applications at this time is only by ordering a copy and paying the appropriate fee. Paragraph (c)(2) is part of the definition of "essential subject matter" and is not seen to say or imply that claims can be incorporated by reference. The deletion of the reference to 35 U.S.C. 112, ¶ 6, from the provision is also not adopted. This provision merely codifies existing practice, in MPEP § 608.01(p), which states that material may be incorporated by reference to "describe the claimed invention." The comment that the law is sufficiently confusing in requiring a link between the specification and claim for 35 U.S.C. 112, ¶ 6, that the change will cause more confusion is not seen to be a problem if the incorporation by reference language of the rule is used (see also the discussion of *Atmel Corp.* that incorporation by reference does not relieve an applicant of providing a proper written description of equivalence).

Comment 62: Section 1.57(b) should not require more than the minimum amount of information needed for a skilled person to uniquely identify the document. The incorporation by reference standard should not be tied to § 1.98.

Response: The comment is adopted.

Comment 63: A comment stated that the true holding of *Atmel Corp.* should not be ignored or glossed over by practitioners or the Office, and that there is no basis for 35 U.S.C. 112, ¶ 1, written description incorporation by reference in case law, so it should be barred.

Response: The comment is not adopted. Section 1.57(c) as noted in the above discussion of the MPEP is a codification of existing practice which includes providing support for language found in the claims. The improper incorporation by reference in *Atmel Corp.* does not appear to bar this practice. Although the final rule permits incorporation by reference of material for 35 U.S.C. 112, ¶ 6 purposes, it does not relieve an applicant from providing a written description within an application that an element disclosed in the document is an equivalent for the purpose of 35 U.S.C. 112, ¶ 6. To the extent that applicants must provide a written description within an application, the final rule is considered consistent with 35 U.S.C. 112, ¶ 1, and *Atmel Corp.*

Section 1.58: Section 1.58(a) is amended to provide that the same table not be included in both the drawings as a figure and in the body of the specification of an application. Section 1.58(b) is also amended to clarify that correct visual alignment of rows and columns of chemical and mathematical formulae and tables is retained when the electronic file is rendered by opening and displaying the electronic file at the Office using a text viewer program. Section 1.58(c) is additionally amended to recommend that the font size of text be at least 0.166 inches or 0.422 cm. and to eliminate a reference to elite type font.

Section 1.58(a) is amended because applicants have been causing voluminous applications to become even larger by including the same table as both a drawing figure and as text in the body of an application. Filing duplicate copies of the same table requires additional review by the Office to determine if the drawing table and the text table are duplicates and to identify differences, if any exist. Moreover, the duplicate inclusion is causing the number of pages of the application to increase, thereby causing increased scanning, storage and reproduction costs. In addition, the burden on the public to copy and review a published application or patent is also increased. Applications filed under 35 U.S.C. 371 are excluded from the prohibition from having the same tables in both the description portion of the specification and drawings.

See § 1.83 for a similar proposed change involving tables and sequence listings.

Section 1.58(b) is amended by adding the word "visually" to make it clear that the data in the electronic file is appropriately formatted so that the alignment of rows and columns is maintained in the table when the file is opened for viewing at the Office. The Office has found that some filers have only been providing markers to identify rows and columns in table data. When the table is viewed at the Office, the markers do not cause the rows and columns of data to be visually aligned. Unless each entry in a table is surrounded with an appropriate number of spaces, the visual spatial alignment of the table is not maintained: *i.e.*, the rows and cells are misaligned. A way to provide the proper alignment is to insert space characters in each cell so that the overall number of characters in each cell is the same, and to maintain a constant font width for all characters.

Many programs that are used to generate tables allow the user to provide additional spaces manually when typing data. Many of these programs also provide an automated way to pad the cells with space characters, and create an ASCII file with spatially aligned data. This feature is generally invoked by a command that is often called printing to a "formatted text" format or "prn" file. The program feature formats the table as it would appear on paper, padding the cells with spaces to provide proper alignment of the cell entries.

A review of different versions of one software product and similarly, of different software products showed no consistency in the menu language used for the formatting command noted above. With the constant change in software versions, the Office is not able to provide a list of all the menu variations necessary to create a formatted text format. A person knowledgeable with software used to create tabular data, however, should be able to find the commands to invoke this feature in the selected software.

Section 1.58(c) is amended for the same reason that § 1.52(b)(2)(ii) is amended. Section 1.58(c) previously required that the text be in a lettering style that is at least 0.08 inches high, which is the minimum font size set forth in Patent Cooperation Treaty (PCT)

Rule 11.9. Text having a font size only 0.08 inches high is difficult to capture with optical character recognition technology and may not be reproducible as required by § 1.52(a)(1)(v) (and PCT Rule 11.2(a)). A font size of 12 (12/72 inch or 0.166 inch (0.422 cm.) high) is significantly more reproducible than a font size of 6 (6/72 inch or 0.08 inch (0.211 cm.) high). Accordingly, § 1.58(c) is amended to indicate a preference for a larger font size. In addition, the reference to elite type is deleted as it was inconsistent with the size given. Elite type is a typewriter type that runs 12 characters to the inch. Instead of referencing elite type, the rule references font size which should be more meaningful to most patent applicants (most word processing software programs have an option to choose a font and a font size).

Section 1.59: Section 1.59 is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the changes in the petition fees.

Section 1.63: Section 1.63(d)(4) is amended to delete "(or authorization of agent)".

Section 1.69: Section 1.69(b) is amended by deleting the words "or approved" as unnecessary, and possibly leading to confusion and the mistaken assumption that the Office has a procedure for the approval of applicant-generated forms, where no such procedure exists. *See Changes to Implement the Patent Business Goals,* 64 FR 53771, 53777 (Oct. 4, 1999), 1228 *Off. Gaz. Pat. Office* 15, 20 (Nov. 2, 1999) (proposed rule) (declining to adopt a review service for applicant-created forms).

PCT Rule 4.17(iv) provides for the submission of declarations of inventorship in the international phase of an international application as part of the PCT Request form. Such declarations may be accepted as satisfying the requirement under 35 U.S.C. 371(c)(4) for an oath or declaration of the inventor in the U.S. national phase. *See* § 1.497(a). WIPO has translated the text for the PCT Rule 4.17(iv) declaration form into languages other than English and has made such forms available to applicants, for example, by downloading the declaration form from WIPO's Web site at *http://www.wipo.int/pct/en/forms/index.htm.* Accordingly, § 1.69(b) is being further revised to make it clear that PCT Rule 4.17(iv) declarations are not subject to the translation requirements set forth in that section.

Paragraph (b) of § 1.69 was proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. The Office will not proceed with this additional amendment. See § 1.52(b)(1)(ii) for a discussion. See also §§ 1.52(d)(1), 1.55(a)(4) and 1.78(a)(5)(iv).

Section 1.76: Section 1.76(a) is amended to require that any application data sheet (ADS) contain the seven headings listed in § 1.76(b) and all appropriate data for each section heading. As revised, § 1.76 also requires that the ADS be titled "Application Data Sheet." Any label (*e.g.*, the label "Given Name" in the "Applicant Information" heading) that does not contain any corresponding data will be interpreted by the Office to mean that there is no corresponding data for that label anywhere in the application. By requiring an ADS to contain all seven section headings, and any appropriate data for the sections, the accuracy of bibliographic data in patent applications will be enhanced and the need for corrected filing receipts related to Office errors will be reduced.

Section 1.76(b)(4) is amended to delete "authorization of agent" and to change the cross-reference from § 1.34(b) to § 1.32.

Section 1.76(c)(2) is amended to require a supplemental application data sheet to be titled "Supplemental Application Data Sheet" and to also contain all of the seven section headings listed in § 1.76(b) with all appropriate data for each heading, rather than only identifying the information that is being changed (added, deleted, or modified) in the supplemental ADS. Requiring a supplemental ADS to contain all of the information from the ADS, but with the changes indicated, is consistent with the ADS guide posted on the Office's Internet Web site at: *http://www.uspto.gov/web/offices/pac/dapp/sir/doc/patappde.html.* A supplemental ADS containing only new or changed information is likely to confuse the record, create unnecessary work for the Office, and would not comply with § 1.76. If no ADS was originally filed, but applicant wants to submit an ADS to correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled "Supplemental Application Data Sheet." When submitting a supplemental ADS after the initial filing of the application to correct, modify, or augment the original application data included in a previously filed ADS or oath or declaration pursuant to § 1.63 or § 1.67, the following applies: (1) The supplemental ADS must be titled "Supplemental Application Data Sheet" (while the title "Supplemental Application Data Sheet" is preferred, "Supp. ADS," "Supplemental ADS" or other variations thereof will be accepted); (2) the supplemental application data sheet must be a full replacement copy of the original ADS, if any, with each of the seven section headings, and with all appropriate data for the section headings; and (3) the supplemental ADS must be submitted with all changes indicated, preferably with insertions or additions indicated by underlining, and deletions, with or without replacement data, indicated by strike-through or brackets. A supplemental ADS that is being used to correct data shown in an oath or declaration, such as foreign priority or residence information for an inventor, would then show the original incorrect information with strike-through or brackets, and the new information with underlining, as if an ADS had originally been used to submit the information. For example, if the original oath or declaration included a foreign priority claim, in order to delete the claim, applicant should provide a supplemental ADS showing the foreign priority claim with strike-through or brackets to ensure that the patent will reflect such change.

Applicants are reminded that use of an application data sheet is strongly encouraged when there is a change in the spelling of an inventor's name pursuant to MPEP 605.04(b), or the inventor changes his or her name pursuant to § 1.182, or there is a correction of inventorship under § 1.48. *See Advance Notice of Change to MPEP 605.04(b), (c) and (f)—Application Data Sheets Are Strongly Recommended When Inventor Information is Changed,* 1281 *Off. Gaz. Pat. Office* 54 (Apr. 13, 2004).

Section 1.76(d) is amended to clarify that if an ADS is inconsistent with information provided in another document that was submitted at the same time or previous to the ADS submission, the ADS will control. The title of § 1.76(d) is amended by replacing "oath or declaration" with "other documents" to reflect the amendments to paragraphs (d)(1) and (d)(2) of § 1.76. Section 1.76(d)(1) and 1.76(d)(2) are amended to add an amendment to the specification, a designation of a correspondence address, in order to emphasize other documents that may have inconsistent information with an ADS.

In addition, § 1.76(d)(4) is amended to delete "initially" from the first sentence, and ", an oath or declaration under § 1.63 or 1.67, or a letter pursuant to § 1.33(b)" from the last sentence thereof. In addition, § 1.76(d)(4) is amended to

add ", for example," to the second sentence, and to clarify the last sentence. The Office captures bibliographic data from the ADS, so if an ADS has been provided, the ADS needs to be accurate. A separate letter indicating an error, for example in the spelling of an inventor's name in a prior-filed oath or declaration or ADS, is likely to be overlooked and the error likely to be duplicated if the application issues as a patent. Accordingly, if applicants have made an error in an ADS, a supplemental (corrected) ADS needs to be submitted with any request for a corrected filing receipt, or a request to correct the inventorship in the patent application (and any required new oath or declaration showing the correct inventorship). If the error was included in a declaration under § 1.63, and no ADS was filed, a supplemental declaration pursuant to § 1.67 remains an acceptable mechanism to correct the defect in the original declaration. If the error was included in an originally filed ADS, a supplemental ADS is required because a supplemental declaration is not an acceptable mechanism to correct a defect in an ADS.

Comment 64: One comment stated that the Office had not explained why a supplemental application data sheet was being required to contain bibliographic data that was not being changed, and also requested that the rule indicate the manner in which changes should be shown. Another comment indicated that the ePAVE software in EFS for generating Application Data Sheets does not permit underlining or strike-through.

Response: The suggestion to indicate in the rule how changes should be shown has been adopted. In a supplemental ADS, all changes must be indicated, with insertions or additions preferably shown by underlining, and deletions preferably shown by brackets or strike-through. The Office is trying to encourage applicants to submit ADSs and supplemental ADSs that are useful to the Office, but not difficult for applicants to prepare. Accordingly, while the Office suggests underlining and brackets or strike-through to show changes on an ADS, or a supplemental ADS, other clear indications of changes may be used as well. As to why a supplemental ADS should contain the material that is not being changed, application data sheets are used in printing the patent, and it is useful and most efficient for the printer to have a single document from which to extract data. The Office anticipates that an applicant may file several supplemental ADSs, and searching through the file to find all such documents and comparing the documents is unreliable and is not an efficient use of Office resources. As to ePAVE, this feature of EFS assists applicants in creating an ADS for filing with an initial filing of an application. EFS cannot currently be used to submit a Supplemental ADS, and as a result, ePAVE (part of EFS) does not provide a mechanism to show insertions or deletions. An applicant who initially created an ADS using ePAVE would need to retype the ADS to create a supplemental ADS.

Section 1.78: Section 1.78(a)(1) is amended to delete an unnecessary alternate condition to permit a claim for the benefit of a prior-filed application. Sections 1.78(a)(2)(iii) and (a)(5)(iii) are amended to permit the required reference to the prior application(s) to be in multiple sentences, forming a continuous string, at the beginning of the specification, rather than being limited to the first sentence of the specification. The multiple sentences must begin as the first sentence after the title, and the second, or any additional, sentence including a benefit claim must follow the first sentence and not be separated from the first sentence by any other sentence not making a benefit claim. Section 1.78(c) is amended to clarify that the prior art exception under 35 U.S.C. 103(c) does not apply to double patenting rejections.

Section 1.78(a)(1) sets forth the conditions under which a nonprovisional application may claim the benefit of one or more prior-filed copending U.S. nonprovisional applications or international applications designating the United States of America. Where the prior-filed application is a nonprovisional application (filed under 35 U.S.C. 111(a)), one of the conditions under § 1.78(a)(1) is met when the prior-filed application satisfied any one of paragraphs (ii), (iii) or (iv) of § 1.78(a)(1). To satisfy paragraph (ii), the prior-filed application must be "[c]omplete as set forth in § 1.51(b)." To satisfy paragraph (iii), the prior-filed application must be "[e]ntitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16." Considering that paragraph (iii) is less restrictive than paragraph (ii), paragraph (ii) is deleted, with paragraphs (iii) and (iv) being redesignated as paragraphs (ii) and (iii), respectively, as paragraph (ii) is unnecessary because any prior-filed application that would satisfy paragraph (ii) would also satisfy paragraph (iii).

Sections 1.78(a)(2)(iii) and (a)(5)(iii) are amended to change the word "sentence" to "sentence(s)." The change permits the required reference to the prior application(s) to be in more than one sentence, forming a continuous string, at the beginning of the specification. In some situations, it would be easier and clearer to set forth the relationship between prior applications if more than one sentence were permitted. For example, where there is a provisional application and multiple intermediate nonprovisional applications, the required identification in the latest nonprovisional application as to which intermediate nonprovisional application(s) claims benefit to the provisional application (*i.e.*, is within one year of the provisional application's filing date), could be set forth in a clearer manner using multiple sentences.

Section 1.78(a)(5)(iv) was proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. This proposed change has not been included in the final rule as the changes are not deemed to be necessary in view of the requirements of § 10.18, as explained in regard to § 1.52(b)(1)(ii). *See also* §§ 1.52(d)(1), 1.55(a)(4) and 1.69(b).

Section 1.78(c) is amended to clarify that the prior art exception under 35 U.S.C. 103(c) does not apply to double patenting rejections by the addition of a new final sentence, which states "Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made, the conflicting claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination." Therefore, § 1.78(c) emphasizes that double patenting rejections should still be made, when appropriate, even if a reference is disqualified from being used in a rejection under 35 U.S.C. 103(a) via the prior art exclusion under 35 U.S.C. 103(c). This clarification codifies patent policy regarding double patenting rejections and the prior art exclusion under 35 U.S.C. 103(c) as set forth in the notice *Guidelines Concerning the Implementation of Changes to 35 U.S.C. 102(g) and 103(c) and the Interpretation of the Term "Original Application" in the American Inventors Protection Act of 1999*, 1233 *Off. Gaz. Pat. Office* 54 (Apr. 11, 2000)) and MPEP § 706.02(l)(1). Thus, applicants, pursuant to § 1.56, must disclose all relevant applications for which a double patenting rejection would be appropriate. Additionally, the first sentence of § 1.78(c) is amended by changing the word "party" to "person"

in order to use terminology consistent with 35 U.S.C. 103(c).

Section 1.83: Section 1.83(a) is amended to provide that tables and sequence listings that are included in the specification are not permitted to be reprinted in the drawings. Applicants should not be obliged to include tables or the sequence listing in the drawings due to the current requirement of § 1.83(a) that all claimed features must be shown in the drawings. Accordingly, as amended, if the specification includes a sequence listing or a table, such a sequence listing or table would not be permitted to be reprinted in the drawings. As a result, if a sequence listing as shown in the drawings has more information than is contained in the specification, the sequence listing could be included in the specification and the drawings, but a sequence listing in the specification would not be permitted to be duplicated in the drawings. Applications filed under 35 U.S.C. 371 are excluded from the prohibition from having the same tables and sequence listings in both the description portion of the specification and drawings. This is because such format requirements for the specification and drawings of PCT applications (including national stage applications under 35 U.S.C. 371) are provided for in PCT Rule 11.

See § 1.58(a) for a similar proposed change to require that tables be included in only one of either the drawings or the specification.

Section 1.84: Section 1.84 is amended by removing former § 1.84(a)(2)(iii) to eliminate the requirement for submission of a black and white copy of any color drawings or photographs. Section 1.84(a)(2)(iv) is redesignated as (a)(2)(iii). Section 1.84(c) is amended to clarify that identification (labeling) of the drawing is recommended, but not required. If identification (of the application for which the drawing is related to) is provided it must be placed on the front of the sheet within the top margin. Section 1.84(c) is clarified to add an informational reference to § 1.121(d) relating to the requirement to identify the type of change represented by drawings submitted after the filing date of an application.

Section 1.84(a)(2) is amended to remove the requirement in former paragraph (a)(2)(ii) for a black and white copy of a color drawing or photograph. This requirement has already been waived. *See Interim Waiver of Parts of 37 CFR 1.84 and 1.165, and Delay in the Enforcement of the Change in 37 CFR 1.84(e) to No Longer Permit Mounting of Photographs,* 1246 *Off. Gaz. Pat. Office* 106 (May 22, 2001).

Section 1.84(c) is amended to be consistent with the requirements set forth in § 1.121(d). Each drawing sheet submitted after the filing date of an application must be identified as either "Replacement Sheet" or "New Sheet" so that the Office will recognize how to treat such a drawing sheet for entry into the application. If a marked-up copy of any amended drawing figure, including annotations indicating the changes made, is filed, such marked-up copy must be clearly labeled as "Annotated Sheet." Although the amendment to add the identification of "New Sheet" requirement was not set forth in the notice of proposed rule making and was not previously in § 1.121(d), the amendment is merely made to provide a means of identification ("New Sheet") for presenting an additional figure. The absence of an identification for a new sheet of drawing (as opposed to a replacement sheet of drawings) has caused applicants to inquire about the appropriate label for such situation.

Section 1.84(c) is clarified by the addition of references to § 1.121(d) to alert applicants to the need to identify the type of changes represented by drawings submitted after the filing date of an application. Each drawing sheet submitted after the filing date of an application must be identified as either "Replacement Sheet" or "New Sheet" so that the Office will recognize how to treat such a drawing sheet for entry into the application. If a marked-up copy of any amended drawing figure including annotations indicating the changes made is filed, such marked-up copy must be clearly labeled as "Annotated Sheet."

Section 1.85: Section 1.85(c) is clarified by deleting the phrase "or formal." Although the instant amendment was not set forth in the notice of proposed rule making, the amendment is merely made for the purpose of conformity to current terminology and does not represent a change in practice. The concept of a "formal" drawing is no longer applicable in that the focus is on whether a drawing can be scanned by the Office.

Section 1.91: Section 1.91 is amended to add a paragraph (c), which provides that a model or exhibit must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84. Material features are considered to be those features which represent that portion(s) of the model or exhibit forming the basis for which the model or exhibit has been submitted. Since the Office generally returns or otherwise disposes of models or exhibits when they are no longer necessary for the conduct of business before the Office (§ 1.94), such photographs are necessary for the file of the application or proceeding to contain an adequate record of the model or exhibit submitted to the Office. Models, exhibits or specimens not in compliance with § 1.52 and those in compliance that cannot be scanned will be stored by the Office in an artifact file until they can be disposed of. Section 1.91(c) provides that this requirement does not apply if the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84, since a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84 can itself be retained in the file wrapper of the application or proceeding.

In applications where the exhibit is not intended to display the medium of submission (*e.g.*, video tapes, DVDs, and compact discs) but the content of the submission, the requirement that the photographs be of the substantive content is included in this paragraph. Video tapes, DVDs, and compact discs are usually submitted with movies or multimedia images. The requirement that the photographs submitted should show the material features that were being exhibited is intended to require that the photograph be that of the content of the material, not a photograph of the medium of submission. Hence, if video or multimedia submission is contained on a tape or disc, the corresponding photograph should be a still image single frame of a movie, and not a submission of a photograph of a video cassette, DVD disc or compact disc.

A video or DVD is not the type of model or exhibit that would substantially conform to the requirements of §§ 1.52 or 1.84. The Office does not intend to store bulky items, such as videos, particularly as the Office is moving toward IFW. *See Changes To Implement Electronic Maintenance of Official Patent Application Records,* 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003) (final rule). Accordingly, where a video or DVD or similar item is submitted as a model or exhibit, the requirement of § 1.91(c) for supplying photographs of what is depicted in the video or DVD, pursuant to § 1.84, would need to be met.

Section 1.94: Section 1.94 is amended to be divided into paragraphs (a) through (c). Paragraph (a) provides that once notification is sent to applicant, arrangements must be made by applicant for the return of the model, exhibit, or specimen at applicant's

expense, in response to such notification. The Office may return the model, exhibit, or specimen, at any time once it is no longer necessary for the conduct of business and need not wait until the close of prosecution or later. Applicant is required to retain the returned model, exhibit or specimen for the enforceable life of any patent resulting from the application for which it was submitted pursuant to paragraph (b) of § 1.94. Accordingly, applicant may be called upon to resubmit such returned model, exhibit, or specimen under appropriate circumstances, such as where a continuing application is filed. Where the model, exhibit or specimen is a perishable, the Office will be presumed to have permission to dispose of the item without notice to applicant, unless applicant notifies the Office upon submission of the item that a return is desired and arrangements are promptly made for the item's return upon notification by the Office.

Paragraph (b) provides that applicant is responsible for retaining the actual model, exhibit, or specimen for the enforceable life of any patent resulting from the application. Section 1.94 also provides that its provisions do not apply: (1) If the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84, since a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84 can itself be retained in the file wrapper of the application or proceeding; (2) where a model, exhibit, or specimen has been described by photographs that conform to § 1.84; or (3) where the model, exhibit, or specimen is perishable.

Paragraph (c) provides that the notification to applicant will set a time period within which applicant must make arrangements for a return of a model, exhibit, or specimen, with extensions of time available under § 1.136, except in the case of perishables. The time period is one month from the mailing date of the notification for applicant to make arrangements for a return, unless the item is a perishable, in which case the time period will be shorter. Failure by applicant to establish that arrangements for the return of a model, exhibit or specimen have been made within the time period set in the notice will result in the item being discarded by the Office.

Section 1.98: Section 1.98(a) is amended by revising paragraph (a)(1) to require: (1) A specified format/identification for each page of an Information Disclosure Statement (IDS), and that U.S. patents and U.S. patent application publications be listed in a section separately from citations of other documents; (2) a column that provides a space next to each document listed to permit the examiner's initials; and (3) a heading that the list is an IDS. Section 1.98(a)(1) is specifically amended to require that U.S. patents and U.S. patent application publications be listed separately from the citations of other documents. The separation of citations will permit the Office to obtain the U.S. patent numbers and the U.S. patent application publication numbers by optical character recognition (OCR) from the scanned documents such that the documents can be made available electronically to the examiner to facilitate searching and retrieval of the cited U.S. patents and U.S. patent application publications from the Office's search databases. Applicants will comply with this requirement if they use forms PTO/SB/08A and 08B (or the more commonly used PTO–1449), which provide a separate section for listing U.S. patents and U.S. patent application publications. Applicants who do not use these forms for submitting an IDS must make sure that the U.S. patents and U.S. patent application publications are listed in a separate section from citations of other documents. Section 1.98(a)(2)(i) is amended to eliminate the requirement in paragraph (a)(2)(i) for a copy of each U.S. patent or U.S. patent application publication listed in an IDS in a patent application regardless of the filing date of the application. Section 1.98(a)(2)(ii) is also amended to add the phrase "other than U.S. patents and U.S. patent application publications unless required by the Office." Section 1.98(c) is amended to add the phrase "as specified in paragraph (a)" to be consistent with the changes to § 1.98(a)(2). Section 1.98(e) is deleted as unnecessary.

Section 1.98(a)(1) previously did not require the use of a form such as the PTO/SB/08A and 08B because the Office wished to provide applicants the flexibility to use other types of lists. The Office, however, has experienced problems associated with lists that do not properly identify the application in which the IDS is being submitted: *e.g.*, when applicants submit a list that includes copies of PTO–1449 or PTO–892 forms from other applications. Even though the IDS transmittal letter had the proper application number, each page of the list did not include the proper application number, but instead had the application numbers of the other applications. If the pages of the list became separated, the Office could not associate the pages with the proper application. Therefore, the rule is amended to also require that each page of the list must clearly identify the application number of the application in which the IDS is being submitted.

Section 1.98(a)(1) is also amended to require that the list must include a column that provides a space next to each document listed in order to permit the examiner to enter his or her initials next to the citations of the documents that have been considered by the examiner. This provides a notification to the applicant and a clear record in the application to indicate which documents have been considered by the examiner in the application. Applicants are strongly discouraged from submitting a list that includes copies of PTO/SB/08 (PTO–1449) or PTO–892 forms from other applications. A completed PTO/SB/08 or PTO–1449 form from another application may already have initials of an examiner and the application number of another application. This information will likely confuse the record. Furthermore, when the spaces provided on the form have initials of an examiner, there are no spaces available next to the documents listed for the examiner of the subsequent application to provide his or her initials, and the previously relevant initials may be erroneously construed as being applied for the current application, which can be particularly confusing if the application is being handled by the same examiner.

Section 1.98(a)(1) is also amended to require that each page of the list include a heading that clearly indicates that the list is an IDS. Since the Office treats an IDS submitted by the applicant differently than information submitted by a third-party (*e.g.*, the Office may discard any non-compliant third-party submission under § 1.99), a heading on each page of the list to indicate that the list is an IDS would promote proper treatment of the IDS submitted by the applicant and reduce handling errors.

Section 1.98(a)(2) is amended to eliminate the requirement for a copy of each U.S. patent or U.S. patent application publication listed in an IDS, unless required by the Office. The Office had provided a waiver for the former requirement in § 1.98(a)(2)(i) for a copy of each cited U.S. patent or U.S. patent application publication in IDSs submitted in U.S. national patent applications filed after June 30, 2003, and international applications that have entered the national stage under 35 U.S.C. 371 after June 30, 2003, because these applications are stored in electronic form in the Office's IFW system. *See Information Disclosure Statements May Be Filed Without Copies of U.S. Patents and Published*

Applications in Patent Applications filed after June 30, 2003, 1273 *Off. Gaz. Pat. Office* 55 (Aug. 5, 2003).

Information disclosure statements submitted for electronic applications are processed by Office staff to create an electronic link which permits cited U.S. patents and U.S. patent application publications to be conveniently viewed by examiners through the Office's electronic search system. This feature enables the Office to avoid scanning these documents into IFW, obviating the need for a copy of the cited U.S. patent documents. By October 2004, the Office will store almost all pending U.S. nonprovisional patent applications in electronic form in the IFW system. Accordingly, it will no longer be necessary to require a copy of each cited U.S. patent or U.S. patent application publication in an IDS regardless of the filing date of the application or the national stage entry date under 35 U.S.C. 371, unless it is required by the Office. In exceptional circumstances, such as where the application had not been converted into IFW, or the IDS includes a large number of cited U.S. patent documents, the Office may require a copy of the cited U.S. patent documents because entering a large number of cited U.S. patent documents into the Office system to create the electronic link places a significant burden on the Office and the Office cannot guarantee the accuracy of the electronic link created by the Office staff due to data entry errors. Applicants are encouraged to file an e-IDS that is submitted in compliance with the Office's EFS requirements, and may do so to avoid supplying copies of U.S. patent documents. The Office will continue to not require a copy of any cited U.S. patent documents listed in an e-IDS that is submitted in compliance with the Office's EFS requirements.

Section 1.98(c) is amended to add the phase "as specified in paragraph (a)" to be consistent with the changes to § 1.98(a)(2). Section 1.98(e) is deleted as unnecessary. Previously, one could avoid the need to supply a copy of the U.S. patent documents of former paragraph (a)(2)(i) by using the Office's EFS. This exception is not necessary because the requirement for copies of U.S. patent documents has been deleted.

Section 1.102: Section 1.102(c) is amended to provide, by rule, for a petition to make an application special without a fee when the application materially relates to a counter-terrorism invention. Prior to amending this rule, the Office accorded "special" status to patent applications relating to counter-terrorism technology so long as the fee under § 1.17(h) was included with the petition. Amending § 1.102(c) to cover applications relating to counter-terrorism inventions will eliminate the requirement for a fee.

Under the previous § 1.102(c), there were two types of inventions that qualified as a basis for making an application special without a fee (other than on the basis of an applicant's age or health), namely: (1) inventions that will materially enhance the quality of the environment; and (2) inventions that will materially contribute to the development or conservation of energy resources. Previously, petitions to accelerate examination of inventions countering terrorism were governed by § 1.102(d) requiring a petition fee. Amended § 1.102(c) now provides that inventions that will materially contribute to countering terrorism are a third type of invention that qualify as a basis for making an application special without a fee under § 1.102(c). As set forth in MPEP § 708.02, XI (Inventions For Countering Terrorism), the types of technology for countering terrorism include, but are not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems. Removal of the petition fee is appropriate considering that such inventions may help maintain homeland security. In view of meeting this significant national objective, the basis for making applications relating to counter-terrorism technology special is transferred from § 1.102(d) to § 1.102(c).

Pursuant to the amendment, § 1.102(c) sets forth two bases for making an application special: (1) Applicant's age or health; or (2) that the invention is one of the three qualifying types of inventions (*i.e.*, the invention is one that will materially enhance the quality of the environment, materially contribute to the development or conservation of energy resources, or materially contribute to countering terrorism). In view of the divergent subject matter covered by § 1.102(c)(1) and (c)(2), a petition under § 1.102(c)(1) or (c)(2) must identify the particular basis under which applicant is petitioning for special status so that the Office can determine how to evaluate an application's entitlement to special status.

Where the petition is filed under § 1.102(c)(2), qualification for advanced examination is based upon the invention materially contributing as one of three qualifying types of inventions. For inventions countering terrorism, MPEP § 708.02, XI states that the petition "should be accompanied by a statement explaining how the invention contributes to countering terrorism." Such a statement is required where the application disclosure is not clear on its face that the claimed invention is materially directed to countering terrorism. The materiality standard does not permit an applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Nor does such standard permit an applicant to enjoy the benefit of advanced examination merely because some minor aspect of the claimed invention may be directed to countering terrorism. Also, the application claiming an invention materially contributing to countering terrorism need not include words such as "counter terrorism", "explosives" or "security" to qualify for special status as there may be a concern how a computer-based word search could be used to identify such applications.

MPEP § 708.02, XI, Inventions For Countering Terrorism, will be amended to better reflect the standard that the invention materially contribute to countering terrorism, and to indicate that the fee requirement has been eliminated.

Applicants are reminded that any identification of a basis for requesting special status and a statement of compliance with the technology specific requirement for special status must be based upon a good faith belief that the invention in fact qualifies for special status. *See* §§ 1.56 and 10.18.

Comment 65: The Office has received internal comments expressing concern that some applicants may view the lack of a petition fee as an inducement to file petitions where the nexus between the invention and the countering of terrorism is "strained."

Response: The comment has been adopted in part. The discussion of the rule amendment has focused on the need for applicants to recognize the "material" aspect of the claimed invention's relationship to countering terrorism, which will be further addressed in an MPEP revision. In view of such discussion, applicants should not expect to have their petitions granted without a clear demonstration that the claimed invention is materially related to countering terrorism.

Section 1.103: Section 1.103(a) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the changes in the petition fees.

Section 1.105: Section 1.105(a) is amended to revise and redesignate former paragraph (a)(3) as new paragraph (a)(4), and add new paragraphs (a)(1)(viii) and (a)(3). Section

1.105(a)(1)(viii) adds pertinent, factual, technical information that is known to the applicant as an additional example of information that might be required under § 1.105.

Section 1.105(a)(3) also expresses the Office's authority to require information in any appropriate manner, and gives, as examples, a requirement for factual information known to applicant (not involving an interrogatory or stipulation) (paragraph (a)(3)(i)); interrogatories regarding applicant's factual knowledge (paragraph (a)(3)(ii)); and stipulations as to facts with which applicant may agree or disagree (paragraph (a)(3)(iii)). Section 1.105(a)(4) contains the former § 1.105 (a)(3) requirements relating to the acceptance of replies to requirements for information. The § 1.105(a)(4) recitation of safe harbor replies, that the information sought is either unknown or not readily available is set forth in a clearer manner. In addition, the characterization in § 1.105(a)(4) of the Office's acceptance of replies is changed from "will" to "may" be accepted to more accurately reflect the Office's authority to ask follow-up questions.

The provisions of existing §§ 1.105(a)(1)(i) through (a)(1)(vii) set forth non-exhaustive examples of the types of documents that may be required from applicants under § 1.105. Section 1.105(a)(1)(viii) sets forth an additional (non-exhaustive) example, technical information that is known to applicant, which may be required of applicants. This may include factual information concerning: (1) Art related to applicant's invention; (2) applicant's disclosure; (3) the claimed subject matter; (4) other factual information pertinent to patentability; or (5) the accuracy of the examiner's stated analysis of such items.

Section 1.105(a)(3)(i) provides that a requirement for information may be used to ask for factual information known to applicant. An accompanying interrogatory or stipulation is not required. Section 1.105(a)(3)(ii) provides that interrogatories may be used to ask specific questions seeking applicant's factual knowledge. Such a requirement for information may include an inquiry as to the existence of a particular document or other piece of information and a requirement that such information be supplied if it is known to exist and is readily available. Section 1.105(a)(3)(iii) provides that a stipulation may be used as to facts with which applicant may agree or disagree in order to clarify the record about uncontroverted matters. The terms "factual" and "facts" are included in the rule to make it clear that it is facts, and factual information, that are known to applicant, or readily obtained after reasonable inquiry by applicant, that are being sought, and that requirements under § 1.105(a)(3) are not requesting opinions that may be held or would be required to be formulated by applicant. Factual technical information subject to a requirement is that factual information that is known to, or readily ascertained after making reasonable inquiry by, applicant. Where the factual information requested relates to the subject application, and details thereof, applicant would be expected to make a reasonable inquiry under the circumstances to find the factual information requested (§ 10.18(b)(2)). Applicant need not, however, derive or independently discover a fact, such as by experimentation, in response to a requirement for information. The purpose of § 1.105 is to improve patent quality, and render better decisions, and not to put applicants in jeopardy of meeting their duties of candor and good faith in their replies to a requirement for information. Requirements for stipulations and interrogatories under § 1.105 are a means to clarify prosecution history, thereby enhancing quality and reducing patent pendency, key objectives of the Office's 21st Century Strategic Plan.

Section 1.105(a)(4) replaces former § 1.105(a)(3) and provides two types of safe harbor replies to requirements for information that may be accepted as a complete reply to a requirement for information. Section 1.105(a)(4) applies not only to previously existing § 1.105(a)(1)(i)–(vii), but also to new § 1.105(a)(1)(viii), as well as any other type of information requested under § 1.105 that is not explicitly set forth in the examples of § 1.105(a)(1)(i)–(viii). Section 1.105(a)(4) indicates that the Office may accept, as a reply, a statement from applicant that the required information is "either unknown or is not readily available" (providing both alternatives) to the party or parties from which it was requested. There is seen to be no need for applicants to distinguish between whether the required information is unknown or is not readily available. Thus, if information remains unknown after a reasonable inquiry is made (MPEP § 704.12(b)), applicant may simply reply that the requested information is either unknown or is not readily available rather than be required to take a categorical position either that the information is unknown to applicant, or that the information is not readily available to applicant.

A reply under § 1.105(a)(4) that the information inquired about is unknown may only be used after applicant has made a good faith attempt to obtain the information based on a reasonable inquiry. Applicants, however, should also be aware that the absence of some kinds of information may adversely affect the prosecution of an application. For example, to be compliant with 35 U.S.C. 112, ¶ 6, there must be a clear correlation and identification of what structure set forth in the specification would be capable of carrying out a function recited in a claim. *See Med. Instrumentation & Diagnostics Corp.* v. *Elekta AB*, 344 F.3d 1205, 1211, 1212, 68 USPQ2d 1263, 1268, 1269 (Fed. Cir. 2003) ("[t]he requirement that a particular structure be clearly linked with the claimed function in order to qualify as corresponding structure is also supported by the requirement" of 35 U.S.C. 112, ¶ 2, and "[t]he correct inquiry is to look at the *disclosure* of the patent and determine if one of skill in the art would have understood that disclosure to encompass software * * * and been able to implement such a program, not simply whether one of skill in the art would have been able to write such a software program"). A purpose for the current addition of § 1.105(a)(viii), below, is the encouragement of inquiry into the support found in the disclosure for means- or step-plus-function limitations recited in the claims (35 U.S.C. 112, ¶ 6). If it is not apparent to the examiner where in the specification and drawings there is support for a particular claim limitation reciting a means to accomplish a function, and if an inquiry by the examiner for such support is met by a stated lack of knowledge thereof by applicant, the examiner could very well conclude that there is no such support and make appropriate rejections under, *e.g.*, 35 U.S.C. 112, ¶ 1 (written description) and 35 U.S.C. 112, ¶ 2. MPEP section 2181. This is to be distinguished from the requirement of § 1.75(d), which may be invoked to make clearer, by amending the specification, the original presence of the corresponding support.

Section 1.105 is simply an express statement of the Office's (and the examiner's) inherent authority under 35 U.S.C. 131 and 132 to require information that is reasonably necessary to properly examine or treat a matter in an application. *See Changes to Implement the Patent Business Goals*, 65 FR 54603, 54633 (Sept. 8, 2000), 1238 *Off. Gaz. Pat. Office* 77, 103 (Sept. 19, 2000) (final rule); *see also Jaskiewicz* v. *Mossinghoff*, 822 F.2d 1053, 1061, 3 USPQ2d 1294, 1301 (Fed. Cir. 1987) (practitioners have a duty to honestly

and forthrightly answer requirements for information from the Office). Requirements for information are not routinely made. They are to be used only where there is an absence of necessary information within the record. Any such requirement should be tailored to treat specific issues on a case-by-case basis.

Section 1.105(a)(4) has also been revised to state that the Office "may" (rather than "will") accept a reply to a requirement for information that states that the required information is either unknown or is not readily available. Such revision is intended to better reflect present practice where the Office has stated that such a reply will "generally" be accepted, but that the Office can ask follow-up questions, such as where it is clear that applicant did not understand the requirement, or the reply was ambiguous and a more specific answer is possible. MPEP § 704.12(b).

Examples where stipulations and interrogatories may be used to elicit technical factual information reasonably necessary for examination include applicant's actual knowledge: (1) Of the common technical features shared among all claims, or admission that certain groups of claims do not share any common technical features; (2) about the support found in the disclosure for means- or step-plus-function claims (35 U.S.C. 112, ¶ 6); (3) of precisely which portion(s) of the disclosure provide the written description and enablement support for specific claim element(s); (4) of the meaning of claim limitations or terms used in the claims, such as what teachings in the prior art would be covered by particular limitations or terms in a claim and which dictionary definitions would define a particular claim term, particularly where those terms are not used *per se* in the specification; (5) of which portions of each claim correspond to any admitted prior art in the specification; (6) of the specific utility provided by the claimed subject matter on a claim-by-claim basis; (7) as to whether a dependent claim element is known in the prior art based on the examiner having a reasonable basis for believing so; (8) of support for added limitations in an amended claim; and (9) of facts related to public use or sale situations. Other situations where it would be appropriate to use interrogatories or stipulations will be determined on a case-by-case basis. The intent of requirements for information in the form of interrogatories and stipulations is to obtain facts pertinent to examination or treatment of a matter. For example, applicant may be questioned about the use of a particular claim expression as to applicant's factual knowledge of what the particular expression would cover so that an appropriate search of the prior art can be made and to determine whether alternative expressions used in the prior art are in fact equivalent teachings.

As with the initial implementation of § 1.105, the Office will train its employees on the appropriate use of the revised rule. *See Changes to Implement the Patent Business Goals,* 65 FR at 54634, 1238 *Off. Gaz. Pat. Office* at 104. Every requirement for information using stipulations or interrogatories, for an initial break-in period, will be reviewed by management in the appropriate Technology Center. More specific guidance will be provided to examiners on the treatment of replies to interrogatories and stipulations. While the Office does not currently plan to develop standard form paragraphs for interrogatories or stipulations, as interrogatories or stipulations are expected to be used on a case-by-case basis, generic form paragraphs may be developed if a need for them develops in the future.

There were many comments submitted on the proposed amendments to § 1.105, with all comments either strongly opposed to the rule change, or expressing significant concerns similar to the comments received during the rule making in which § 1.105 was initially promulgated. Some comments express almost the exact same concerns as were expressed in the original rule making (*e.g.,* that it may be used to shift the burden of examination from the examiner to the applicant). These comments, however, do not indicate that there have actually been any problems in the three-year history of this section.

Comment 66: Several comments suggested that the Office hold public hearings prior to implementation of the changes that had been proposed to § 1.105, *e.g.,* to permit a full airing of views and exploration of the consequences of the changes.

Response: The comment has not been adopted. The three comments that urged such a course of action did not explain what specific additional gains were to be achieved from a public hearing over what could be learned from written public comments in response to the proposed amendment to § 1.105. The Office has received a number of comments in regard to the details of the proposed changes and has adopted a number of them in an attempt to balance "improving patent quality without imposing undue burden on applicants" (statement in comment).

Comment 67: Several comments criticized the adoption of "litigation" techniques, such as interrogatories and stipulations, on the grounds that examiners are not legally trained to draft interrogatories and stipulations, in such a manner as not to be overly broad and produce useful results. A representative comment notes that "Interrogatories and stipulations are proposed to be used to elicit information as to numerous legally based categories of information. As any litigator will attest, the crafting of interrogatory questions or statements for stipulation is one that requires a fair amount of time, training and skill in considering the formulations of such and the significant verbiage of both the questions and consequences of the answers. This expanded requirement for information places the examiner, who may not be legally trained, in the role of one presumed to be experienced in litigation."

Response: To the extent that such comments are directed toward the elucidation of opinions and legal conclusions, the comments are adopted and the rule has been amended to remove the term "opinion." As to the use of interrogatories and stipulations to elicit factual information, the examiners will be given training to avoid overly broad requests and to tailor requirements to elicit specific information. Hence, examiners will endeavor to draft requirements for information that are focused and adequately convey what factual information is required.

Comment 68: Several comments state that the use of interrogatories and stipulations will be an expensive, time-consuming process, and will require applicant to expend a large amount of resources to avoid creating unnecessary estoppels.

Response: The comment has been adopted to the extent that such criticism was based on the use of interrogatories and stipulations to obtain opinions.

Comment 69: Several comments expressed concern that responses to interrogatories and stipulations will lead to additional charges of inequitable conduct.

Response: The comments are adopted in that such fears were apparently based on the use of interrogatories and stipulations to obtain opinions, which use is not reflected in the final rule.

Comment 70: Several comments strongly opposed the use of interrogatories and stipulations to elicit an opinion on the level of ordinary skill in the art. The comments say that applicants are generally not knowledgeable in that regard, examiners have greater knowledge, and in

litigation, expert witnesses are used to determine such information.

Response: The comment has been adopted in that Office guidelines will indicate that requirements for information should generally not seek opinions on the level of ordinary skill in the art, and an example thereto in the notice of proposed rule making has been deleted.

Comment 71: Several comments have expressed concern that interrogatories and stipulations may be employed as a means to shift the burden of examination to applicants.

Response: The comment is not adopted. Similar comments were made in the original rule making establishing § 1.105 (as noted above) but no commentator to this proposed rule making has indicated any instance of where § 1.105, as actually used, shifted the burden of examination to applicant. With proper training of examiners, and supervisory review of stipulations or interrogatories used during an initial period, there should not be any sound reason to be concerned.

Comment 72: Several comments are directed at the need for examiners to be trained in the drafting of interrogatories and stipulations and the need for their requirements to be reviewed by attorneys.

Response: The comment is adopted to the extent that interrogatories and stipulations should not be used to ask for opinions, and that examiners will receive training in the drafting of concise, focused interrogatories and stipulations. For an initial period after adoption of the rule, stipulations and interrogatories will be reviewed.

Comment 73: Several comments have been received seeking a mechanism for further review of interrogatories and stipulations as to their propriety, scope and clarity, faster than a petition to the Director would take.

Response: The comment has not been adopted. The current petition remedy under § 1.181 is sufficient. Applicant may petition under § 1.181 to have a requirement for information modified or withdrawn. During the three-year existence of § 1.105, there is no evidence to date that has demonstrated the need for a different means for review, or that the current means of review would not be handled expeditiously.

Comment 74: One comment asked if applicant could request clarification of the requirement for information.

Response: Clarifications may be requested but would not toll the period for reply. Tolling would lead to unnecessary prolonging of prosecution. Where applicant has made a bona fide attempt to reply to a requirement for information but has misunderstood what was being requested, the reply will not be held to be incomplete and applicant may be given additional time to reply. Where a requirement for information cannot be answered at all or in part absent clarification, applicant should petition pursuant to § 1.181 that the requirement for information be clarified and remailed starting a new period for reply. Of course, applicant may informally contact the examiner requesting clarification without a need to remail and restart the date for reply.

Comment 75: Several comments sought clarifications for responses to the various types of information that may be required to be submitted to determine possible safe harbor responses other than the submission of the required information. In one example, it is posited that rather than ask about the distinctions among claims, the examiner could simply read the claims. A proposed "predictable and accurate response to such an interrogatory would be to recite the words used in the first independent claim, then to discuss any words that are different in any subsequent independent claims and provide technical or lay definitions for each of the different words." It is concluded that such reply would provide no more information than "the Examiner could and should have acquired on his own during the first examination."

Response: The comment is not adopted. Claims frequently contain differing generic language or convoluted syntax. Whether a single word may be misunderstood is not at issue. This may be easily remedied by reference to a standard dictionary. Rather, where different expressions are used in different independent claims to apparently describe the same function, process, product, result, etc., is the type of issue to be addressed. To the extent that applicant is aware of the fact that one expression may be broader or represent an altogether different limitation, the examiner, as well as the public, would benefit from such knowledge during prosecution rather than during infringement litigation.

Comment 76: One comment has suggested additional items of technical information that would be useful for the Office to obtain. For example, "[i]nformation that helps ensure the examiner searches and examines the 'right' invention, preferably prior to the first official action on the merits." Specific examples of such information included "meaning of claim terms," identification of "structure or steps that correspond to a functional claim limitation," seeking to clarify "results-obtained limitations," identification of utility if not evident, and the "ability to request linkage between identified claim terms and the drawings and/or specification." It was noted that such information would improve "examination efficiency," and also benefit "the public by providing a more certain claim scope."

Response: The comment has been adopted in some of the examples set forth above.

Comment 77: Several comments suggested that the proposed amendment to § 1.105 would be particularly onerous on *pro se* inventors.

Response: The comment has been adopted to the extent that the comments were directed towards requiring submission of opinion evidence, *e.g.*, the level of ordinary skill in the art. Thus, this final rule making clarifies that "opinion evidence" shall not be encouraged to be sought by a § 1.105 requirement. It is not seen that such comments would be equally applicable towards a requirement to submit factual information that applicants are aware of, or could readily determine after making a reasonable inquiry.

Comment 78: Comments have requested the inclusion of a provision "clarifying that confidential and protected information cannot be requested under Rule 105." It is noted in the comments that "an agency cannot routinely request such information to be produced without first meeting heightened burdens, specific to each type of information requested, to show why such information is necessary." It is argued that a standard of "reasonably necessary" is a "much lower burden" than "substantial need," which is the standard required to obtain an attorney work product.

Response: The comment is not adopted. The argument that the standard of "reasonably necessary to properly examine or treat" a matter would not suffice is not accepted. Where applicant is being asked to submit what it believes to be trade secret, proprietary, and/or protective order materials, applicant can make use of, at the time the material is submitted, the provisions of § 1.59 for expungement of information where applicable. Additionally, applicant can petition under § 1.181 that the trade secret, proprietary, and/or protective order materials being requested to be submitted are unnecessary.

Comment 79: A comment seeks to have the Office specifically provide in Rule 105 that "the record must provide support for the proposition that the particular information being requested

is reasonably necessary to further examination of the application."

Response: The comment is not adopted. A review of MPEP §§ 704.11 and 704.11(a), relating to determining if information is reasonably necessary, reveals that the need for such information should be based on the presence, or *absence,* of information in the record of the application.

Comment 80: A comment seeks to have a provision in § 1.105 "clarifying that the examiner making the request for information must explicitly articulate, based on specific facts in the record, the reason why the information is reasonably necessary."

Response: The comment is not adopted. As a practical matter, specific guidance exists in examples in § 1.105, in this final rule, and the MPEP. All this guidance clearly dictates that requirements for information are made only when reasonably necessary.

Comment 81: One comment requested that "the examiner be required under the rule to provide a reasoned statement in the record as to why the request for information does exhibit a reasonable likelihood of being readily fulfilled by the applicant." It was also requested that examples be given of "what types of requests would not exhibit such a reasonable likelihood of being fulfilled by the applicant."

Response: Examples are provided to examiners as to the types of information that can be required to be submitted. The examples relate to factual information that is "reasonably necessary to properly examine or treat the matter." Moreover, § 1.105(a)(4) provides that the Office may accept as a complete reply that the factual information requested is unknown or is not readily available. In appropriate situations the Office can ask follow-up questions. It is not seen to be productive to develop negative examples where information would not be readily be available.

Comment 82: One comment asks for clarification as to whether equivalents need also be specified when replying to a requirement for information as to support in the disclosure for a means- or step-plus-function limitation.

Response: Equivalents by their nature are items not specifically disclosed in the specification as corresponding to the function in the claim, but are equivalents of what are so disclosed. Hence, a requirement for information requiring only identification of what structure or steps in the specification are taught as corresponding with the claimed function would not require disclosure of equivalents. An examiner may, however, inquire as to what applicant knows to be equivalents to what is disclosed if such information would be reasonably necessary for purposes of search or prior art application and therefore necessary to properly examine the application. In such case, applicant would be required to identify all equivalents of which applicant has actual knowledge.

Comment 83: A comment asks "[w]here applicant intends a claim term to be afforded its accustomed meaning, would it be a complete and proper response to merely indicate the intention? If not, must a dictionary definition be given * * * as only one example of a term's accustomed meaning?" The comment goes on to question the need for such requirement as the examiner is "presumed to be skilled in the field of the invention" and has "access to dictionaries and treatises to the same extent as applicant. * * *"

Response: A requirement as to the scope or definition of a claim term would be because the record was unclear in such matter. A reply that the term be given its ordinary meaning would be sufficient, provided general publication dictionaries define such term. Where applicant is relying upon a specialized treatise for the definition of a term, it may be that the examiner does not have access to such treatise and a more specific reply, such as identification of the treatise and a copy of the pertinent page, may be required.

Comment 84: One comment states stipulations and interrogatories to elicit information about claim terms are unnecessary as applicant's interpretation is "totally irrelevant, as claims are given their broadest reasonable meaning absent a clear definition in the specification."

Response: Interrogatories will not be used to seek applicant's opinion about claim terms. Examiners, however, need to appreciate the meaning of claims prior to giving them the broadest reasonable interpretation. The meaning of words, phrases and terms is often opaque and clarification would be highly desirable. To the extent that an applicant has some factual information as to what is meant by a particular word or phrase, it is appropriate that applicant supply such information. For example, it may be that a portion of the specification has given a special definition to the term, which is not apparent to the examiner. Moreover, it may not be apparent to an examiner how broad a particular limitation may in fact be read, *e.g.,* where the claim term or expression lends itself to a variety of meanings or it is particularly opaque. Thus, applicant's factual knowledge is relevant and necessary to properly examine the application. Additionally, a stipulation may be useful in seeking agreement with what the examiner believes to be the proper definition of a claim term or phrase. The failure to reach agreement would in itself provide valuable prosecution history.

Comment 85: One comment, in discussing the example of identification of a specific utility supporting the claimed subject matter, requests that the examiner be required to indicate a reason to doubt the objective truth of the statements in the disclosure of a specific utility.

Response: The comment is not adopted. Example 7 in the notice of proposed rule making includes the situation where there is a disclosure of more than one utility, some of which are incredible, and at least one claim where it is not specified which utilities support that claim. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 68 FR at 53832, 1275 *Off. Gaz. Pat. Office* at 37. In such instance, it is appropriate for the examiner to question which utility supports which claims so as to determine if any claims are supported by only incredible utilities. Where a utility is believed to be incredible and it is the only one that is identified in the specification as supporting a particular claim, Office policy directs the examiner to reject the claim and provide reasons why the utility is believed to be incredible. The issue of the examiner doubting the objective truth of the statements in the disclosure of a specific recited utility is not reached under the purpose contemplated for § 1.105. Section 1.105 is to be utilized to identify a utility asserted to support a claim. Once that is established, should the examiner doubt that such utility supports a particular claim, a rejection, not a requirement for information, would be made.

Comment 86: Two comments suggested that the use of a rejection rather than a requirement for information is more appropriate, such as if the examiner cannot comprehend the technology. A response to the rejection can either direct the examiner to teachings in the disclosure or the prior art, or amend the specification and/or claims if applicant agrees that the examiner's confusion is caused by the application. Information about precisely which portions of the disclosure provide written description supporting the enablement of the claim is unnecessary as claims are presumed enabled. Such information is "not reasonably necessary to examination

until the Office makes a prima facie case of lack of written description or nonenablement."

Response: The comments are not adopted. The type of information contemplated under § 1.105 may affect the type of search done by the examiner and may therefore be beneficial to have prior to a first Office action on the merits. A distinction will be made in the implementation instructions regarding compliance with § 1.75(d)(1) vs. 35 U.S.C. 112, ¶ 2. If the examiner is convinced that the claim's metes and bounds lack sufficient definition in the specification, a rejection under 35 U.S.C. 112, ¶ 2, would be appropriate. If, on the other hand, the examiner is not certain that there is compliance with § 1.75(d)(1) between the claims and the specification, rather than require amendment to achieve conformance, which may have implications under *Festo* v. *Shoketsu Kinzoku Kogyo,* 535 U.S. 722, 62 USPQ2d 1705 (2002), the record may be clarified by a reply to a requirement for information rather than by amendment.

Comment 87: One comment characterizes the rule as overly broad in not limiting the amount of discovery requests that could be made.

Response: The comment is not adopted. The Office does not envision multiple sequential requirements for information being made, except for limited situations, such as where it appears that applicant did not understand the requirement, or the reply was ambiguous and a more specific answer is possible.

Comment 88: One comment states that stipulations are unnecessary because if "an Examiner's assertion is not controverted, the record stands for the Examiner's assertion under the doctrine of file wrapper estoppel."

Response: The comment is not adopted. Silence on part of the applicant to a statement made by the examiner does not necessarily establish an estoppel.

Comment 89: One comment suggests that Rule 105 should be "directed to applicants, or to the assignee if the assignee has excluded the rights of the applicants."

Response: The comment is not adopted. The suggestion would exclude the inventors from being questioned where the assignee has taken over prosecution. The fact that the assignee has taken over prosecution of an application does not shield the inventors from their duties, such as executing a § 1.63 declaration, or providing material information to the Office. To the extent that one or more inventors can no longer be located or refuse to cooperate, such would support a reply that the information is not readily available, if they are the only ones with such information.

Section 1.111: Section 1.111(a)(2) is amended to provide that a reply that is supplemental to a § 1.111(b) compliant reply will not be entered as a matter of right, with the exception that a supplemental reply will be entered if it is filed within the period when action by the Office is suspended under § 1.103(a) or (c) (suspensions requested by the applicant). Section 1.111(a)(2) is also amended to provide that the Office may enter a supplemental reply if the supplemental reply is clearly limited to: (1) Cancellation of a claim(s); (2) adoption of the examiner suggestion(s); (3) placement of the application in condition for allowance; (4) reply to an Office requirement made after the first reply was filed; (5) correction of informalities (*e.g.*, typographical errors); or (6) simplification of issues for appeal. When a supplemental reply is filed in sufficient time to be entered into the application filed before the examiner considers the prior reply, the examiner may approve the entry of a supplemental reply if, after a cursory review, the examiner determines that the supplemental reply is limited to meeting one or more of the conditions set forth in § 1.111(a)(2)(i). The new practice replaces the prior practice for disapproving a second or subsequent supplemental reply set forth in § 1.111(a)(2).

A supplemental reply which has not been approved for entry, and therefore, not entered, will not be entered when a reply to a subsequent Office action is filed, even if there is a specific request for its entry in the subsequent reply. If applicants wish to have the (not entered) supplemental reply considered by the examiner, applicants must include the contents of the (not entered) supplemental reply in a proper reply under § 1.111, 1.116, or 1.312 in response to the next Office action. If the reply under § 1.111, 1.116, or 1.312. includes any amendments to the specification including claims, or drawings, the reply must be filed in compliance with § 1.121. If the next Office action is a final rejection or a notice of allowance, applicants may file an RCE in compliance with § 1.114 (*i.e.*, having a submission and a fee) and include the contents of such (not entered) supplemental reply in the submission.

A supplemental reply will be entered if it is filed within the period during which action is suspended by the Office under § 1.103(a) or (c). For example, if test data is required to overcome a rejection under 35 U.S.C. 103(a) and the applicant needs more time to conduct an experiment and collect the test data, the applicant may file a first reply to the Office action (as the Office will not grant a suspension of action if there is an outstanding Office action awaiting a reply by the applicant) and a petition for suspension of action with a showing of good and sufficient cause under § 1.103(a). If the suspension is granted by the Office, applicant may submit the test data in a supplemental reply during the suspension period. In addition, if an applicant is filing an RCE after a final rejection accompanied by a submission which is a reply to the final Office action, and needs more time to prepare a supplemental reply (*e.g.*, an affidavit), applicant may consider filing a request for suspension of action under § 1.103(c) along with the RCE (and submission) because any supplemental reply filed during the suspension period will be entered. *See* § 1.111(a)(2)(ii). A supplemental reply, however, will not be entered if it is filed during a suspension of action initiated by the Office under § 1.103(e), (f) or (g). Amendments filed within the period during which action is suspended under § 1.103(b) (note: continued prosecution applications (CPAs) for designs can still be filed) or § 1.103(d) are not considered supplemental replies under § 1.111 because they are preliminary amendments per § 1.115. Information disclosure statements under § 1.97 and § 1.98 are also not considered supplemental replies under § 1.111.

Section 1.111(a)(2) will not change the impact of the submission of a supplemental reply on patent term adjustment, in that the submission of any supplemental reply will continue to cause a reduction of any accumulated patent term adjustment under § 1.704(c)(8).

Comment 90: Several comments suggested that the Office should not require that a supplemental reply must be filed within the statutory period. The comments further suggested that a supplemental reply should be entered if it is filed and associated with the application file before the examiner begins considering the original reply. One of the comments also suggested that the Office should adopt a guideline similar to the PCT Regulation 66.4bis which states "[a]mendments or arguments need not be taken into account by the International Preliminary Examining Authority for the purposes of a written opinion or the international preliminary examination report if they are received after that Authority has begun to draw up that opinion or report."

Response: Most of these suggestions have been adopted. Section 1.111(a)(2)(i) will not require that a reply that is supplemental to a § 1.111(b) compliant reply must be filed within the statutory period. While a supplemental reply does not have to be filed within the statutory period for reply, if applicant wishes to have a supplemental reply considered for entry, applicant should file the supplemental reply in sufficient time to be entered into the application file before the examiner considers the prior reply.

Comment 91: Several comments suggested that the prior disapproval practice that permits the Office to disapprove a second or subsequent supplemental reply when a substantial amount of work has already been conducted by the examiner would appear sufficient to safeguard the interests of the Office in maintaining the efficiency of the examination process. A few comments further suggested that the Office should apply the disapproval practice to the first supplemental reply.

Response: These suggestions have not been adopted. The disapproval practice did not address the pendency problems associated with first supplemental replies. The Office receives a significantly larger number of first supplemental replies than second (or subsequent) supplemental replies. The procedures for disapproving a second (or subsequent) supplemental reply were too time-consuming for examiners to use for the large number of first supplemental replies in determining whether a substantial amount of work has already been conducted on the date the Office receives the first supplemental reply. Furthermore, when the examiner wished to disapprove a supplemental reply, the examiner had to request the Office technical support to unenter the amendment, change the system records, and send the applicant an Office communication to document the reasons for the disapproval. The revised § 1.111(a)(2) will provide a single simplified procedure for handling all supplemental replies, which will reduce processing delays and save Office resources.

Comment 92: A few comments suggested that there may be justifiable reasons for filing a supplemental reply other than the specific reasons identified in the proposed § 1.111(a)(2)(i), such as a supplemental amendment to correct inadvertent errors, to reduce the issues for an appeal following an interview by the examiner, to file a complete written statement of the reasons presented at the interview as warranting favorable action under § 1.133(b), or to take into consideration the teachings of new prior art.

Response: Most of these suggestions have been adopted. Section 1.111(a)(2)(i) includes three more conditions where a supplemental reply may be entered, which are: Reply to an Office requirement made after the first reply was filed; correction of informalities (*e.g.*, typographical errors); and simplification of issues for appeal. *See* § 1.111(a)(2)(i)(D) through (a)(2)(i)(F).

Comment 93: A few comments requested clarification on whether applicants may request entry of a supplemental reply in response to a final Office action without filing an RCE under § 1.114, although it is recognized that there would be no entry of such an amendment as a matter of right without filing the RCE.

Response: The Office would like to clarify that an applicant may include the contents of a supplemental reply that has previously not been approved for entry in a reply under § 1.116 in response to a final Office action. Entry of the reply, however, would be unlikely as the standard for entry under § 1.116 is similar to the standard for entry under § 1.111(a)(2)(i). Furthermore, applicants cannot simply request the entry of a supplemental reply in a subsequent reply. If applicants wish to have a (not entered) supplemental reply considered by the examiner, applicants must include the contents of the (not entered) supplemental reply in a proper reply under § 1.111, 1.116, or 1.312, or an RCE submission under § 1.114(c). If the reply or submission includes any amendments to the specification including claims, or drawings, the reply must be filed in compliance with § 1.121.

Comment 94: A comment suggested that a submission in reply to a requirement under § 1.105 should not be considered as a reply under § 1.111 because applicants should be allowed to file a supplemental reply to a requirement under § 1.105.

Response: If applicant wishes to file additional information after submitting a reply to a requirement under § 1.105, applicant may file the additional information in a supplemental reply to the requirement under § 1.105, although such reply will not be entered as a matter of right. Applicant may also submit the additional information in accordance with § 1.97 and § 1.98.

Comment 95: A comment suggested that the Office should provide the examiner discretionary authority to enter a supplemental amendment filed before the mailing of a subsequent Office action and provide substantial guidance indicating exemplary circumstances in which the Office believes that examiners should exercise their discretion to enter the supplemental amendments. Another comment sought clarification whether the examiner has the discretionary authority to enter and consider supplemental amendments that are not listed in § 1.111(a)(2)(i).

Response: The suggestions have been adopted. Section 1.111(a)(2)(i) will not require that a reply that is supplemental to a § 1.111(b) compliant reply must be filed within the statutory period. Section 1.111(a)(2)(i) provides that such a supplemental reply will not be entered as matter of right except as provided in § 1.111(a)(2)(ii). Section 1.111(a)(2)(i) provides six exemplary circumstances where an examiner can exercise discretion to enter a supplemental reply. Examiners may enter and consider other supplemental amendments that are not listed in § 1.111(a)(2)(i).

Comment 96: A comment suggested that the Office should provide a procedure for filing an RCE under § 1.114 in applications that have not been finally rejected.

Response: The comment is not adopted. Filing an RCE is not necessary if prosecution in the application is not closed. Applicant may include the contents of the (previously not entered) supplemental reply in a proper reply to the next Office action.

Comment 97: A comment indicated that there would be disagreement between the applicant and the examiner on whether a supplemental amendment would place the application in condition for allowance. The comment further indicated that since such determination can only be made after the supplemental reply has been entered and considered, it would be illogical to deny entry at that time.

Response: The comment is not adopted. The examiner is not required to give full consideration to the supplemental reply before not approving the entry of the supplemental reply. The examiner has the discretion not to approve the entry of a supplemental reply if, after a cursory review, the examiner determines that the supplemental reply does not place the application in condition for allowance and no other conditions set forth in § 1.111(a)(2)(i) applies.

Section 1.115: Section 1.115(a) is amended to provide that the patent application publication may include preliminary amendments. For more details, see § 1.215(a). Section 1.115(a)(1) is added to provide that a preliminary amendment that is present

on the filing date of an application is part of the original disclosure of the application. Section 1.115(a)(2) is added to provide that a preliminary amendment filed after the filing date of the application is not part of the original disclosure of the application. Section 1.115(b) is amended to include the first sentence of § 1.115(b)(1) to read "[a] preliminary amendment in compliance with § 1.121 will be entered unless disapproved by the Director." The rest of original § 1.115(b)(1) is redesignated as § 1.115(b)(2). Section 1.115(b)(2) is redesignated as § 1.115(b)(3). Section 1.115(b)(1) is amended to provide that a preliminary amendment seeking cancellation of all claims without presenting any new or substitute claims will be disapproved. Section 1.115(c) is redesignated as § 1.115(b)(4) and is amended to change the reference to paragraph (b)(2) to paragraph (b)(3) because paragraph (b)(2) is redesignated as paragraph (b)(3).

The Office will treat any preliminary amendment under § 1.115(a)(1) that is present on the filing date of the application automatically as part of the original disclosure. Under the prior practice, a preliminary amendment that was present on the filing date of an application may be considered a part of the original disclosure if it was referred to in a first filed oath or declaration in compliance with § 1.63. If the preliminary amendment was not referred to in the oath or declaration, any request to treat the preliminary amendment as a part of the original disclosure was by way of petition under § 1.182 requesting that the original oath or declaration be disregarded and that the application be treated as an application filed without an executed oath or declaration under § 1.53(f). Any such petition must have been accompanied by the $130.00 petition fee, a newly executed oath or declaration (which identified the application and referred to the preliminary amendment), and the requisite surcharge under § 1.16(e).

Section 1.115(a)(1) will provide a consistent way of treating preliminary amendments that are present on the filing date of the application as part of the original disclosure and eliminates the need for filing a petition under § 1.182, the petition fee, and the surcharge under § 1.16(e) when applicant files a supplemental oath or declaration that refers to the preliminary amendment.

If a preliminary amendment is present on the filing date of an application, and the oath or declaration under § 1.63 does not also refer to the preliminary amendment, the normal operating procedure is to not screen the preliminary amendment to determine whether it contains subject matter not otherwise included in the specification or drawings of the application as filed (*i.e.*, subject matter that is "new matter" relative to the specification and drawings of the application). As a result, it is applicant's obligation to review such a preliminary amendment to ensure that it does not contain subject matter not otherwise included in the specification or drawings of the application as filed, otherwise a supplemental oath or declaration under § 1.67 referring to such preliminary amendment must be filed in the application. The failure to submit a supplemental oath or declaration under § 1.67 referring to a preliminary amendment that contains subject matter not otherwise included in the specification or drawings of the application as filed removes safeguards that are implied in the oath or declaration requirements that the inventor review and understand the contents of the application, and acknowledge the duty to disclose to the Office all information known to be material to patentability as defined in § 1.56.

Applicants can avoid the need to file an oath or declaration referring to any preliminary amendment by incorporating any desired amendments into the text of the specification including a new set of claims when filing the application instead of filing a preliminary amendment, even where the application is a continuation or divisional application of a prior-filed application. Furthermore, applicants are strongly encouraged to avoid submitting any preliminary amendments so as to minimize the burden on the Office in processing preliminary amendments and reduce delays in processing the application.

During examination, if an examiner determines that a preliminary amendment that is present on the filing date of the application includes subject matter not otherwise supported by the originally filed specification and drawings, and the oath or declaration does not refer to the preliminary amendment, the examiner may require the applicant to file a supplemental oath or declaration under § 1.67 referring to the preliminary amendment. In response to the requirement, applicant must submit (1) An oath or declaration that refers to the preliminary amendment, (2) an amendment that cancels the subject matter not supported by the originally filed specification and drawings, or (3) a request for reconsideration.

Section 1.115(a)(2) is added to provide clarification that a preliminary amendment filed after the filing date of the application is not part of the original disclosure of the application. Preliminary amendments filed after the filing date of the application cannot include new matter, (*i.e.*, subject matter not supported by the original disclosure of the application). *See* 35 U.S.C. 132.

Example 1 (supplemental declaration): Practitioner has received an application for filing along with an executed § 1.63 declaration by the inventors. Practitioner has drafted a preliminary amendment and would like to file the amendment along with the application but is uncertain whether the amendment contains subject matter not otherwise supported by the application as executed by the inventors. Practitioner should file the application along with the executed declaration and preliminary amendment. As a precaution, the inventors should execute and thereafter the practitioner should submit a supplemental declaration under § 1.67 that refers to the preliminary amendment.

Example 2 (incorporation by reference): A preliminary amendment is present as of the filing date of an application. The preliminary amendment contains an incorporation by reference to a U.S. patent. The incorporated material represents subject matter not otherwise present in the specification of the application. A § 1.63 oath or declaration specifically referring to the preliminary amendment is required.

Section § 1.115(b)(1) is amended to provide that a preliminary amendment seeking cancellation of all the claims without presenting any new or substitute claims will be disapproved.

Before June of 1998, it was the practice of the Office to treat an application filed with an amendment (preliminary amendment) canceling all of the claims and presenting no new or substitute claims by denying entry of the amendment. *See* MPEP §§ 711.01 and 714.19 (7th ed. 1998). In *Baxter Int'l Inc.* v. *McGaw Inc.*, 149 F.3d 1321, 47 USPQ2d 1225 (Fed. Cir. 1998), the Federal Circuit held that a divisional application that included instructions to cancel all of the claims in the specification, without presenting any new claims, and did not contain at least one claim as required by 35 U.S.C. 112, ¶2, was not entitled to a filing date under 35 U.S.C. 111(a) until the date an amendment including at least one claim was filed in the application. Following *Baxter*, the Office changed its practice and no longer accorded a filing date to any application that was accompanied

by a preliminary amendment which canceled all claims and failed to simultaneously submit any new claims. *See Any Application Filed With Instructions to Cancel All of the Claims in the Application is Not Entitled to a Filing Date,* 1216 *Off. Gaz. Pat. Office* 46 (Nov. 10, 1998).

Subsequently, in *Exxon Corp.* v. *Phillips Petroleum Co.,* 265 F.3d 1249, 60 USPQ2d 1368 (Fed. Cir. 2001), the Federal Circuit affirmed that the Office may refuse to enter an improper amendment that would cancel all of the claims in an application to avert harm (loss of a filing date) to an applicant. The Federal Circuit distinguished its decision in *Baxter,* since in *Baxter* the Office did enter the amendment that canceled all of the claims in the application, thus resulting in the application not being entitled to a filing date. In contrast, in *Exxon* the Office refused to enter the amendment and thus the claims were never canceled.

Consistent with *Exxon Corp.* v. *Phillips Petroleum Co.* and MPEP §§ 711.01 and 714.19, the Office will disapprove entry of any amendment (whether submitted prior to, on or after the filing date of the application) that seeks cancellation of all claims but does not present any new or substitute claims. Also see *Treatment of Amendments that if Entered Would Cancel All of the Claims in an Application,* 1255 *Off. Gaz. Pat. Office* 827 (Feb. 5, 2002). For fee calculation purposes, however, the Office will treat such an application as containing a single claim. For example, if an applicant files a preliminary amendment seeking cancellation of all the claims without presenting any new or substitute claims and the claims in the application have not been paid for, such amendment will be disapproved for entry and the Office of Initial Patent Examination (OIPE) will initially treat the application as containing a single claim for fee calculation purposes. In most cases, such an amendment would not contain a complete claim listing and would not comply with § 1.121. Therefore, OIPE will notify the applicant and require a preliminary amendment in compliance with § 1.121. When the applicant files a preliminary amendment in compliance with § 1.121, OIPE will take the preliminary amendment in compliance with § 1.121 into account in determining the appropriate filing fee due.

Comment 98: One comment suggested that the Office should not adopt the second sentence of proposed § 1.115(b): "[i]f a preliminary amendment is determined to contain matter not otherwise included in the contents of the originally filed specification, including claims, and drawings, and the preliminary amendment is not specifically referred to in the oath or declaration under § 1.63, a new oath or declaration in compliance with § 1.63 will be required."

Response: The second sentence of proposed § 1.115(b) is not adopted in the final rule. If a preliminary amendment is present on the filing date of an application, and the oath or declaration under § 1.63 does not also refer to the preliminary amendment, the normal operating procedure is to not screen the preliminary amendment to determine whether it contains subject matter not otherwise included in the specification or drawings of the application as filed (*i.e.,* subject matter that is "new matter" relative to the specification and drawings of the application). As a result, it is applicant's obligation to review such a preliminary amendment to ensure that it does not contain subject matter not otherwise included in the specification or drawings of the application as filed, otherwise a supplemental oath or declaration under § 1.67 referring to such preliminary amendment must be filed in the application. The failure to submit a supplemental oath or declaration under § 1.67 referring to a preliminary amendment that contains subject matter not otherwise included in the specification or drawings of the application removes safeguards that are implied in the requirements that the inventor review and understand the contents of the application, and acknowledge the duty to disclose to the Office all information known to be material to patentability as defined in § 1.56.

Comment 99: A few comments suggested that if the Office adopts the second sentence of proposed § 1.115(b), applicant should have the option to cancel the subject matter that is not otherwise supported in the originally filed specification and drawings, or request for reconsideration, rather than submitting a new oath or declaration referring to a preliminary amendment filed on or before the filing date of the application.

Response: The second sentence of proposed § 1.115(b) is not adopted in the final rule. During examination, however, if the examiner determines that a preliminary amendment that is present on the filing date of the application contains subject matter not otherwise supported by the specification and drawings of the application as filed, the examiner may require a supplemental oath or declaration under § 1.67 referring to such preliminary amendment. In response to the requirement, the applicant must submit: (1) A supplemental oath or declaration under § 1.67 referring to such preliminary amendment, (2) an amendment to cancel the subject matter that is not otherwise supported in the originally filed specification and drawings, or (3) a request for reconsideration.

Comment 100: A few comments suggested that the second sentence of proposed § 1.115(b) should be amended to read "if such a preliminary amendment submitted on or prior to the filing date of an application is determined * * *" for purposes of clarity.

Response: This proposed sentence is not adopted in the final rule. It is, however, applicant's obligation to review any preliminary amendment that is present on the filing date of the application to ensure that it does not contain subject matter not otherwise supported by the originally filed specification and drawings. Otherwise, applicant must file an oath or declaration referring to such preliminary amendment.

Comment 101: One comment requested clarification on what subject matter constitutes part of the "original disclosure" as opposed to "originally filed specification, including claims, and drawing."

Response: The "original disclosure" of the application includes application papers (*e.g.,* the specification, including claims, any drawings, and any preliminary amendment) that are present on the filing date of the application. The phrase "originally filed specification, including claims, and drawing" includes the specification, including claims, and drawings that are present on the filing date of the application, but it does not include any preliminary amendment.

Comment 102: One comment indicated that the automatic inclusion of preliminary amendments filed on or before the filing date of the application as part of the original disclosure could have substantial adverse effects where an applicant intends not to add new disclosure, but the examiner nonetheless holds that the amendment presents "new matter" relative to the specification and drawings of the application as filed. The disagreement could lead to substantial administrative delays in prosecution.

Response: Section 1.115(a)(1) codifies the prior practice, but eliminates the requirement for filing a petition under § 1.182, the petition fee, and the surcharge under § 1.16(e). The elimination of the petition requirement

will reduce any delays in prosecution caused by the filing and processing of the petition. Thus, no additional delays in prosecution due to the changes in § 1.115(a)(1) are expected.

Comment 103: One comment questioned the Office's authority to bind courts by § 1.115. The comment noted that 35 U.S.C. 2 only gives the Office authority to make procedural rules.

Response: The Office has the authority to promulgate § 1.115 since the rule is a procedural rule. The Office already has a similar procedure in place. Section 1.115(a)(1) codifies the prior practice, but eliminates the requirement for a petition under § 1.182.

Comment 104: One comment suggested that if a new oath or declaration referring to a preliminary amendment cannot be executed by all of the inventors, applicants may file a petition, similar to a petition under § 1.47, for the Office to accept an oath or declaration signed by other available inventors.

Response: The current practice set forth in MPEP § 603 provides that if an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with § 1.183. All available joint inventors must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. *See* MPEP sections 603 and 409.03.

Comment 105: One comment suggested that § 1.115(b)(2)(ii) should be amended to delete the reference to continued prosecution application (CPA) under § 1.53(d) because the CPA practice has been eliminated.

Response: This suggestion is not adopted. Continued prosecution applications (CPA) under § 1.53(d) can be filed in design applications. *See* § 1.53(d)(1). The CPA practice was eliminated only as to utility and plant patent applications. *See Elimination of Continued Prosecution Application* Practice as to Utility and Plant Patent Applications 68 FR 32376 (May 30, 2003) 1271 *Off. Gaz. Pat. Office* 43 (June 24, 2003) (final rule).

Comment 106: One comment suggested that the time periods set forth in § 1.115(b)(2) should be extended.

Response: The Office did not propose changes to § 1.115(b)(2) which has been redesignated as § 1.115(b)(3).

Comment 107: One comment asked the Office to clarify whether a preliminary amendment or an information disclosure statement should be filed within three months of the filing date or to wait until after receiving the official filing receipt.

Response: Applicants are strongly encouraged not to file preliminary amendments. Applicants should incorporate any desired changes into the specification and drawings when filing the application. If an applicant wishes to file a preliminary amendment or an information disclosure statement (IDS), the preliminary amendment or IDS may be filed as soon as applicant receives an Office communication that provides the application number assigned to the application so that the amendment or IDS can be properly identified with the application number.

Section 1.121: Section 1.121(d) is clarified by adding a sentence that any new sheet of drawings containing an additional figure must be labeled in the top margin as "New Sheet." Although the instant amendment was not set forth in the notice of proposed rule making, the amendment is merely made to provide a means of identification, "New Sheet," for presenting an additional figure, a type of drawing change identification previously omitted, which is in addition to the replacement figure identification that was previously provided for.

Section 1.121(d)(1) is clarified by replacing the phrase "Annotated Marked-up Drawings" with "Annotated Sheet." Although the instant amendment was not set forth in the notice of proposed rule making, the amendment is merely made for the purpose of conformity with § 1.121(d), which utilizes the word "sheet" rather than drawing.

Section 1.131: Section 1.131(b) is amended for correction of a typographical error that was inadvertently introduced in the final rule *Miscellaneous Amendments of Patent Rules,* 53 FR 23728 (June 23, 1988) (final rule). The typographical error that is corrected is contained in the text at the end of the second (and last) sentence of § 1.131(b), which pertains to exhibits or records needed to substantiate an oath or declaration of prior invention swearing behind a reference applied in a rejection of a claim. Specifically, the text "*of* their absence satisfactorily explained" should read "*or* their absence satisfactorily explained" (emphasis added). Thus, § 1.131(b) is amended to clarify that for any oath or declaration under § 1.131 lacking original exhibits of drawings or records in support thereof, the absence of such original exhibits of drawings or records must be satisfactorily explained.

Section 1.136: Section 1.136(b) is amended to add a petition fee requirement. Paragraph 1.136(a)(2), for example, specifically refers to § 1.136(b) for extensions of time to file replies under §§ 1.193(b), 1.194, 1.196 or 1.197 after a notice of appeal is filed. Section 1.136(a) is not available for extending the period of replies under §§ 1.193(b), 1.194, 1.196 or 1.197. Applicant may, however, still be able to make the "sufficient cause" showing under § 1.136(b). To evaluate whether a showing of "sufficient cause" exists, decisions on § 1.136(b) requests require a thorough evaluation of facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.136(b) are generally treated expeditiously by the deciding official. At MPEP § 710.02(e), it is recommended that requests under § 1.136(b) be filed in duplicate with a stamped return-address envelope to assist the Office in processing these requests with special dispatch. To reflect the Office's cost of deciding requests under § 1.136(b), a requirement for a petition fee is added to § 1.136(b). Evaluation of a request for an extension of time under § 1.136(b) for sufficient cause is analogous to evaluation of a request for the Office to suspend action for sufficient cause pursuant to § 1.103(a). See discussion of § 1.17 for comments related to the changes in the petition fees.

Section 1.137: Section 1.137(d) is amended to clarify that when reviving a reissue application pursuant to § 1.137 a terminal disclaimer is not required. Section 1.137(d)(3) is amended to clarify that the terminal disclaimer requirements of paragraph (d)(1) do not apply to reissue applications. Pursuant to 35 U.S.C. 251, a patent is reissued "for the unexpired part of the term of the original patent." Hence, any period of abandonment of a reissue application, should the reissue application become revived and serve to reissue the patent, will result in a loss of patent term for the period that the reissue application was abandoned. Accordingly, there is no need to impose an additional penalty on patentee to terminally disclaim the entire period of abandonment of a reissue application. This rationale accords with the exclusion of the terminal disclaimer requirement when petitioning for revival of nonprovisional applications filed on or after June 8, 1995, pursuant to § 1.137(d)(1).

Current Office practice does not require a terminal disclaimer as a condition precedent for revival of an abandoned reissue application, no matter when the application was filed, where revival is otherwise appropriate.

In order to codify current practice, § 1.137(d)(3) is amended by inserting "to reissue applications" to provide a

blanket exception for reissue applications. Regardless of when the reissue application was filed, applicant is not required to file an accompanying terminal disclaimer with a petition to revive under § 1.137.

Section 1.165: Section 1.165(b) is amended to remove the requirement for a black and white copy of a color drawing or photograph. This requirement has already been waived. *See Interim Waiver of Parts of 37 CFR 1.84 and 1.165, and Delay in the Enforcement of the Change in 37 CFR 1.84(e) to No Longer Permit Mounting of Photographs,* 1246 Off. *Gaz. Pat. Office* 106 (May 22, 2001).

Section 1.173: Section 1.173(b) is amended to clarify that paragraphs (b)(1), (b)(2) and (b)(3) are directly related to, and should be read with, paragraph (b).

Section 1.175: Section 1.175 is amended by adding a new paragraph (e), which requires a new oath or declaration which identifies an error not corrected in an earlier reissue application be filed in any continuing reissue application that does not replace its parent reissue application.

Section 1.175 was previously interpreted to require any continuing reissue applicatiou whose parent application has not been abandoned to include an oath or declaration identifying at least one error being corrected, which error is different from the error(s) being corrected in the parent reissue (or an earlier reissue). Such interpretation is now clarified by the addition of paragraph (e) to § 1.175. Ordinarily, a single reissue application is filed to replace a single original patent and corrects all of the errors recognized by the applicant at the time of filing of the (single) reissue. If, during the prosecution of the reissue application, applicant (patentee) recognizes additional errors needing corrections, such corrections could, and should, be made in the same application. If, however, after the close of prosecution and up until the time that the first reissue issues, applicant recognizes a further error which needs correction and files a continuing reissue application, § 1.175(e) now explicitly requires applicant to include an oath or declaration which identifies an error which was not corrected in the parent reissue application or in an earlier reissue application, *e.g.,* a grandparent reissue application.

Section 1.178: Section 1.178 is amended to eliminate the requirement for physical surrender of the original letters patent (*i.e.,* the "ribbon copy" of the original patent) in a reissue application, and to make surrender of the original patent automatic upon the grant of the reissue patent. The reissue statute provides in part that:

> Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less then he had a right to claim in the patent, the Director shall, on the *surrender of such patent* and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent.

See 35 U.S.C. 251, ¶ 1 (emphasis added).

While 35 U.S.C. 251, ¶ 1, requires a "surrender" of the original patent, it neither requires a physical surrender of the actual letters patent, nor a statement that the patent owner surrenders the patent. Physical surrender by submission of the letters patent (*i.e.,* the copy of the original patent grant) was previously required by rule via § 1.178; however, such submission was only symbolic because the patent right exists independently of physical possession of the letters patent.

It is the right to the original patent that must be surrendered upon grant of the reissue patent, rather than any physical document. Thus, where the letters patent is not submitted during the prosecution of the reissue application because it is stated in the reissue that the letters patent copy of the patent is lost or inaccessible, there is no evidence that any stigma is attached to the reissue patent by the public. Further, there was no case law treating such a reissue patent adversely due to the failure to submit the letters patent. In fact, there is no legal reason to retain the requirement for physical surrender of the letters patent. Conversely, it is beneficial to eliminate the requirement for physical surrender of the letters patent.

It is beneficial to both the Office and the public to establish that the surrender of the original patent is automatic upon the grant of the reissue patent to thereby eliminate the requirement for a physical submission of the letters patent or the filing of a paper offering to physically surrender the letters patent (§ 1.178(a)).

Previously, the requirement for submission of the patent document compelled the patent owner (seeking reissue) to try to obtain the letters patent copy of the patent. If the document was lost or misplaced, the patent owner had to search for it. If it was in the hands of a former employee, the patentee had to make an effort to secure it from that employee (who might not be on friendly terms with the patentee). If the letters patent was obtained, it then had to be physically submitted without losing or destroying it. If the letters patent could not be obtained, the patent owner had to make a statement of loss (Form PTO/SB/55) or explain that it could not be obtained from the party having physical possession of it. The revision of § 1.178 eliminates these burdens, and the requirement for use of form PTO/SB/55 or its equivalent.

The requirement for submission of the letters patent copy of the patent previously provided an unnecessary drain on Office processing and storage resources in dealing with the submitted letters patent document. Further, in the event the reissue was not granted, the Office had to return the letters patent to the applicant where such was requested. The revision does away with the burden on the Office of processing, storing, and returning letters patent.

The previous requirement for submission of the original patent (the letters patent), or a statement as to its loss, resulted in a "built in" delay in the prosecution while the Office awaited submission of the letters patent or the statement of loss, which was often submitted only after an indication of allowance of claims. The revision reduces reissue application pendency because the Office no longer needs to delay prosecution while waiting for the letters patent or the statement of loss. Thus, the complete elimination of the requirement for an affirmative act (of surrender) by the patent owner puts reissue in step with other post patent proceedings for changes of patents which have no requirement for a statement of surrender (*e.g.,* reexamination certificate, certificate of correction).

Amended § 1.178 applies retroactively to all pending applications. For those applications with an outstanding requirement for the physical surrender of the original letters patent, applicant must timely reply that the requirement is moot in view of the implementation of the instant amended rule. Such a reply will be considered a complete reply to any requirement directed toward the surrender of the original letters patent. It is to be noted that the Office will not conduct a search to withdraw Office actions where the only outstanding requirement is compliance with the physical surrender of the original letters patent.

Example 1: An Office action issues prior to the effective date of the amendment to § 1.178 with only a requirement for a return of the original letters patent to the Office. Applicant fails to timely reply to the Office action,

relying on the amendment to § 1.178 as mooting the requirement for physical surrender of the original letters patent. In this instance the application would be abandoned for failure to timely respond to the Office action because no response was filed.

Example 2: An Office action issues prior to the effective date of the amendment to § 1.178 with the only requirement for a return of the original letters patent to the Office. Applicant fails to reply to the Office action within the two-month period set in the Office action, relying on the amendment to § 1.178 as mooting the requirement for physical surrender of the original letters patent. In reviewing the reissue application in connection with a related application, the examiner notes the omission prior to the expiration of the six-month statutory period for reply. In this instance, the examiner may telephone the applicant, and remind applicant of the need to file a timely reply.

Example 3: An Office action issues prior to the effective date of the amendment to § 1.178 with the only requirement being a return of the original letters patent to the Office. Applicant timely replies to the Office that it should vacate/withdraw the requirement, or otherwise indicates that return of the original letters patent is now unnecessary. In this instance, a complete reply would have been filed, and the requirement would be withdrawn and the application passed to issue.

Example 4: An Office action issues prior to the effective date of the amendment to § 1.178 with both a requirement to return the original letters patent to the Office and a rejection of the claims under 35 U.S.C. 103. Applicant timely responds to the Office action addressing only the rejection under 35 U.S.C. 103 (but not the need for physical surrender of the original letters patent). In this instance, the reply would be accepted as complete, and the Office would withdraw the requirement for physical surrender of the original letters patent. (The requirement was proper when made, so the Office would not vacate the action in regard to submission of the original letters patent.)

Return of original letters patent: Where the patentee has submitted the original letters patent in a reissue application subject to § 1.178 as it is now amended, the Office may, in response to a timely request, return the original letters patent, when it can be readily retrieved from where it is stored, namely, the paper application file, or the artifact storage area for an IFW file. Any request for return of the letters patent which is submitted after the issue fee has been paid will require a petition pursuant to § 1.59(b) to expunge from the file and return the original letters patent. Where the original letters patent cannot be readily retrieved, or in the rare instance that it has been subsequently misplaced, the Office will not be able to return the original letters patent and will not create a new one.

Example 5: In an application filed after the effective date of the amendment to § 1.178, applicant has mistakenly submitted the original letters patent and later seeks its return. In this instance, provided applicant timely requests the return of the original letters patent, the Office would return the patent provided it can be readily retrieved.

Example 6: A reissue application was pending at the time of the effective date of the amendment to § 1.178 and an original letters patent was submitted. Applicant requests return of the original letters patent, although the application is abandoned at the time the request for return is made. In this instance, the Office would return the original letters patent if it is readily retrievable. If the reissue application was abandoned at the time of the effective date of the amendment to § 1.178, the Office would also return the original letters patent.

Example 7: Same as Example 6, except that the reissue application is pending, and the issue fee has been paid for the reissue application at the time the request for return of the original letters patent is made. In this instance, the Office may similarly return the original letters patent, but only if the request is accompanied by a petition under § 1.59(b).

Example 8: Same as Example 7, except that the reissue application has issued as a reissue patent at the time the request for return of the original letters patent is made. Once again, the Office may return the original letters patent, but only if the request is accompanied by a petition under § 1.59(b).

Example 9: A reissue application issued as a reissue patent prior to the effective date of the amendment to § 1.178. Applicant requests return of the original letters patent that was submitted in the reissue application. In this instance, the Office will not return the original letters patent. The original letters patent was submitted in reply to a requirement that was in effect throughout the pendency of the reissue application.

Section 1.179: Section 1.179 is removed and reserved as no longer being necessary. The information provided by this rule, *i.e.*, notification to the public in the patent file that a reissue application has been filed for a particular patent, is now available through other means, such as public PAIR on the Office's Internet home page. This source of information can be accessed through the Office's Internet Web site at *http://pair.uspto.gov/cgi-bin/final/home.pl* wherein the user can enter the original patent number, click on "Search," and then click on "Continuity Data." Any post-issuance filings (*e.g.*, reissues, reexamination proceedings) will be identified by scrolling to "Child Continuity Data." To identify an application under "Child Continuity Data" as a reissue, the user simply clicks on the desired application number and searches through the file contents screen for "Notice of Reissue Published in Official Gazette." The Inventors Assistance Center (IAC) Help desk (telephone number: 800–786–9199) can also provide information to the public on reissue filings. Removal of the provision that the Office place a separate paper in the patent file stating that a reissue has been filed eliminates several processing steps within the Office and contributes to overall efficiency. Similarly, public PAIR will indicate termination of the reissue examination, and, therefore, placing a second separate paper notice to that effect in the patent file is unnecessary. Additionally, Office personnel can internally through the PALM database access information regarding reissue filings, and therefore, do not rely on the presence or absence of the notice in the patent file as determinative of reissue status.

Section 1.182: Section 1.182 is amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.183: Section 1.183 is amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.213: The proposed changes to § 1.213 are not being adopted in this final rule. These changes are deemed unnecessary as they are merely reflective of what is already required by statute (35 U.S.C. 122(b)(2)(B)(i)–(iv)) and regulation (§ 10.18). The Office proposed to amend § 1.213 to highlight to applicants and practitioners what 35 U.S.C. 122(b)(2)(B)(i)–(iv) and § 10.18 currently require. Specifically, the Office's position is that 35 U.S.C. 122(b)(2)(B)(i)–(iv) and § 10.18 require that, prior to the submission of a nonpublication request, one must make

an actual inquiry (consistent with § 10.18) as to the intent to file a foreign counterpart application, and that at the time any nonpublication request is submitted, there must be an affirmative intent by applicant that the application will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months.

Similarly, the Office will not include the amendments to § 1.213 that highlight the distinctions between a rescission of a previously filed nonpublication request and the requirement for a notification of foreign filing, which is required by 35 U.S.C. 122(b)(2)(B)(iii), the non-applicability of § 1.8 to filings under §§ 1.213(b) and (c), and the inquiry obligations before a request to rescind a nonpublication request is filed (§ 1.213(b)). The Office plans to revise the MPEP to further clarify and to emphasize its position as set forth in this final rule, the notice of proposed rule making, and in the notice *Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)–(iv)*, 1272 *Off. Gaz. Pat. Office* 22 (July 1, 2003).

Section 1.213(d) was proposed to be added to provide that if an applicant who has submitted a nonpublication request under § 1.213(a), subsequently files a request under § 1.213(b) to rescind a nonpublication request or files a notice of a filing in another country, or under a multilateral international agreement, under § 1.213(c), the application shall be published as soon as is practical after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code, as required by 35 U.S.C. 122(b)(2)(B)(ii). The Office will continue its practice to proceed with the publication of an application as soon as practical, as required by statute where a request to rescind has been filed notwithstanding the lack of amendment of the rules to reflect such practice.

While the Office is not including any of the proposed changes to § 1.213 in this final rule, the comments received and the Office's responses thereto reflect the Office's interpretation which will be included in a future revision of the MPEP.

Comment 108: One comment stated that the requirement that applicant must have an affirmative intent not to file a counterpart application that would be subject to eighteen-month publication, and not just the absence of any intent or plan concerning the filing of any counterpart application, is believed to be extreme, not based on statute and would be unduly burdensome. The comment further stated that the intent of the applicant at the time of signing the nonpublication request should be irrelevant, that the Office's interpretation of the statute requires an applicant to formulate an intent whether to foreign file a year before the foreign filing must be made, and that often the time frame envisioned by the Office is much too early for intent to be decided, particularly if applicant is waiting for money from investors or licensees. The comment stated that one should look at whether the application has been subject to the activity that requires publication (which apparently is meant to be limited to an actual foreign filing of a counterpart application). One comment stated that the Office's view regarding the existence of an actual intent not to foreign file a counterpart application is "not required by the letter or spirit of the statute," and pointed out that where a decision has not been made as to foreign filing at the time of U.S. filing, under the Office's view, applicant could not file a nonpublication request, but if later a decision was made not to foreign file, the original U.S. application would have to be abandoned and refiled with a nonpublication request thereby adding senseless costs and unnecessary filing burdens on both the Office and applicants. The comment also stated that the Office's position would impact small entities the most as their limited resources hamper their ability to form an intent about foreign filing at the time the U.S. application is filed.

Response: The procedure for filing a nonpublication request, whereby applicant must have a current intent at the time of filing the request not to foreign file may not be to the liking of certain applicants and practitioners; however, Congress has spoken and indicated a strong preference for the publication of applications unless a very specific exception can be met. That exception includes the requirement that a certification be made at the time of filing the nonpublication request that the invention "has not and will not be the subject" of a foreign-filed counterpart application. It is significant that Congress has stated both "has not" and "will not" in defining its exception. The comments received decrying the Office's narrow interpretation of the statute are merely an attempt to read out of the statute the "will not" part of the exception. An applicant simply cannot make a certification that the application will not be foreign filed if there is no current intent not to foreign file the application. To argue that the absence of any intent regarding the future foreign filing of the application can amount to a certification that the application will not be foreign filed is a specious argument. That hardship may be caused by a requirement of a current intent not to future foreign file was recognized by Congress by providing the ability to later change one's mind and foreign file provided timely notice is given of the foreign filing and a rescission of the nonpublication request is filed. On the other hand, as to the hardship pointed out by needing to abandon an application where it was later decided not to foreign file so that the application could be refiled with a nonpublication request, that is not an unforseen consequence as § 1.138(c) has been provided to allow for express abandonment in these situations. That applicants would need to go to this length is merely a result of the overriding desire by Congress in favor of publication of applications.

Comment 109: The question is posed "If applicant does not have the resources for foreign filing, but would file abroad if additional funds were discovered during the year, does the applicant have an 'intent' to file abroad?"

Response: The comment is one of many possibilities that would need to be answered on a case-by-case basis depending on the particular facts and will be addressed on as general a basis as possible. Where applicant makes a decision not to later foreign file because of lack of funds, there is no intent to foreign file, provided that decision is based on a current determination that funds will not be available later to foreign file. If there is a desire to later foreign file and it is foreseeable that funds may be available, *e.g.*, ongoing license negotiations, then there is no current intent not to foreign file.

Comment 110: One comment suggested that there be an exception to performing an actual inquiry before filing a nonpublication request for every application where the attorney has received "a single written statement from a client that, by default, all U.S. applications should be filed with a non-publication request and that the client understands that there are limitations on filing foreign applications."

Response: It is possible that a client would have a current intention not to "foreign file" any applications, especially if the client has never filed an application in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing. In this case, the client could inform its counsel of that intent and a nonpublication

request could be routinely filed with each application without separately checking the intent to "foreign file" as to that application. It must be emphasized that the instant advice is given based on the facts of no intent to ever foreign file an application, based on a consistent past history. Variations in the facts given may alter the result as to the permissible use of a blanket default. There would, however, be a duty by applicant to timely change its advice to counsel should the facts change.

Section 1.215: Section 1.215(a) is amended to provide that the patent application publication may also be based upon certain amendments, codifying the Office's current practice. *See Patent Application Publications May Now Include Amendments,* 1281 *Off. Gaz. Pat. Office* 53 (Apr. 13, 2004). Specifically, the patent application publication may be based upon amendments to the specification (other than the abstract or the claims) that are reflected in a substitute specification under § 1.125(b), amendments to the abstract under § 1.121(b), amendments to the claims that are reflected in a complete claim listing under § 1.121(c), and amendments to the drawings under § 1.121(d), provided that such substitute specification or amendment is submitted in sufficient time to be entered into the Office file wrapper of the application before technical preparations for publication of the application have begun. Technical preparations for publication of an application generally begin four months prior to the projected date of publication. Section 1.215(a) is also amended to provide that the patent application publication of an application that has entered the national stage under 35 U.S.C. 371 may also include amendments made during the international stage. Accordingly, the publication under 35 U.S.C. 122(b) of an application that has entered the national stage may include amendments under Article 34 and 19, and other amendments made to the international application during the international stage (*e.g.*, rectifications, corrections of physical defects under PCT Rule 26, and an abstract rewritten by the International Searching Authority).

The Office is scanning application papers including amendments into electronic image files and maintaining all the records associated with patent applications in the IFW system replacing the standard paper processing of patent applications. *See Changes to Implement Electronic Maintenance of Official Patent Application Records* 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003)(final rule). The implementation of the IFW system and the current amendment practice under § 1.121 permits the Office to include certain amendments (*e.g.*, a complete claim listing in compliance with § 1.121(c), substitute specification in compliance with § 1.125, drawings in compliance with § 1.84 and § 1.121(d), and amendments made during the international stage of an international application) in the patent application publication.

If applicant files an amendment that includes a complete claim listing in compliance with § 1.121(c) and the amendment is scanned into the IFW system before technical preparations for publication of the application have begun, the Office may publish the amended claims in the complete claim listing instead of the originally filed claims. For example, if applicant files a preliminary amendment that includes cancellation of claims to reduce the amount of claims fees due in response to a Notice To File Missing Parts of Application, the Office may publish only the pending claims and not the canceled claims. The Office may also publish an amended specification instead of the originally filed specification if applicant files a substitute specification in compliance with § 1.125(b) and the substitute specification is scanned into the IFW system before the publication process has begun. Similarly, the Office may publish replacement drawings instead of the originally filed drawings if applicant files the replacement drawings in compliance with § 1.84 and § 1.121(d) and the replacement drawings are scanned into the IFW system before the publication process has begun.

The Office cannot guarantee that the latest amendment or any particular amendment will be included in the patent application publication. Applicants should incorporate any desired amendments into the text of the specification including a new set of claims when filing the application, even where the application is a continuation or divisional application of a prior-filed patent application. Submitting applications without any accompanying preliminary amendment reduces the processing required of the Office, and may preclude Office errors in processing of the amendments. Although the Office may include amendments in patent application publications, applicants desiring to ensure that a patent application publication reflects an amendment should submit the application, as amended, to the Office in compliance with § 1.215(c) by using EFS. *See also Helpful Hints Regarding Publication of Patent Applications,* 1249 *Off. Gaz. Pat. Office* 83 (August 21, 2001). In situations when the publication does not reflect an amendment that includes applicant's desired changes, applicant may request a republication of the application under § 1.221(a). Any such request for corrected publication under § 1.221(b), however, will not be accepted.

Preliminary amendment that is present on the filing date of the application: Since a preliminary amendment that is present on the filing date of the application is part of the original disclosure of the application under § 1.115(a)(1), the Office will require such an amendment to be filed in a format that can be included in the patent application publication. Thus, if a preliminary amendment under § 1.115(a)(1) is filed in a format that cannot be included in the publication, the Office of Initial Patent Examination (OIPE) will issue a notice requiring the applicant to submit the amendment in a format useable for publication purposes. The patent application publication may not reflect a preliminary amendment under § 1.115(a)(1) if applicant includes the amendment in a place that is difficult to find (*e.g.*, a transmittal letter) or files the amendment separately from the application so that it would be difficult to match the amendment with the application. In order for the patent application publication to include all of applicant's desired changes, applicants should either incorporate the desired changes into the specification and the claims filed with the application, or file the preliminary amendment with the application and clearly present the preliminary amendment on a separate paper in compliance with § 1.121.

Replacement Drawings: The Office proposed changes to § 1.215(a) that provided that any replacement drawings received with the processing fee set forth in § 1.17(i) within the period set forth in proposed § 1.215(c) will be included in the patent application publication. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 68 FR at 53839–40, 53855, 1275 *Off. Gaz. Pat. Office* at 43, 57. Since § 1.215(a) is amended to provide that the patent application publication may also be based upon certain amendments including amendments to drawings under § 1.121(d), this proposed change is not adopted in the final rule. If an applicant wishes to submit better quality drawings or amended drawings for publication purposes, applicant should file the replacement drawings in compliance

with § 1.84 and § 1.121(d) before the technical preparations for publication of the application have begun (generally four months prior to the projected publication date). The Office may include any replacement drawings filed in compliance with § 1.84 and § 1.121(d) if the replacement drawings are scanned into IFW system before the publication process for the application has begun. Applicant is not required to submit the processing fee set forth in § 1.17(i). Accordingly, the procedure for submitting replacement drawings by filing a petition under § 1.182 and a petition fee set forth in § 1.17(h) is eliminated. Furthermore, Mail Stop PGPUB Drawings is being eliminated. Applicants may submit any replacement drawings and preliminary amendments that are filed in response to an OIPE preexamination notice to "Mail Stop Missing Parts'.

Section 1.215(c) is amended to provide that applicant has until the later of: (1) one month after the mailing date of the first Office communication that includes a confirmation number for the application; or (2) fourteen months after the earliest filing date claimed under title 35, United States Code, to file an amended version of an application through EFS, for publication purposes, codifying the Office current practice. *See Assignment of Confirmation Number and Time Period for Filing a Copy of an Application by EFS for Eighteen-Month Publication Purposes,* 1241 *Off. Gaz. Pat. Office* 97 (Dec. 26, 2000).

Section 1.291: Section 1.291(b)(1) now provides for the submission of a protest after publication or the mailing of the notice of allowance when the protest is accompanied by the written consent of the applicant. Section 1.291(b)(2) now requires a protest to include a statement that it is the first protest submitted in the application by the real party interest who is submitting the protest; or the protest must comply with the requirements relating to subsequent protests by the same real party in interest. Section 1.291(c)(5) has been added to eliminate the ability of a single protestor to submit cumulative prior art in a subsequent protest by requiring a subsequent protest to be directed at significantly different issue(s), and also requiring an explanation as to how the issue(s) raised are significantly different and why the different issues were not presented in the earlier protest. A processing fee is also required. Finally, § 1.291 has been essentially rewritten and restructured for clarity. Section 1.291(a) clarifies that matching of the protest to the intended application is dependent upon adequate identification of the intended application and that if the protest is inadequately identified, the protest may not be matched at all or not timely matched, in which case, the protest may be returned where practical, or, if return is not practical, discarded. Section 1.291(b) now recites the service requirements and time frame for submitting a protest. Section 1.291(g) clarifies that protests which do not comply with paragraph (b), or (c) may be returned, or discarded.

It was proposed to amend § 1.291 to require the naming of the real party in interest, or privy thereof, when a protest is filed in any application, *i.e.*, both reissue and non-reissue applications. The purpose of the proposal was to eliminate potential for harassment of the prosecution process via multiple filings of protests in any type of application by persons serving the same interest. Such abuse of protest practice has occurred, for example, by the filing of multiple piecemeal protests (raising a slightly different issue in each protest submission) in a single application by practitioners of the same firm, with a different practitioner signing each protest, and similarly, by any of the inventors and/or assignees. Essentially the same grounds of protest were presented in each of the protests.

Upon reconsideration based on comments received, the Office has determined that the stated objectives of the proposed rule can be achieved in a simpler manner. Specifically, § 1.291(b)(2) requires a statement accompanying any protest in an application that the protest is the first protest submitted in the application by the real party in interest submitting the protest; or the protest must comply with the requirements relating to subsequent protests by the same real party in interest, which are discussed in regard to paragraph (c)(5) of § 1.291. Section 1.291(b)(2) does not apply to the first protest filed in an application. This approach eliminates the issue of how to adequately identify the real party in interest. Where a protestor desires not to identify the real party in interest on behalf of whom the protest is being filed, the protester may still retain anonymity. Where a protest is not the first protest by the real party in interest, § 1.291(b)(2) requires compliance with paragraph (c)(5) of § 1.291 without a need for a specific statement that this is a subsequent protest by a real party in interest or identification of the real party in interest.

As amended, § 1.291 is structured as follows: Paragraph (a) sets forth the need for adequate identification of the application to which a protest is directed to permit matching of the protest with the application and the consequences of inadequate identification not permitting a matching or a timely matching. Paragraph (b) sets forth service upon applicant and timeliness requirements for submitting the protest. Paragraph (b)(1) makes provision for the written consent of the applicant as an exception to the timeliness requirements of paragraph (b). Paragraph (b)(2) relates to the submission of multiple protests along with paragraph (c)(5). Paragraph (c) sets forth content requirements for a protest. Paragraphs (c)(1) through (c)(4) substantively repeat the content requirements of former § 1.291(b)(1) through (b)(4). The content requirement for subsequent protests in the last sentence of former paragraph (c) is now present in current paragraph (c)(5). Paragraphs (d) and (f) of the amended rule are material moved from prior paragraph (c). Paragraph (e) of the amended rule is material moved from prior paragraph (b). Paragraph (g) clarifies how the Office can treat protests that fail to comply with paragraphs (b) and (c) of the rule.

Section 1.291(a): In order for a protest submission to be matched with an application, it must include sufficient information to adequately identify the application for which the submission is being made.

Where possible, the protest should specifically identify the application to which the protest is directed by application number and filing date. If, however, the protestor is unable to specifically identify the application to which the protest is directed by application number and filing date, but, nevertheless, believes such an application to be pending, the protest should be directed to the attention of the Office of Petitions, along with as much identifying data for the application as is possible, such as the name of an inventor.

If a protest is timely submitted within the time frames of § 1.291(b) and the other requirements of paragraphs (b) and (c) of § 1.291 are complied with, but the protest is not matched or not timely matched with the intended application to permit review by the examiner during prosecution of the application due to inadequate identification of the intended application as defined in § 1.291(a), the Office may or may not enter the protest. If not entered, the protest may be returned to the party that submitted it where practical, or, if not practical to return, discarded.

If a protest includes adequate identification, is timely submitted within the time frames of § 1.291(b) and

timely matched with the intended application (during prosecution of the application), and where the protest further complies with paragraphs (b) and (c) of § 1.291, it will be "entered" into the file (*i.e.*, it has an entry right) and it will be considered by the examiner. If a protest includes adequate identification, is timely submitted as defined in § 1.291(b), but not timely matched during prosecution of the application (*e.g.*, the protest is submitted a day before a notice of allowance is mailed), the protest will be entered of record and the examiner may or may not consider it. The seemingly disparate treatment in § 1.291(a) where an untimely match may result in non-entry of the protest is due to the protestor's failure to adequately identify the intended application under § 1.291(a) (versus adequate identification but other problems in timely matching under § 1.291(b)).

Section 1.291(b): The language of § 1.291(b) includes the timeliness and service provisions of former §§ 1.291(a)(1) and (a)(2) and makes compliance with these provisions, as well as those in paragraph (c), a condition for entry of the protest in the record of the intended application, except for the timeliness provisions of protests filed with the consent of the applicant. Entry of a protest in the record does not ensure that the protest will be considered by the examiner. For example, a first protest by a real party in interest (along with the required statement pursuant to § 1.291(b)(2)) may be timely submitted, *e.g.*, prior to publication of the application, yet the application may be issued as a patent prior to the actual matching of the protest with the intended application. Where a protest is timely submitted, includes adequate identification, and is otherwise compliant with §§ 1.291(b), (b)(2) and (c), the Office will endeavor to consider the protest even if it is matched with the intended file after prosecution is closed.

Section 1.291(b)(1) provides that a protest may be filed at any time if it is accompanied by the written consent of the applicant to the filing of the protest being submitted as it specifically excludes the timeliness requirements of paragraph (b). While § 1.291(b)(1) ensures that any (adequately identified) protest filed with the written consent of the applicant will be entered into the record of the intended application (if there is also compliance with paragraph (c)), paragraph (b)(1) makes clear that the protest must be matched with the intended application during prosecution to ensure consideration by the examiner. For example, where the protest is submitted close to publication of the patent, it is doubtful that the examiner would have time to review the protest, although the protest would be made of record. Even if not timely matched, the examiner may still decide to consider the protest should there be sufficient time to do so.

35 U.S.C. 122(c) permits the filing of a protest in an application after the application has been published if there is express written consent of the applicant. In order to file protests after publication of patent applications, § 1.291(b)(1) requires that the protest after publication (of an application) be accompanied by the written consent of the applicant. The written consent should indicate that applicant is consenting to the specific protest being submitted. Applicant may choose to provide a blanket consent to: any protests filed, protests filed by a particular real party in interest, a single protest by a particular party in interest (*e.g.*, a protest that party Smith has informed me that he will be submitting during the week of November 26th), a protest involving a particular piece of prior art, or a particular protest that has been reviewed and applicant is willing to have considered by the Office. Where a protest is permitted only by consent of applicant, the Office will abide by the terms of the consent. The Office may, however, as discussed later in regard to § 1.291(g), choose to consider a piece of prior art permitted under the terms of the consent, but noncompliant with some requirement of §§ 1.291(b), or (c).

Section 1.291(b)(2), as discussed earlier, requires either a statement that the protest is the first protest submitted in the application by the real party in interest who is submitting the protest or that the protest must also comply with paragraph (c)(5) of § 1.291. In addition, § 1.291(b)(2) does not apply to the first protest in an application. A protestor may not know if a protest has already been filed (by another), and may have no way of checking (non-reissue application for which public PAIR would not be available). Should the protest (inadvertently or otherwise) fail to include the statement that the protest is the first protest by the real party in interest filing the current protest and fail to comply with paragraph (c)(5) of § 1.291, if, in fact, the protest is the first filed protest in an application, it will be considered where all other conditions have been met.

Section 1.291(c): Where the protest adequately identifies a pending application and is otherwise compliant with paragraph (b) of § 1.291, the protest will be "entered" into the application and considered by the examiner, if the protest includes: (1) a listing of patents, publications, or other information relied upon; (2) a concise explanation of the relevance of each listed patent, publication and other item of information; (3) a copy of each listed patent, publication, or other item of information in written form, or at least pertinent portions thereof; (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information relied upon; and (5) if the protest is a second or subsequent protest in the case by a single real party in interest, an explanation as to why the issues presented are significantly different from those raised in an earlier protest and why they were not presented earlier, and a processing fee under § 1.17(i). Where there is noncompliance with any item of information required by § 1.291(c)(1) through (c)(5), the protest may not be entered and will be treated pursuant to § 1.291(g), except where the examiner determines to review an item of information and decides to make that item of record as an examiner citation. See the discussion of § 1.291(g) below.

Section 1.291(c)(5) sets forth additional content requirements that now apply to subsequent protest submissions. As opposed to former § 1.291(c), new § 1.291(c)(5) does not permit the submission of additional (cumulative) prior art. Section 1.291(c)(5) requires that any subsequent protest must present significantly different issues and sets forth an explicit requirement that a second or subsequent protest must be accompanied by an explanation as to why the issue(s) raised in the second or subsequent protest are significantly different from those raised earlier and, further, why the significantly different issue(s) were not presented earlier. In complying with the requirement to distinguish a subsequent protest from one previously submitted, the protestor should identify with particularity the prior submitted protest, such as by date submitted and information supplied.

Section 1.291(e): This paragraph is added to reiterate and confirm the Office's long-standing practice to enter protests raising inequitable conduct issues without comment on such issues. *See* MPEP § 1901.02.

Section 1.291(f): This paragraph represents material carried over from former § 1.291(c).

Section 1.291(g): This paragraph is added to make clear that protests which do not comply with paragraph (b), or (c) may be returned, or discarded at the sole discretion of the Office as the

protest is not in fact entered of record. This is a different standard than that of 1.291(a) in that the preference the Office has for returning, rather than discarding, protests not adequately identifying a pending patent application does not exist for protests not complying with paragraphs (b) or (c). Such preference is reflected by § 1.291 in that paragraph (a) states protests not adequately identifying a pending patent application will be returned "where practical" and that no such practicality consideration is present in paragraph (g). The reason the Office prefers to return protests not adequately identifying a pending patent application is that this gives the protestor the chance to resubmit the protest with adequate patent application identifying information.

Where a protest is partially noncompliant with §§ 1.291(b), or (c), such as four of the five submitted items of prior art do not have a concise explanation of their relevance pursuant to § 1.291(c)(2), those items will not be entered of record in the file and may be returned, or discarded. If the fifth prior art item is fully compliant with §§ 1.291 (a), (b), and (c), the fifth item (having a concise explanation) will be made of record and considered by the examiner.

Where a protest is entirely noncompliant with §§ 1.291(b), or (c), the prior art will not be made of record and the protest may be returned, or discarded at the Office's option. Alternatively, the examiner may choose to consider any or all of the prior art submitted, in which case the examiner may choose to make certain of the prior art considered of record by citing it as an examiner's citation of prior art. The examiner need not make any prior art actually considered from a noncompliant § 1.291 protest of record.

The examiner may always look at, or consider any documents submitted in an application, under amended § 1.291. This is the same as in the past. An examiner will attempt to consider a second protest filed on behalf of the same real party in interest (subject to the time frames set forth in § 1.291(b) and the caveat that the protest can be timely matched and considered prior to issuance of the patent) if the second protest includes: (1) new issue(s) significantly different from issue(s) presented earlier; (2) an explanation of why the new issue(s) are significantly different; and (3) an explanation why such new issue(s) could not have been earlier presented. *See* § 1.291(c)(5). Raising of new issue(s) may be done by the submission of new, non-cumulative prior art. This substantive amendment to prior § 1.291(c) was made to no longer permit the submission of just "additional prior art" in view of the previously stated experience of the Office receiving subsequent protests by the same real party in interest with essentially the same grounds. Prior § 1.291(c) permitted a further submission of "additional prior art" so long as a concise explanation was provided pursuant to prior § 1.291(b)(2). As noted in the proposed rulemaking, applicants would present "essentially the same grounds of protest * * * in each of the protests" as "there was no explicit bar in the rule against multiple piecemeal protest submissions," such as by utilization of the alternative of submitting prior art that was essentially cumulative to that submitted in the previous protest, or by utilizing a different person (representing the same real party in interest) to submit essentially the same protest. See the notice of proposed rulemaking at page 53840.

Once a protest has been matched with an application, the examiner is always free to look at, or consider, any document(s) or other information submitted in that protest whether or not the protest complies with § 1.291. Section 1.291 exists as a matter of administrative convenience for the Office; thus, a third party's failure to comply with any of the requirements of § 1.291 does not vest the applicant with any "right" to preclude consideration by the examiner of information set forth/presented in a non-compliant protest. The noncompliant protest, however, will not be made of record and may be returned, or discarded (§ 1.291(g)) after consideration of the information contained therein should the examiner desire to do so.

Comment 111: One comment stated that the Office provided no statistics or other evidence showing a need for the originally proposed amendment to § 1.291 to require the naming of the real party in interest whenever any protest is filed. The comment suggested that it would be better to amend § 1.291 to require the party submitting the protest to identify any prior protests the party has filed, or to certify that it has not filed any prior protest. The comment also suggested amending § 1.291 to permit the filing of protests in published applications.

Response: The comment is adopted in part. The Office has reconsidered the need for identification of the real party in interest and has determined that a statement as to prior protests is sufficient. Thus, rather than amend § 1.291 to require the naming of the real party in interest whenever any protest is filed, as originally proposed, § 1.291(b)(2) provides that a statement that the protest is the first by the real party in interest be made or the protest must comply with § 1.295(c)(5). A further exception is made where the protest turns out to be the first protest in the application.

The suggestion to amend § 1.291 to permit the filing of protests in published applications cannot be adopted as 35 U.S.C. 122(c) statutorily prohibits the filing of a protest in published applications without the express written consent of the applicant. This statutory provision is reflected by the language now contained in § 1.291(b)(1). As reissue applications are not published under 35 U.S.C. 122, the requirement for the express written consent of the applicant never applies to reissue applications. Although protests in published applications cannot be filed without the express written consent of the applicant, § 1.99 provides for third-party submissions of prior art and other information in published applications provided, *inter alia,* the submission is timely submitted (§ 1.99(e)) and it does not include any explanation of the material being submitted (§ 1.99(d)).

Section 1.295: Section 1.295(a) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.296: Section 1.296 is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.311: Section 1.311(b) is amended to provide that the submission after the mailing of a notice of allowance of either: (1) an incorrect issue fee or publication fee; or (2) a fee transmittal form (or letter) for payment of issue fee or publication fee, will operate as a valid request to charge the correct issue fee, or any publication fee due, to any deposit account identified in a previously filed authorization to charge such fees. Additionally, use of issue and publication fee forms, which are not supplied by the Office, are permitted. It is also clarified that for previous authorizations to be effective under the exceptions provided for, the previous authorizations must cover the issue and publication fees to be charged.

Prior to this amendment, § 1.311(b) set forth that an authorization to charge the issue fee or other post-allowance fees (such as any publication fee due) to a deposit account may be filed only after the mailing of a notice of allowance in part to encourage the use (return) of the PTOL–85B form since that form contains important information, such as

the name of the assignee. The last sentence of § 1.311(b) prior to this amendment, however, provided an exception for charging the issue fee to a deposit account identified in a previously filed authorization if the applicant submitted either an incorrect issue fee or an Office-provided fee transmittal form (*i.e.*, Part B—Fee(s) Transmittal of a Notice of Allowance and Fee(s) Due, form PTOL–85). The amendment to § 1.311(b) extends the exception to any publication fee due and expands the exception to apply where an applicant's own fee transmittal form or letter for submitting issue fee or publication fee is submitted. Further, the term "such" is added before "fees" in the last line of section 1.311(b) to clarify that the previously filed authorization must be an authorization to charge the appropriate fee due to an identified deposit account. For example, if the previously filed fee authorization only authorizes the Office to charge the issue fee, the Office will not be able to charge any publication fee due to the identified deposit account in the previously filed authorization even when the applicant submitted an issue fee transmittal form. For such authorization, the Office will only charge the correct issue fee to the identified deposit account. Furthermore, if the previously filed fee authorization only authorized the Office to charge any fees due under §§ 1.16 or 1.17, the Office would not be able to charge either the issue fee (§ 1.18(a) through (c)) or the publication fee (§ 1.18(d)).

The phrase "A completed Office-provided issue fee transmittal form (where no issue fee has been submitted)" in the last sentence of § 1.311(b) is changed to "A fee transmittal form (or letter) for payment of issue fee or publication fee" to provide that a submission of an Office-provided fee transmittal form (*i.e.*, Part B of the form PTOL–85), or applicant's own fee transmittal form or letter for submitting issue fee or publication fee, (either complete, or incomplete but for a fee authorization) operates as a request to charge the correct issue fee due, or any publication fee due, to any deposit account identified in a previously filed authorization to charge such fees, even if the issue fee has been previously submitted. Submission of an Office-provided fee transmittal form, or applicant's own fee transmittal form or letter, will not operate as a request to charge the issue fee or publication fee due to a deposit account if neither the fee transmittal document nor a previous authorization includes an authorization to charge fees due under § 1.18.

Where an issue fee has been previously submitted, and the application is withdrawn from issue and is allowed again, since November 13, 2001, the Notice of Allowance has indicated the current amount due as the difference between the previously paid issue fee and the current amount for an issue fee. In such situations, a payment of only the difference, or a response to the notice where there is no issue fee due (or only the return of the Part B-Fee(s) Transmittal of form PTOL–85 as the current issue fee is the same amount as previously paid), will be treated as a ratification of the Office's decision to apply the previously paid issue fee. If the fee was paid in a different application (*e.g.*, the parent application of a continued prosecution application under § 1.53(d) (CPA)), the fee indicated in the notice as due is the current issue fee. The issue fee paid in the parent application cannot be refunded, or applied, to the notice of allowance mailed in the CPA.

Section 1.324: Sections 1.324(a) and (b) are amended to provide an informational reference to 35 U.S.C. 256 and to replace "petition" with "request."

Section 1.324(a) is amended by adding an explicit reference to 35 U.S.C. 256 and its requirement in order to clarify that the inventorship of a patent may be changed only by way of a request from *all* of the inventors together with assignees of the entire interest, or on order of a court. The Office will then issue a certificate naming the correct inventors. 35 U.S.C. 256 requires that there be agreement among all parties (inventors and existing assignees), or that a court has issued an order so directing the inventorship change. The previous reference in § 1.324 to a petition was eliminated in order to conform the rule language to earlier changes made to § 1.20(b).

Section 1.377: Section 1.377 is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees. Section 1.377 retains the provision that the petition fee may be refunded if an Office error created the need for the petition.

Section 1.378: Section 1.378(e) is amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.550: Section 1.550(c) is amended to add a $200 petition fee requirement pursuant to § 1.17(g) in *ex parte* reexamination proceedings for requests for extensions of time, which requests are based upon sufficient cause. Extensions of time under § 1.136(a) are not permitted in *ex parte* reexamination proceedings because the provisions of 35 U.S.C. 41(a)(8) and § 1.136(a) apply only to an "application" and not to a reexamination proceeding (*ex parte or inter partes*). Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch." Accordingly, extensions of time in *inter partes* reexamination proceedings are provided for in § 1.550(c) only "for sufficient cause and for a reasonable time specified." To evaluate whether a showing of "sufficient cause" exists and whether a "reasonable time" is specified, decisions on § 1.550(c) requests require a thorough evaluation of the facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.550(c) are generally treated expeditiously by the deciding official since the statute requires "special dispatch" for reexamination proceedings. To reflect the Office's cost of deciding requests under § 1.550(c), *i.e.*, the cost of evaluating whether a showing of "sufficient cause" exists and whether a "reasonable time" is specified, a requirement for a petition fee is added to § 1.550(c).

The revision of the rule tracks the above-discussed rule revisions to require a petition fee for the decision on § 1.136(b) and § 1.956 extension of time requests, and the criteria for granting of an extension of time under § 1.550(c) is analogous to that for § 1.136(b) and § 1.956.

Section 1.741: Section 1.741(b) is amended to refer to the petition fee set forth in section 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 1.956: Section 1.956 is amended to add a $200 fee requirement pursuant to § 1.17(g) in *inter partes* reexamination proceedings for requests for extensions of time, which requests are based upon sufficient cause. Extensions of time under § 1.136(a) are not permitted in *inter partes* reexamination proceedings because the provisions of 35 U.S.C. 41(a)(8) and § 1.136(a) apply only to an "application" and not to a reexamination proceeding (*ex parte or inter partes*). Additionally, 35 U.S.C. 314 requires that *inter partes* reexamination proceedings "will be conducted with special dispatch." Accordingly, extensions of time in *inter partes* reexamination proceedings are

provided for in § 1.956 only "for sufficient cause and for a reasonable time specified." To evaluate whether a showing of "sufficient cause" exists and whether a "reasonable time" is specified, decisions on § 1.956 requests require a thorough evaluation of facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.956 are generally treated expeditiously by the deciding official, especially so in reexamination since the statute requires "special dispatch." To reflect the Office's cost of deciding requests under § 1.956, *i.e.*, the cost of evaluating whether a showing of "sufficient cause" exists and whether a "reasonable time" is specified, a requirement for a fee is added to § 1.956.

The present amendment tracks the above-discussed amendments to require a fee for the decision on § 1.136(b) and § 1.550(c) extension of time requests, and the criteria for granting of an extension of time under § 1.956 is analogous to that for § 1.136(b) and § 1.550(c).

Section 5.12: Section 5.12(b) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 5.15: Section 5.15(c) is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 5.25: Section 5.25 is amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 10.18: Section 10.18 is amended to align the signature requirements of this section with the changes to the signature requirements for patents, § 1.4(d), and to add a reference to the signature requirements for trademarks, § 2.193(c)(1).

Section 10.18 required that signatures by practitioners on correspondence submitted to the Office in patent, trademark, and other non-patent matters conform to the requirements of personally signed signatures set forth in § 1.4(d)(1). In view of the amendments to § 1.4(d) creating S-signatures, § 1.4(d)(2), and creating EFS character coded signatures, § 1.4(d)(3), § 10.18 has been amended to align the reference to § 1.4 from solely paragraph (d)(1) to paragraphs (d) and (e) so as to encompass all the signature paragraphs of § 1.4 (paragraphs (d)(1), (d)(2), (d)(3) and (e)).

The amendment of § 10.18 to refer to §§ 1.4(d) and (e) also takes into account the clarifications in § 1.4(d) that the permanent signature is to be in dark ink or its equivalent and the confirmation that §§ 1.4(d)(1) and (e) are the only paragraphs of § 1.4 that permit handwritten signatures.

Section 10.18 has also been amended to add a reference to § 2.193(c)(1), which are the trademark signature requirements.

Section 41.20: Section 41.20 sets forth the fee for petitions in part 41. The petition fee amount set forth in § 41.20 is increased from $130.00 to $400.00 for consistency with the change to § 1.17. *See* discussion of § 1.17 for comments related to the increase of the petition fees.

Section 104.3: Section 104.3 is amended to set forth a petition fee of $130.00, rather than a reference to the petition fee set forth in § 1.17(h).

Rule Making Considerations

Administrative Procedure Act: The notable changes in this final rule are: (1) Providing for an alternative to a handwritten signature on a number of submissions; (2) adjusting the fees for a number of patent-related petitions to reflect the actual cost of processing these petitions; (3) codifying the current incorporation by reference practice and also providing the conditions under which a claim for priority or benefit of a prior-filed application would be considered an incorporation by reference of the prior-filed application; (4) expanding the submissions that can be filed on a compact disc; (5) eliminating the requirement for copies of U.S. patents or U.S. patent application publications cited in an information disclosure statement in certain applications; (6) providing that a request for information may contain interrogatories or requests for stipulations seeking technical factual information actually known by the applicant; (7) providing that supplemental replies will no longer be entered as a matter of right; (8) providing for the treatment of preliminary amendments filed on or before the filing date of an application as part of the original disclosure; and (9) eliminating the requirement in a reissue application for the actual physical surrender by applicant of the original Letters Patent.

The changes in this final rule (except for the adjustment to the fees for a number of patent-related petitions to reflect the actual cost of processing the petitions) relate solely to the procedures to be followed in filing and prosecuting a patent application. Therefore, these rule changes involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See* Bachow *Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are "rules of agency organization, procedure, or practice" and exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) ("it is doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretative rules, general statements of policy, * * * procedure, or practice'" (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule (except for the change to § 1.17), a final regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this final rule (with the sole exception of the fee changes in § 1.17). *See* 5 U.S.C. 603. With respect to the fee changes in § 1.17, the factual basis supporting the certification under the Regulatory Flexibility Act is set forth herein.

Accordingly, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Factual basis for change to petition fees: With regard to fees, the Office is adjusting certain petition fees that are set under the Office's authority under 35 U.S.C. 41(d), which allows the Office to adjust petition fees to be in alignment with the actual average costs of deciding such petitions. The petition fee for petitions formerly covered in § 1.17(h) and now covered in §§ 1.17(f), 1.17(g), or 41.20(a) will be either $200.00 (an

increase of $70.00) or $400.00 (an increase of $270.00).

The Office estimates that there will be fewer than 8,000 petitions filed each year of the type that would be affected by the patent fee changes, with fewer than 5,000 petitions being affected by the fee change from $130.00 to $400.00, and fewer than 3,000 petitions being affected by the fee change from $130.00 to $200.00. Since the small entity filing rate has not exceeded 31.0% during the last five fiscal years, the Office further estimates that there will be fewer than 2,480 petitions filed by a small entity each year of the type that would be affected by the patent fee changes, with fewer than 1,550 petitions by a small entity being affected by the fee change from $130.00 to $400.00, and fewer than 930 petitions by a small entity being affected by the fee change from $130.00 to $200.00. The Office received about 448,000 patent applications (over 92,500 provisional applications and about 355,500 nonprovisional applications) in fiscal year 2003, the Office received about 443,000 patent applications (over 89,500 provisional applications and about 353,500 nonprovisional applications) in fiscal year 2002, and the Office received over 430,000 patent applications (over 86,000 provisional applications and over 344,000 nonprovisional applications) in fiscal year 2001. Thus, this proposed change would impact relatively few (less than 2% of) patent applicants.

In addition, the petition fee amounts being adopted by the Office for petitions whose fees are set under the authority in 35 U.S.C. 41(d) ($400.00, $200.00, and $130.00) are comparable to or lower than the petition fee amounts for petitions whose fees are set by statute in 35 U.S.C. 41(a) ($110.00 to $1,970.00 for extension of time petitions (35 U.S.C. 41(a)(8)), or $1,300.00 to revive an unintentionally abandoned application (35 U.S.C. 41(a)(7)).

Therefore, the Office has determined that the change to the petition fees in this final rule will not have a significant economic impact on a substantial number of small entities.

Comments received in response to the notice of proposed rule making: The Office published a notice of proposed rule making and certified that an initial Regulatory Flexibility Act analysis was not required. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 68 FR 53816, 53844 (Sept. 12, 2003), 1275 *Off. Gaz. Pat. Office* 23, 47 (Oct. 7, 2003) (proposed rule). The Office has received a comment and several letters from an intellectual property law organization generally asserting that the Office did not comply with the requirements of the Regulatory Flexibility Act in certifying that the changes in this (and several other) rule makings will not have a significant economic impact on a substantial number of small entities. The intellectual property law organization that submitted a comment and letters argues that the changes to the following sections will increase the burden and economic costs on small entities: §§ 1.4, 1.17, 1.19, 1.53, 1.57, 1.105, 1.111, 1.213. The intellectual property law organization also argues that the Office cannot just label rules that will have a substantial effect on large and small businesses, and that have been objected to by other intellectual property law organizations, as procedural to escape analysis under the Regulatory Flexibility Act. The intellectual property law organization asserts that: (1) 1,435,712 patents were issued between 1977 and 2001 to applicants from the United States of America; (2) 445,872 of these 1,435,712 patents (thirty-one percent) were issued to persons who did not assign their rights in the patents to others; (3) the number of patents obtained by small businesses is undoubtedly higher; and (4) small business and individuals account for a significant portion of the patent business before the Office. The Office has reconsidered the initial certification in view of the comment and letters.

The comment and letters raised several issues that the Office will address. First, the numbers used by the commenters (and even the numbers quoted in this certification) with respect to "small entities" overstate the number of small entities by as much as forty-five percent. In any event, even using the overstated small entity statistics maintained by the Office, none of these rules will impact a substantial number of small entities. Second, the vast majority of the Office's rules are procedural or interpretative, and are thus exempt from the analytical requirements of the Regulatory Flexibility Act. Third, notwithstanding the procedural or interpretative nature of most of the Office's rules, the Office has set forth the factual basis for those rules which commenters allege will create a significant economic impact on a substantial number of small entities. In sum, because the Office provided a sufficient factual basis for the fee changes contained in this final rule, and because the Office has considered, but rejected, all arguments raised regarding the certification in the notice of proposed rule making, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities.

Small entity patent activity (as a percentage): Based upon Office Revenue Accounting and Management (RAM) records, small entity status was claimed in between 27.0 and 36.7 percent of nonprovisional (since 1995) utility patent applications over the last thirteen fiscal years (between fiscal years 1990 and 2003), and small entity status was claimed in between 27.0 and 30.7 percent of nonprovisional utility patent applications over the last five fiscal years (between fiscal years 1999 and 2003).

Small entity status for purposes of paying reduced patent fees may be claimed in a patent application if the applicant is an independent inventor (foreign or domestic), a small business concern (foreign or domestic) meeting the SBA's size standards set forth in 13 CFR 121.801 through 121.805, or a qualifying nonprofit organization (foreign or domestic). *See* 35 U.S.C. 41(h)(1) and § 1.27(a). Small entities within the meaning of Regulatory Flexibility Act analysis or certification are only a subset of small entities for purposes of paying reduced patent fees. The Small Business Administration requires (13 CFR 121.105) that an entity also have a place of business located in the United States, and operate primarily within the United States or make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor, for that entity to be considered a small entity or small business for purposes of the Regulatory Flexibility Act. *See Northwest Mining Ass'n* v. *Babbitt,* 5 F.Supp. 2d 9, 16–17 (D.D.C. 1998) (an agency must use the Small Business Administration's definition of small entity or small business, rather than its own definition, for a Regulatory Flexibility Act analysis or certification). Since about forty-five percent of all nonprovisional applications are filed by residents of foreign countries (this has been the trend for the last five fiscal years), the number of small entities (as defined by the Small Business Administration) impacted by this rule change is actually up to forty-five percent lower than is being estimated by the Office.

Procedural or interpretative nature of most of the rules involved in this rule making: As discussed previously, the changes in this final rule (except for the

adjustment to the fees for a number of patent-related petitions to reflect the actual cost of processing the petitions (§ 1.17)) involve interpretative rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). For example: (1) § 1.4 sets out the requirements for correspondence (including signature requirements) with the Office; (2) § 1.19 sets out the fees for certified and uncertified copies of Office documents (the Office is not changing the fees set forth in § 1.19); (3) § 1.53 sets out the application filing date requirements as provided in 35 U.S.C. 111, and specifies the procedures for completing an application and for contesting the filing date accorded to an application; (4) § 1.57 sets out the procedures for incorporating material by reference in an application; (5) § 1.78 sets out the procedures for claiming the benefit of prior-filed provisional applications, nonprovisional applications, or international applications which designate the U.S.; (6) § 1.98 sets out the procedures for having information considered by the Office; (7) § 1.105 sets out the procedures to be followed by examiners and applicants in issuing and replying to (respectively) requirements for information; (8) § 1.111 sets out the conditions under which a supplemental reply to an Office action may entered; and (9) § 1.115 sets out the conditions under which a preliminary amendment filed on or before the filing date of an application will be treated as part of the original disclosure. As indicated by the U.S. Court of Appeals for the District of Columbia Circuit:

> Our oft-cited formulation holds that the "critical feature" of the procedural exception [of the Administrative Procedure Act] "is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency."

JEM Broad. Co. v. *FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton* v. *Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)). That a rule has or may have a substantial impact or burden on parties, or that an agency receives numerous objections to a rule or proposed rule change, does not convert a procedural rule into a substantive rule. *See James V. Hurson Assocs., Inc.* v. *Glickman*, 229 F.3d 277, 281–82 (D.C. Cir. 2000).

The Office does agree that individuals (independent inventors) and small businesses account for a significant portion of the patent business before the Office, and the Office generally does consider the impact of rule changes (even for regulations exempt from notice and comment requirements, for which a regulatory flexibility analysis is not required under 5 U.S.C. 603) on small entity applicants. For this reason, the Office has often published a notice of proposed rule making for rule makings that are exempt from public comment because the Office is seeking public comment on (*inter alia*) the impacts that a proposed rule (if adopted) will have on the public, which includes small entities. *See, e.g., Clarification of Power of Attorney Practice, and Revisions to Assignment Rules*, 68 FR 38258, 38262 (June 27, 2003), 1272 *Off. Gaz. Pat. Office* 181, 185 (July 29, 2003) (notice seeking comment on changes to procedural rules). *Changes to Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute*, 68 FR 22343, 22349 (Apr. 28, 2003), 1270 *Off. Gaz. Pat. Office* 106, 110 (May 20, 2003) (notice seeking comment on changes to interpretative and procedural rules), and *Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 FR 14365, 14372 (Mar. 25, 2003), 1269 *Off. Gaz. Pat. Office* 166, 172 (Apr. 22, 2003) (notice seeking comment on changes to procedural rules). Nevertheless, since prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes to §§ 1.4, 1.19, 1.53, 1.57, 1.105, and 1.111 in this final rule, a final regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes to §§ 1.4, 1.19, 1.53, 1.57, 1.105, and 1.111 in this final rule.

Discussion of specific sections alleged to increase the burden and economic costs on small entities: The following is a section-by-section discussion of the changes to §§ 1.4, 1.17, 1.19, 1.53, 1.57, 1.105, and 1.111 (the changes that the Office is adopting in this final rule that the intellectual property law organization alleges will increase the burden and economic costs on small entities).

Section 1.4: The intellectual property law organization provides no specific explanation as to how or why the change to § 1.4 will increase the burden and economic costs on small entities. There is no reasonable basis for contending that the change to § 1.4 in this final rule will have a significant economic impact on any entity. The change to this section simply provides additional means of signing certain documents being submitted to the Office. Any entity may continue to either provide correspondence which bears an original handwritten signature, or provide a copy of correspondence which bears an original handwritten signature (where permitted), as provided in former § 1.4(d). Because small entities are not required to use the alternatives to a handwritten signature (and the alternative signatures does not require the purchase of any special software), the final rule does not have any economic impact on small entities. The Office anticipates that the alternative to a handwritten signature now provided for in § 1.4 will be used primarily by residents of foreign countries and large business entities, and that the number of small entities (as defined by the SBA) who will use the alternative to a handwritten signature now provided for in § 1.4 will be very low (less than 1.0%). Therefore, the Office has determined that the change to § 1.4 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.17: The change to this section revises the petition fees set under the authority provided in 35 U.S.C. 41(d) to reflect the actual costs of processing these petitions. The intellectual property law organization argues that: (1) Certain petition fees (*e.g.*, the fee for a petition under § 1.53) are more than the small entity fee for filing an application; (2) there is no reduction in these petition fees for small entities; and (3) no petition fee should be required for any small entity. The arguments do not explain how or why the change to § 1.17 in this final rule has a significant economic impact on a substantial number of small entities, or explain how or why the Office's analysis that this change would impact relatively few (less than 2% of) patent applicants is not correct. The arguments simply present the changes that the intellectual property law organization would like to see made with regard to the Office's proposed change to the petition fees set forth in § 1.17. The Office is not adopting these suggestions because (as discussed with respect to the comments on the proposed change to § 1.17): (1) The comparison of a petition fee set on a cost-recovery basis under 35 U.S.C. 41(d) to a small entity basic filing fee set under 35 U.S.C. 41(a) is inapt as the full (non-small entity) basic filing fee does not recover the cost of initial processing and examination of an application; (2) the small entity fee reduction in 35 U.S.C. 41(h) only applies to fees charged under 35 U.S.C. 41(a) or (b), where the petition fee amounts being changed in this final rule are charged under the authority provided in 35 U.S.C. 41(d); and (2)

there is no authority in the patent statute to reduce a fee charged under 35 U.S.C. 41 by one hundred percent for small entities. As discussed above, the petition fee increase would be either $70.00 or $270.00 depending upon the type of petition, and this petition fee change would impact relatively few (less than 2% of) patent applicants. Therefore, the Office has determined that the change to § 1.17 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.19: The intellectual property law organization argues that the imposition of additional document supply fees will increase the burden and economic costs on small entity applicants. The Office is not revising the document supply fees set forth in § 1.19. The Office is revising § 1.19 to provide that the Office may supply documents on paper or on an electronic medium (*i.e.*, compact disc or by electronic mail message via the Internet) regardless of the form in which the document was originally submitted to the Office, and to provide that the applicable fee is based upon the medium (paper or electronic) upon which the document is being supplied by the Office rather than the medium upon which the document was originally submitted to the Office. This change to § 1.19 will result in many requesters paying less because the fee for the Office to provide a document in an electronic medium ($55.00 for the first compact disc) is lower than the fee for the Office to provide the document in paper form ($200 for the first 400 pages). The Office receives fewer than 10,000 requests for a copy of the file wrapper and contents of a patent or patent application each year. Since the changes in this final rule will reduce or have no effect on the document fees under § 1.19, this change to § 1.19 will not have a significant economic impact on a substantial number of small entities even if all 10,000 requests for a copy of the file wrapper and contents of a patent or patent application received by the Office each year are by a small entity. In any event, the document supply fees set forth in § 1.19 are not fees that an applicant for patent must pay as part of the patent application process; rather, the document supply fees set forth in § 1.19 are fees that the Office charges for persons who wish to purchase patent documents (*i.e.*, Office patent products) from the Office. Therefore, the Office has determined that the change to § 1.19 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.53: The intellectual property law organization argues that, where an application has been filed with omitted drawings or pages of specification, the Office should permit applicants the option of retaining the original filing date and proceeding with the application as filed. The only change to § 1.53 in this final rule is to provide that a petition under § 1.53 requires the petition fee under § 1.17(f) ($400.00), rather than the petition fee under § 1.17(h) ($130.00). The Office estimates that fewer than 2,000 petitions under § 1.53 are filed each year (and since the small entity filing rate has not exceeded 31.0% during the last five fiscal years, the Office further estimates that there will be fewer than 620 petitions under § 1.53 by a small entity), and these petitions are included in the fewer than 5,000 petitions indicated as being affected by the fee change from $130.00 to $400.00 (see discussion of the change to § 1.17). The Office is otherwise retaining the practice for treating applications filed with omitted drawings or pages of specification set forth in MPEP 601.01(d) through 601.01(g). Therefore, the Office has determined that the change to § 1.53 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.57: The intellectual property law organization argues that § 1.57 is too rigid and inflexible and that incorporation by reference should be more liberal and open. Section 1.57 is adopted to codify the current incorporation by reference practice set forth in MPEP 608.01(p), and also provide the conditions under which a claim for priority or benefit of a prior-filed application would be considered an incorporation by reference of the prior-filed application. The codification of the current incorporation by reference practice set forth in MPEP 608.01(p) is not a change in practice. While the intellectual property law organization complains that the requirement in § 1.57(b) that an applicant express the incorporation by reference by using the root words "incorporat(e)" and "reference," and identify the referenced patent, application, or publication in the manner set forth in §§ 1.98(b)(1) through (b)(5) are too rigid, the requirement that a patent applicant provide this information when incorporating material by reference into an application (*i.e.*, that an applicant be clear when making an incorporation by reference) has no economic impact, let alone a "significant economic impact" on any entity. Any entity who considers the conditions set forth in § 1.57(a) under which a claim for priority or benefit of a prior-filed application may now be considered an incorporation by reference of the prior-filed application to be too onerous, rigid, and inflexible may simply decline to take advantage of this provision by not amending the application to include any omitted portion of the specification or drawing(s) that is disclosed in a prior-filed application.

Therefore, the Office has determined that the change to § 1.57 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.105: Section 1.105(a)(1) provides that in the course of examining or treating a matter in a pending or abandoned application filed under 35 U.S.C. 111 or 371 (including a reissue application), in a patent, or in a reexamination proceeding, the examiner or other Office employee may require the submission of such information as may be reasonably necessary to properly examine or treat the matter. Section 1.105(a)(1) then proceeds to set forth examples of information requirements. The change to § 1.105(a)(1) in this final rule is to add the following example: technical information known to applicant concerning the interpretation of the related art, the disclosure, the claimed subject matter, other factual information pertinent to patentability, or the accuracy of the examiner's stated interpretation of such items. Section 1.105(a)(3) sets forth examples of formats that requirements for factual information may be presented in any appropriate form, namely: (1) A requirement for information; (2) interrogatories in the form of specific questions seeking applicant's factual knowledge; or (3) stipulations as to facts with which the applicant may agree or disagree. The Office estimates that a requirement for information will be issued in fewer than one hundred (0.03% of) nonprovisional patent applications each fiscal year. Since a requirement for information under § 1.105 is issued only rarely during the course of examining a nonprovisional application (fewer than one hundred each year), the change to § 1.105 in this final rule would not impact a substantial number of small entities no matter what percentage of requirements for information under § 1.105 are issued in small entity nonprovisional applications.

Moreover, § 1.105 does not place any new requirements on applicants, but is simply a codification of the Office's (and the examiner's) inherent authority under 35 U.S.C. 131 and 132 to require information that is reasonably necessary to properly examine or treat a matter in an application. *See Changes to*

Implement the Patent Business Goals, 65 FR at 54633, 1238 *Off. Gaz. Pat. Office* at 103; *see also Jaskiewicz* v. *Mossinghoff*, 822 F.2d at 1061, 3 USPQ2d at 1301 (practitioners have a duty to honestly and forthrightly answer requirements for information from the Office). The change to § 1.105 in this final rule adds no new requirements. Section 1.105 has been in effect for over three years (since November of 2000). Section 1.105 now merely provides an additional example of information that may be required by the Office, and the format by which the Office may require the information, which is permitted under the Office's (and the examiner's) authority under 35 U.S.C. 131 and 132 and former § 1.105 to require information that is reasonably necessary to properly examine or treat a matter in an application). Finally, the Office does not believe that § 1.105, or the changes to § 1.105 to provide an additional example of information that may be required by the Office and the format by which the Office may require the information, will have a "significant economic impact" on any entity because this provision requires the entity to provide only the factual information that is readily available. *See* § 1.105(a)(4). Therefore, the Office has determined that the change to § 1.105 in this final rule will not have a significant economic impact on a substantial number of small entities.

Section 1.111: The change to § 1.111 in this final rule is to provide that a supplemental reply will not (with certain exceptions) be entered as a matter of right. Based upon Office PALM records, over 235,500 replies to non-final Office actions were filed in fiscal year 2003 in applications that were pending before the Office, and fewer than 8,270 of these replies were followed by a supplemental reply. Since the small entity filing rate has not exceeded 31.0% during the last five fiscal years, the Office further estimates that fewer 2,564 replies in a small entity nonprovisional application were followed by a supplemental reply. In addition, the Office will enter a supplemental reply that is filed within the period during which action is suspended by the Office under § 1.103(a) or (c). Thus, if a patent applicant has good cause to file a supplemental reply, the applicant may file the initial reply with a petition for suspension of action under § 1.103(a). Moreover, even if a patent applicant does not have good cause to file a supplemental reply, the applicant may file the initial reply with an RCE under § 1.114 (assuming that the conditions of § 1.114 are otherwise met) with a petition for suspension of action under § 1.103(c). The Office is not adjusting the fees for an RCE or for a petition for suspension of action under § 1.103(c), and the change to the fee for a petition for suspension of action under § 1.103(a) (from $130.00 to $200.00) is covered in the discussion of the change to § 1.17. Therefore, the Office has determined that the change to § 1.111 in this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0016, 0651–0020, 0651–0031, 0651–0032, 0651–0033, 0651–0034 and 0651–0036.

The title, description and respondent description of each of the information collections is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impacts of the changes in this final rule are to (1) expressly provide for an alternative signature on a number of submissions; (2) adjust the fees for many of the petitions listed under § 1.17(h) to reflect the Office's actual cost of processing these petitions; and (3) expand the submissions that can be filed on a compact disc.

OMB Number: 0651–0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Type of Review: Approved through May of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 348,140.

Estimated Time Per Response: Between 20 seconds and 8 hours.

Estimated Total Annual Burden Hours: 30,735 hours.

Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,859.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,905 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office (USPTO) by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the USPTO to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/17i, PTO/SB/17P, PTO/SB/21–27, PTO/SB/30–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97,

PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,223,639.

Estimated Time Per Response: 1 minute and 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 2,724,957 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Submission of priority documents and Amendments.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: 22 minutes to 10 hours and 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the USPTO in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44, PTO/SB/50–51, PTO/SB/51S, PTO/SB/52–53, PTO/SB/56–58, PTOL–85B.

Type of Review: Approved through April of 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local or Tribal Governments.

Estimated Number of Respondents: 223, 411.

Estimated Time Per Response: 1.8 minutes to 2 hours.

Estimated Total Annual Burden Hours: 67,261 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.

Title: Secrecy and License to Export.

Form Numbers: None.

Type of Review: Approved through May 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Number of Respondents: 1,669.

Estimated Time Per Response: Between 30 minutes and 4 hours.

Estimated Total Annual Burden Hours: 1,310 hours.

Needs and Uses: When disclosure of an invention may be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the publication of the application or grant of a patent for such period as the national interest requires. The USPTO is also required to grant foreign filing licenses in certain circumstances to applicants filing patent applications in foreign countries. This collection is used by the public to petition the USPTO to allow disclosure, modification, or rescission of a secrecy order, or to obtain a general or group permit. Applicants may also petition the USPTO for a foreign filing license or a retroactive license.

OMB Number: 0651–0036.

Title: Statutory Invention Registration.

Form Number: PTO/SB/94.

Type of Review: Approved through April of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local or Tribal Governments.

Estimated Number of Respondents: 73.

Estimated Time Per Response: 24 minutes.

Estimated Total Annual Burden Hours: 29 hours.

Needs and Uses: This collection of information is necessary to ensure that the requirements of 35 U.S.C. 157 and 37 CFR 1.293 through 1.297 are met. The public uses form PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly filed patent application as a statutory invention registration, to waive the right to receive a United States patent on the same invention claimed in the identified patent application, and to agree that the waiver will be effective upon publication of the statutory invention registration. The USPTO uses form PTO/SB/94, Request for a Statutory Invention Registration, to review, grant, or deny a request for a statutory invention registration. No forms are associated with the petition to review final refusal to publish a statutory invention registration or the petition to withdraw a publication request. The petition to review final refusal to publish a statutory invention registration is used by the public to petition the USPTO's rejection of a request for a statutory invention registration. The USPTO uses the petition to withdraw a publication request to review requests to stop publication of a statutory invention registration.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW.,

Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents, Reporting and recordkeeping requirements, Small Businesses.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

37 CFR Part 104

Administrative practice and procedure, Claims, Courts, Freedom of Information, Inventions and patents, Tort Claims, Trademarks.

■ For the reasons set forth in the preamble, 37 CFR Parts 1, 5 and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.4 is amended by revising paragraphs (d) and (e), and adding new paragraph (h) immediately before the section authority citation to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) *Handwritten signature.* Each piece of correspondence, except as provided in paragraphs (d)(2), (d)(3), (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

(i) Be an original, that is, have an original handwritten signature personally signed, in permanent dark ink or its equivalent, by that person; or

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(2) *S-signature.* An S-signature is a signature inserted between forward slash marks, but not a handwritten signature as defined by § 1.4(d)(1). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by either a handwritten signature of § 1.4(d)(1) or an Office Electronic Filing System (EFS) character coded signature of § 1.4(d)(3). Correspondence being filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), with a signature in permanent dark ink or its equivalent, or via the Office Electronic Filing System as an EFS Tag(ged) Image File Format (TIFF) attachment, for a patent application, patent, or a reexamination proceeding may be S-signature signed instead of being personally signed (*i.e.*, with a handwritten signature) as provided for in paragraph (d)(1) of this section. The requirements for an S-signature under this paragraph (d)(2) are as follows:

(i) The S-signature must consist only of letters, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation, and the person signing the correspondence must insert his or her own S-signature with a first single forward slash mark before, and a second single forward slash mark after, the S-signature (*e.g.*, /Dr. James T. Jones, Jr./); and

(ii) A registered practitioner, signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2), must supply his/her registration number, either as part of the S-signature, or immediately below or adjacent the S-signature. The number (#) character may only be used as part of the S-signature when appearing before a practitioner's registration number; otherwise the number character may not be used in an S-signature.

(iii) The signer's name must be:

(A) Presented in printed or typed form preferably immediately below or adjacent the S-signature, and

(B) Reasonably specific enough so that the identity of the signer can be readily recognized.

(3) *EFS character coded signature.* Correspondence in character coded form being filed via the Office Electronic Filing System for a patent application or patent may be signed electronically. The electronic signature must consist only of letters of the English alphabet, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation. The person signing the correspondence must personally insert the electronic signature with a first single forward slash mark before, and a second single forward slash mark after, the electronic signature (*e.g.*, /Dr. James T. Jones, Jr./).

(4) *Certifications.* (i) *Section 10.18 certifications:* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) of this chapter may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15) of this chapter.

(ii) *Certifications as to the signature:* (A) *Of another:* A person submitting a document signed by another under paragraphs (d)(2) or (d)(3) of this section is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature.

(B) *Self certification:* The person inserting a signature under paragraphs (d)(2) or (d)(3) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.

(C) *Sanctions:* Violations of the certifications as to the signature of another or a person's own signature, set forth in paragraphs (d)(4)(ii)(A) and (B) of this section, may result in the imposition of sanctions under § 10.18(c) and (d) of this chapter.

(e) Correspondence requiring a person's signature and relating to registration practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original handwritten signature personally signed in permanent dark ink or its equivalent by that person.

* * * * *

(h) *Ratification/confirmation/evidence of authenticity*: The Office may require ratification, confirmation (which includes submission of a duplicate document but with a proper signature), or evidence of authenticity of a

signature, such as when the Office has reasonable doubt as to the authenticity (veracity) of the signature, *e.g.*, where there are variations of a signature, or where the signature and the typed or printed name, do not clearly identify the person signing.

* * * * *

■ 3. Section 1.6 is amended by revising paragraph (d)(4) and removing and reserving paragraph (e) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * * * *

(d) * * *

(4) Color drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.173, or 1.437;

* * * * *

■ 4. Section 1.8 is amended by revising the introductory text of paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

* * * * *

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

* * * * *

■ 5. Section 1.10 is amended by adding new paragraphs (g), (h), and (i) to read as follows:

§ 1.10 Filing of correspondence by "Express Mail."

* * * * *

(g) Any person who mails correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but has the correspondence returned by the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed promptly after the person becomes aware of the return of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon and a copy of the "Express Mail" mailing label showing the "date-in"; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was returned by the USPS due to an interruption or emergency in "Express Mail" service.

(h) Any person who attempts to mail correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but has the correspondence refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed promptly after the person becomes aware of the refusal of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the attempted mailing by "Express Mail";

(3) The petition includes the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon; and

(4) The petition includes a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service.

(i) Any person attempting to file correspondence under this section that was unable to be deposited with the USPS due to an interruption or emergency in "Express Mail" service which has been so designated by the Director, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in "Express Mail" service;

(2) The petition includes the original correspondence or a copy of the original correspondence; and

(3) The petition includes a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service, and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

■ 6. Section 1.12 is amended by revising paragraph (c)(1) to read as follows:

§ 1.12 Assignment records open to public inspection.

* * * * *

(c) * * *

(1) Be in the form of a petition including the fee set forth in § 1.17(g); or

* * * * *

■ 7. Section 1.14 is amended by revising paragraph (h)(1) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(h) * * *

(1) The fee set forth in § 1.17(g); and

* * * * *

■ 8. Section 1.17 is amended by revising paragraphs (h) and (i), and adding new paragraphs (f) and (g) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph: $400.00.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(g) For filing a petition under one of the following sections which refers to this paragraph: $200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.296—to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

(h) For filing a petition under one of the following sections which refers to this paragraph: $130.00.

§ 1.19(g)—to request documents in a form other than that provided in this part.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102(d)—to make an application special.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph: $130.00.

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

■ 9. Section 1.19 is amended by revising its introductory text and paragraph (b), and by adding paragraph (g), to read as follows:

§ 1.19 Document supply fees.

The United States Patent and Trademark Office will supply copies of the following patent-related documents upon payment of the fees indicated. Paper copies will be in black and white unless the original document is in color, a color copy is requested and the fee for a color copy is paid.

* * * * *

(b) Copies of Office documents to be provided in paper, or in electronic form, as determined by the Director (for other patent-related materials see § 1.21(k)):

(1) Copy of a patent application as filed, or a patent-related file wrapper and contents, stored in paper in a paper file wrapper, in an image format in an image file wrapper, or if color documents, stored in paper in an Artifact Folder:

(i) If provided on paper:

(A) Application as filed: $20.00.

(B) File wrapper and contents of 400 or fewer pages: $200.00.

(C) Additional fee for each additional 100 pages or portion thereof of file wrapper and contents: $40.00.

(D) Individual application documents, other than application as filed, per document: $25.00.

(ii) If provided on compact disc or other physical electronic medium in a single order:

(A) Application as filed: $20.00.

(B) File wrapper and contents, first physical electronic medium: $55.00.

(C) Additional fee for each continuing physical electronic medium in the single order of paragraph (b)(1)(ii)(B) of this section: $15.00.

(iii) If provided electronically (*e.g.*, by electronic transmission) other than on a physical electronic medium as specified in paragraph (b)(1)(ii) of this section:

(A) Application as filed: $20.00.

(B) File wrapper and contents: $55.00.

(2) Copy of patent-related file wrapper contents that were submitted and are stored on compact disc or other electronic form (*e.g.*, compact discs stored in an Artifact Folder), other than as available in paragraph (b)(1) of this section:

(i) If provided on compact disc or other physical electronic medium in a single order:

(A) First physical electronic medium in a single order: $55.00.

(B) Additional fee for each continuing physical electronic medium in the single order of paragraph (b)(2)(i) of this section: $15.00.

(ii) If provided electronically other than on a physical electronic medium per order: $55.00.

(3) Copy of Office records, except copies available under paragraph (b)(1) or (2) of this section: $25.00.

(4) For assignment records, abstract of title and certification, per patent: $25.00.

* * * * *

(g) Petitions for documents in a form other than that provided by this part, or in a form other than that generally provided by the Director, will be decided in accordance with the merits of each situation. Any petition seeking a decision under this section must be

accompanied by the petition fee set forth in § 1.17(h) and, if the petition is granted, the documents will be provided at cost.

■ 10. Section 1.27 is amended by revising paragraph (a) to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

(a) *Definition of small entities.* A small entity as used in this chapter means any party (person, small business concern, or nonprofit organization) under paragraphs (a)(1) through (a)(3) of this section.

(1) *Person.* A person, as used in paragraph (c) of this section, means any inventor or other individual (*e.g.*, an individual to whom an inventor has transferred some rights in the invention) who has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention. An inventor or other individual who has transferred some rights in the invention to one or more parties, or is under an obligation to transfer some rights in the invention to one or more parties, can also qualify for small entity status if all the parties who have had rights in the invention transferred to them also qualify for small entity status either as a person, small business concern, or nonprofit organization under this section.

(2) *Small business concern.* A small business concern, as used in paragraph (c) of this section, means any business concern that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization; and

(ii) Meets the size standards set forth in 13 CFR 121.801 through 121.805 to be eligible for reduced patent fees. Questions related to standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

(3) *Nonprofit Organization.* A nonprofit organization, as used in paragraph (c) of this section, means any nonprofit organization that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify as a person, small business concern, or a nonprofit organization; and

(ii) Is either:

(A) A university or other institution of higher education located in any country;

(B) An organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));

(C) Any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or

(D) Any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (a)(3)(ii)(B) of this section or (a)(3)(ii)(C) of this section if it were located in this country.

(4) *License to a Federal agency.* (i) For persons under paragraph (a)(1) of this section, a license to the Government resulting from a rights determination under Executive Order 10096 does not constitute a license so as to prohibit claiming small entity status.

(ii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (a)(3) of this section, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license for the purposes of paragraphs (a)(2)(i) and (a)(3)(i) of this section.

(5) *Security Interest.* A security interest does not involve an obligation to transfer rights in the invention for the purposes of paragraphs (a)(1) through (a)(3) of this section unless the security interest is defaulted upon.

* * * * *

■ 11. Section 1.47 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(g), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(g), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

* * * * *

■ 12. Section 1.52 is amended by revising the section heading and paragraphs (b)(2)(ii), (e)(1), (e)(3)(i) and (e)(3)(ii) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(b) * * *

(2) * * *

(ii) Text written in a nonscript type font (*e.g.*, Arial, Times Roman, or Courier, preferably a font size of 12) lettering style having capital letters which should be at least 0.3175 cm. (0.125 inch) high, but may be no smaller than 0.21 cm. (0.08 inch) high (*e.g.*, a font size of 6); and

* * * * *

(e) * * *

(1) The following documents may be submitted to the Office on a compact disc in compliance with this paragraph:

(i) A computer program listing (see § 1.96);

(ii) A "Sequence Listing" (submitted under § 1.821(c)); or

(iii) Any individual table (see § 1.58) if the table is more than 50 pages in length, or if the total number of pages of all of the tables in an application exceeds 100 pages in length, where a table page is a page printed on paper in conformance with paragraph (b) of this section and § 1.58(c).

* * * * *

(3)(i) Each compact disc must conform to the International Standards Organization (ISO) 9660 standard, and the contents of each compact disc must be in compliance with the American Standard Code for Information

Interchange (ASCII). CD–R discs must be finalized so that they are closed to further writing to the CD–R.

(ii) Each compact disc must be enclosed in a hard compact disc case within an unsealed padded and protective mailing envelope and accompanied by a transmittal letter on paper in accordance with paragraph (a) of this section. The transmittal letter must list for each compact disc the machine format (*e.g.*, IBM–PC, Macintosh), the operating system compatibility (*e.g.*, MS–DOS, MS–Windows, Macintosh, Unix), a list of files contained on the compact disc including their names, sizes in bytes, and dates of creation, plus any other special information that is necessary to identify, maintain, and interpret (*e.g.*, tables in landscape orientation should be identified as landscape orientation or be identified when inquired about) the information on the compact disc. Compact discs submitted to the Office will not be returned to the applicant.

* * * * *

■ 13. Section 1.53 is amended by revising paragraph (e)(2) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(e) * * *

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

* * * * *

■ 14. Section 1.57 is added to read as follows:

§ 1.57 Incorporation by reference.

(a) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or a claim under § 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the filing date of the application, and the inadvertently omitted portion of the specification or drawing(s) is completely contained in the prior-filed application, the claim under § 1.55 or § 1.78 shall also be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification or drawing(s).

(1) The application must be amended to include the inadvertently omitted portion of the specification or drawing(s) within any time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114(b), or abandonment of the application, whichever occurs earlier. The applicant is also required to:

(i) Supply a copy of the prior-filed application, except where the prior-filed application is an application filed under 35 U.S.C. 111;

(ii) Supply an English language translation of any prior-filed application that is in a language other than English; and

(iii) Identify where the inadvertently omitted portion of the specification or drawings can be found in the prior-filed application.

(2) Any amendment to an international application pursuant to this paragraph shall be effective only as to the United States, and shall have no effect on the international filing date of the application. In addition, no request to add the inadvertently omitted portion of the specification or drawings in an international application designating the United States will be acted upon by the Office prior to the entry and commencement of the national stage (§ 1.491) or the filing of an application under 35 U.S.C. 111(a) which claims benefit of the international application.

(3) If an application is not otherwise entitled to a filing date under § 1.53(b), the amendment must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f).

(b) Except as provided in paragraph (a) of this section, an incorporation by reference must be set forth in the specification and must:

(1) Express a clear intent to incorporate by reference by using the root words "incorporat(e)" and "reference" (*e.g.*, "incorporate by reference"); and

(2) Clearly identify the referenced patent, application, or publication.

(c) "Essential material" may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. "Essential material" is material that is necessary to:

(1) Provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by the first paragraph of 35 U.S.C. 112;

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112; or

(3) Describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by the sixth paragraph of 35 U.S.C. 112.

(d) Other material ("Nonessential material") may be incorporated by reference to U.S. patents, U.S. patent application publications, foreign patents, foreign published applications, prior and concurrently filed commonly owned U.S. applications, or non-patent publications. An incorporation by reference by hyperlink or other form of browser executable code is not permitted.

(e) The examiner may require the applicant to supply a copy of the material incorporated by reference. If the Office requires the applicant to supply a copy of material incorporated by reference, the material must be accompanied by a statement that the copy supplied consists of the same material incorporated by reference in the referencing application.

(f) Any insertion of material incorporated by reference into the specification or drawings of an application must be by way of an amendment to the specification or drawings. Such an amendment must be accompanied by a statement that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter.

(g) An incorporation of material by reference that does not comply with paragraphs (b), (c), or (d) of this section is not effective to incorporate such material unless corrected within any time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114(b), or abandonment of the application, whichever occurs earlier. In addition:

(1) A correction to comply with paragraph (b)(1) of this section is permitted only if the application as filed clearly conveys an intent to incorporate the material by reference. A mere

reference to material does not convey an intent to incorporate the material by reference.

(2) A correction to comply with paragraph (b)(2) of this section is only permitted for material that was sufficiently described to uniquely identify the document.

■ 15. Section 1.58 is revised to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulae, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables, but the same tables may only be included in both the drawings and description portion of the specification if the application was filed under 35 U.S.C. 371. Claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

(b) Tables that are submitted in electronic form (§§ 1.96(c) and 1.821(c)) must maintain the spatial relationships (*e.g.*, alignment of columns and rows) of the table elements when displayed so as to visually preserve the relational information they convey. Chemical and mathematical formulae must be encoded to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning.

(c) Chemical and mathematical formulae and tables must be presented in compliance with § 1.52(a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulae and tables must be chosen from a block (nonscript) type font or lettering style having capital letters which should be at least 0.422 cm. (0.166 inch) high (*e.g.*, preferably Arial, Times Roman, or Courier with a font size of 12), but may be no smaller than 0.21 cm. (0.08 inch) high (*e.g.*, a font size of 6). A space at least 0.64 cm. (1/4 inch) high should be provided between complex formulae and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

■ 16. Section 1.59 is amended by revising paragraph (b) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

* * * * *

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

* * * * *

■ 17. Section 1.63 is amended by revising paragraph (d)(4) to read as follows:

§ 1.63 Oath or declaration.

* * * * *

(d) * * *

(4) Where the power of attorney or correspondence address was changed during the prosecution of the prior application, the change in power of attorney or correspondence address must be identified in the continuation or divisional application. Otherwise, the Office may not recognize in the continuation or divisional application the change of power of attorney or correspondence address during the prosecution of the prior application.

* * * * *

■ 18. Section 1.69 is amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration is in a language other than English, or in a form provided in accordance with PCT Rule 4.17(iv), it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

* * * * *

■ 19. Section 1.76 is amended by revising paragraphs (a), (b)(4), (c)(2) and (d) to read as follows:

§ 1.76 Application data sheet.

(a) *Application data sheet.* An application data sheet is a sheet or sheets, that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. An application data sheet must be titled "Application Data Sheet" and must contain all of the section headings listed in paragraph (b) of this section, with any appropriate data for each section heading. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.

(b) * * *

(4) *Representative information.* This information includes the registration number of each practitioner having a power of attorney in the application (preferably by reference to a customer number). Providing this information in the application data sheet does not constitute a power of attorney in the application (see § 1.32).

* * * * *

(c) * * *

(2) Must be titled "Supplemental Application Data Sheet," include all of the section headings listed in paragraph (b) of this section, include all appropriate data for each section heading, and must identify the information that is being changed, preferably with underlining for insertions, and strike-through or brackets for text removed.

(d) *Inconsistencies between application data sheet and other documents.* For inconsistencies between information that is supplied by both an application data sheet under this section and other documents.

(1) The latest submitted information will govern notwithstanding whether supplied by an application data sheet, an amendment to the specification, a designation of a correspondence address, or by a § 1.63 or § 1.67 oath or declaration, except as provided by paragraph (d)(3) of this section;

(2) The information in the application data sheet will govern when the inconsistent information is supplied at the same time by an amendment to the specification, a designation of correspondence address, or a § 1.63 or § 1.67 oath or declaration, except as provided by paragraph (d)(3) of this section;

(3) The oath or declaration under § 1.63 or § 1.67 governs inconsistencies with the application data sheet in the naming of inventors (§ 1.41(a)(1)) and setting forth their citizenship (35 U.S.C. 115);

(4) The Office will capture bibliographic information from the application data sheet (notwithstanding whether an oath or declaration governs the information). Thus, the Office shall generally, for example, not look to an oath or declaration under § 1.63 to see if the bibliographic information contained therein is consistent with the bibliographic information captured from an application data sheet (whether the oath or declaration is submitted prior to or subsequent to the application data sheet). Captured bibliographic information derived from an application

data sheet containing errors may be corrected if applicant submits a request therefor and a supplemental application data sheet.

■ 20. Section 1.78 is amended by revising paragraphs (a)(1), (a)(2)(iii), (a)(5)(iii), and (c) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iii) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2) * * *

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

* * * * *

(5) * * *

(iii) If the later-filed application is a non-provisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

* * * * *

(c) If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same person and contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the Office may require the assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor. Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made, the conflicting claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination.

* * * * *

■ 21. Section 1.83 is amended by revising paragraph (a) to read as follows:

§ 1.83 Content of drawing.

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (*e.g.*, a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

* * * * *

■ 22. Section 1.84 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings; and

(iii) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

* * * * *

(c) *Identification of drawings.* Identifying indicia should be provided, and if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet within the top margin. Each drawing sheet submitted after the filing date of an application must be identified as either "Replacement Sheet" or "New Sheet" pursuant to § 1.121(d). If a marked-up copy of any amended drawing figure including annotations indicating the changes made is filed, such marked-up copy must be clearly labeled as "Annotated Sheet" pursuant to § 1.121(d)(1).

* * * * *

■ 23. Section 1.85 is amended by revising paragraph (c) to read as follows:

§ 1.85 Corrections to drawings.

* * * * *

(c) If a corrected drawing is required or if a drawing does not comply with § 1.84 at the time an application is allowed, the Office may notify the applicant and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing in compliance with § 1.84 to avoid abandonment. This time period is not extendable under § 1.136(a) or § 1.136(b).

■ 24. Section 1.91 is amended by adding paragraph (c) to read as follows:

§ 1.91 Models or exhibits not generally admitted as part of application or patent.

* * * * *

(c) Unless the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84 under paragraph (a)(1) of this section, it must be accompanied by photographs that show multiple views of the material

features of the model or exhibit and that substantially conform to the requirements of § 1.84.

■ 25. Section 1.94 is revised to read as follows:

§ 1.94 Return of models, exhibits or specimens.

(a) Models, exhibits, or specimens may be returned to the applicant if no longer necessary for the conduct of business before the Office. When applicant is notified that a model, exhibit, or specimen is no longer necessary for the conduct of business before the Office and will be returned, applicant must arrange for the return of the model, exhibit, or specimen at the applicant's expense. The Office will dispose of perishables without notice to applicant unless applicant notifies the Office upon submission of the model, exhibit or specimen that a return is desired and makes arrangements for its return promptly upon notification by the Office that the model, exhibit or specimen is no longer necessary for the conduct of business before the Office.

(b) Applicant is responsible for retaining the actual model, exhibit, or specimen for the enforceable life of any patent resulting from the application. The provisions of this paragraph do not apply to a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84, where the model or exhibit has been described by photographs that substantially conform to § 1.84, or where the model, exhibit or specimen is perishable.

(c) Where applicant is notified, pursuant to paragraph (a) of this section, of the need to arrange for return of a model, exhibit or specimen, applicant must arrange for the return within the period set in such notice, to avoid disposal of the model, exhibit or specimen by the Office. Extensions of time are available under § 1.136, except in the case of perishables. Failure to establish that the return of the item has been arranged for within the period set or failure to have the item removed from Office storage within a reasonable amount of time notwithstanding any arrangement for return, will permit the Office to dispose of the model, exhibit or specimen.

■ 26. Section 1.98 is amended by revising paragraphs (a) and (c) and removing paragraph (e) to read as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(1) A list of all patents, publications, applications, or other information submitted for consideration by the Office. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents. Each page of the list must include:

(i) The application number of the application in which the information disclosure statement is being submitted;

(ii) A column that provides a space, next to each document to be considered, for the examiner's initials; and

(iii) A heading that clearly indicates that the list is an information disclosure statement.

(2) A legible copy of:

(i) Each foreign patent;

(ii) Each publication or that portion which caused it to be listed, other than U.S. patents and U.S. patent application publications unless required by the Office;

(iii) For each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and

(iv) All other information or that portion which caused it to be listed.

(3)(i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.

(ii) A copy of the translation if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

* * * * *

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications as specified in paragraph (a) of this section may be submitted without copies of the other patents or publications, provided that it is stated that these other patents or publications are cumulative.

* * * * *

■ 27. Section 1.102 is amended by revising paragraph (c) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(c) A petition to make an application special may be filed without a fee if the basis for the petition is:

(1) The applicant's age or health; or

(2) That the invention will materially:

(i) Enhance the quality of the environment;

(ii) Contribute to the development or conservation of energy resources; or

(iii) Contribute to countering terrorism.

* * * * *

■ 28. Section 1.103 is amended by revising paragraph (a)(2) to read as follows:

§ 1.103 Suspension of action by the Office.

(a) * * *

(2) The fee set forth in § 1.17(g), unless such cause is the fault of the Office.

* * * * *

■ 29. Section 1.105 is amended by revising paragraph (a)(3) and by adding new paragraphs (a)(1)(viii) and (a)(4) to read as follows:

§ 1.105 Requirements for information.

(a)(1) * * *

(viii) *Technical information known to applicant.* Technical information known to applicant concerning the related art, the disclosure, the claimed subject matter, other factual information pertinent to patentability, or concerning the accuracy of the examiner's stated interpretation of such items.

* * * * *

(3) Requirements for factual information known to applicant may be presented in any appropriate manner, for example:

(i) A requirement for factual information;

(ii) Interrogatories in the form of specific questions seeking applicant's factual knowledge; or

(iii) Stipulations as to facts with which the applicant may agree or disagree.

(4) Any reply to a requirement for information pursuant to this section that states either that the information required to be submitted is unknown to or is not readily available to the party or parties from which it was requested may be accepted as a complete reply.

* * * * *

■ 30. Section 1.111 is amended by revising paragraph (a)(2) to read as follows:

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a) * * *

(2) *Supplemental replies.* (i) A reply that is supplemental to a reply that in compliance with § 1.111(b) will not be entered as a matter of right except as

provided in paragraph (a)(2)(ii) of this section. The Office may enter a supplemental reply if the supplemental reply is clearly limited to:

(A) Cancellation of a claim(s);

(B) Adoption of the examiner suggestion(s);

(C) Placement of the application in condition for allowance;

(D) Reply to an Office requirement made after the first reply was filed;

(E) Correction of informalities (*e.g.*, typographical errors); or

(F) Simplification of issues for appeal.

(ii) A supplemental reply will be entered if the supplemental reply is filed within the period during which action by the Office is suspended under § 1.103(a) or (c).

* * * * *

■ 31. Section 1.115 is revised to read as follows:

§ 1.115 Preliminary amendments.

(a) A preliminary amendment is an amendment that is received in the Office (§ 1.6) on or before the mail date of the first Office action under § 1.104. The patent application publication may include preliminary amendments (§ 1.215(a)).

(1) A preliminary amendment that is present on the filing date of an application is part of the original disclosure of the application.

(2) A preliminary amendment filed after the filing date of the application is not part of the original disclosure of the application.

(b) A preliminary amendment in compliance with § 1.121 will be entered unless disapproved by the Director.

(1) A preliminary amendment seeking cancellation of all the claims without presenting any new or substitute claims will be disapproved.

(2) A preliminary amendment may be disapproved if the preliminary amendment unduly interferes with the preparation of a first Office action in an application. Factors that will be considered in disapproving a preliminary amendment include:

(i) The state of preparation of a first Office action as of the date of receipt (§ 1.6) of the preliminary amendment by the Office; and

(ii) The nature of any changes to the specification or claims that would result from entry of the preliminary amendment.

(3) A preliminary amendment will not be disapproved under (b)(2) of this section if it is filed no later than:

(i) Three months from the filing date of an application under § 1.53(b);

(ii) The filing date of a continued prosecution application under § 1.53(d); or

(iii) Three months from the date the national stage is entered as set forth in § 1.491 in an international application.

(4) The time periods specified in paragraph (b)(3) of this section are not extendable.

■ 32. Section 1.121 is amended by revising paragraph (d) to read as follows:

§ 1.121 Manner of making amendments in applications.

* * * * *

(d) *Drawings:* One or more application drawings shall be amended in the following manner: Any changes to an application drawing must be in compliance with § 1.84 and must be submitted on a replacement sheet of drawings which shall be an attachment to the amendment document and, in the top margin, labeled "Replacement Sheet." Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. Any new sheet of drawings containing an additional figure must be labeled in the top margin as "New Sheet." All changes to the drawings shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

(1) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change to the drawings.

(2) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.

* * * * *

■ 33. Section 1.131 is amended by revising paragraph (b) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

* * * * *

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

■ 34. Section 1.136 is amended by revising paragraph (b) to read as follows:

§ 1.136 Extensions of time.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and § 1.956 for extensions of time in *inter partes* reexamination proceedings. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

* * * * *

■ 35. Section 1.137 is amended by revising paragraph (d)(3) to read as follows:

§ 1.137 Revival of abandoned application, terminated reexamination proceedings, or lapsed patent.

* * * * *

(d) * * *

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, to reissue applications, or to reexamination proceedings.

* * * * *

■ 36. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Plant drawings.

* * * * *

(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs must be submitted.

■ 37. Section 1.173 is amended by revising paragraph (b) introductory text to read as follows:

§ 1.173 Reissue specification, drawings, and amendments.

* * * * *

(b) *Making amendments in a reissue application.* An amendment in a reissue

application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

* * * * *

■ 38. Section 1.175 is amended by adding a new paragraph (e) to read as follows:

§ 1.175 Reissue oath or declaration.

* * * * *

(e) The filing of any continuing reissue application which does not replace its parent reissue application must include an oath or declaration which, pursuant to paragraph (a)(1) of this section, identifies at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue application. All other requirements relating to oaths or declarations must also be met.

■ 39. Section 1.178 is amended by revising paragraph (a) to read as follows:

§ 1.178 Original patent; continuing duty of applicant.

(a) The application for reissue of a patent shall constitute an offer to surrender that patent, and the surrender shall take effect upon reissue of the patent. Until a reissue application is granted, the original patent shall remain in effect.

* * * * *

§ 1.179 [Removed and Reserved]

■ 40. Section 1.179 is removed and reserved.

■ 41. Section 1.182 is revised to read as follows:

§ 1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

■ 42. Section 1.183 is revised to read as follows:

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

■ 43. Section 1.215 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.215 Patent application publication.

(a) The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the specification and drawings deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application. The patent application publication may also be based upon amendments to the specification (other than the abstract or the claims) that are reflected in a substitute specification under § 1.125(b), amendments to the abstract under § 1.121(b), amendments to the claims that are reflected in a complete claim listing under § 1.121(c), and amendments to the drawings under § 1.121(d), provided that such substitute specification or amendment is submitted in sufficient time to be entered into the Office file wrapper of the application before technical preparations for publication of the application have begun. Technical preparations for publication of an application generally begin four months prior to the projected date of publication. The patent application publication of an application that has entered the national stage under 35 U.S.C. 371 may also include amendments made during the international stage. See paragraph (c) of this section for publication of an application based upon a copy of the application submitted via the Office electronic filing system.

* * * * *

(c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the mailing date of the first Office communication that includes a confirmation number for the application, or fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

* * * * *

■ 44. Section 1.291 is revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) A protest may be filed by a member of the public against a pending application, and it will be matched with the application file if it adequately identifies the patent application. A protest submitted within the time frame of paragraph (b) of this section, which is not matched, or not matched in a timely manner to permit review by the examiner during prosecution, due to inadequate identification, may not be entered and may be returned to the protestor where practical, or, if return is not practical, discarded.

(b) The protest will be entered into the record of the application if, in addition to complying with paragraph (c) of this section, the protest has been served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and, except for paragraph (b)(1) of this section, the protest was filed prior to the date the application was published under § 1.211, or a notice of allowance under § 1.311 was mailed, whichever occurs first.

(1) If a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is matched with the application in time to permit review during prosecution.

(2) A statement must accompany a protest that it is the first protest submitted in the application by the real party in interest who is submitting the protest; or the protest must comply with paragraph (c)(5) of this section. This section does not apply to the first protest filed in an application.

(c) In addition to compliance with paragraphs (a) and (b) of this section, a protest must include:

(1) A listing of the patents, publications, or other information relied upon;

(2) A concise explanation of the relevance of each item listed pursuant to paragraph (c)(1) of this section;

(3) A copy of each listed patent, publication, or other item of information in written form, or at least the pertinent portions thereof;

(4) An English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information relied upon; and

(5) If it is a second or subsequent protest by the same real party in interest, an explanation as to why the

issue(s) raised in the second or subsequent protest are significantly different than those raised earlier and why the significantly different issue(s) were not presented earlier, and a processing fee under § 1.17(i) must be submitted.

(d) A member of the public filing a protest in an application under this section will not receive any communication from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The limited involvement of the member of the public filing a protest pursuant to this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered, unless the submission is made pursuant to paragraph (c)(5) of this section.

(e) Where a protest raising inequitable conduct issues satisfies the provisions of this section for entry, it will be entered into the application file, generally without comment on the inequitable conduct issues raised in it.

(f) In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a protest.

(g) Protests that fail to comply with paragraphs (b) or (c) of this section may not be entered, and if not entered, will be returned to the protestor, or discarded, at the option of the Office.

■ 45. Section 1.295 is amended by revising paragraph (a) to read as follows:

§ 1.295 Review of decision finally refusing to publish a statutory invention registration.

(a) Any requester who is dissatisfied with the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 may obtain review of the refusal to publish the statutory invention registration by filing a petition to the Director accompanied by the fee set forth in § 1.17(g) within one month or such other time as is set in the decision refusing publication. Any such petition should comply with the requirements of § 1.181(b). The petition may include a request that the petition fee be refunded if the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 is determined to result from an error by the Patent and Trademark Office.

* * * * *

■ 46. Section 1.296 is revised to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date on which the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $130.00 which will be retained. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date on which the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition accompanied by the fee set forth in § 1.17(g).

■ 47. Section 1.311 is amended by revising paragraph (b) to read as follows:

§ 1.311 Notice of allowance.

* * * * *

(b) An authorization to charge the issue fee or other post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance. The submission of either of the following after the mailing of a notice of allowance will operate as a request to charge the correct issue fee or any publication fee due to any deposit account identified in a previously filed authorization to charge such fees:

(1) An incorrect issue fee or publication fee; or

(2) A fee transmittal form (or letter) for payment of issue fee or publication fee.

■ 48. Section 1.324 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

(a) Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his or her part, the Director, pursuant to 35 U.S.C. 256, may, on application of all the parties and assignees, or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A request to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 1.634.

(b) Any request to correct inventorship of a patent pursuant to paragraph (a) of this section must be accompanied by:

* * * * *

■ 49. Section 1.377 is amended by revising paragraph (b) to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

* * * * *

(b) Any petition under this section must be filed within two months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(g). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

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■ 50. Section 1.378 is amended by revising paragraph (e) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(f). After the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

■ 51. Section 1.550 is amended by revising paragraph (c) to read as follows:

§ 1.550 Conduct of ex parte reexamination proceedings.

* * * * *

(c) The time for taking any action by a patent owner in an *ex parte*

reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

* * * * *

■ 52. Section 1.741 is amended by revising paragraph (b) to read as follows:

§ 1.741 Complete application given a filing date; petition procedure.

* * * * *

(b) If an application for extension of patent term is incomplete under this section, the Office will so notify the applicant. If applicant requests review of a notice that an application is incomplete, or review of the filing date accorded an application under this section, applicant must file a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f) within two months of the mail date of the notice that the application is incomplete, or the notice according the filing date complained of. Unless the notice indicates otherwise, this time period may be extended under the provisions of § 1.136.

■ 53. Section 1.956 is revised to read as follows:

§ 1.956 Patent owner extensions of time in inter partes reexamination.

The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 54. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

■ 55. Section 5.12 is amended by revising paragraph (b) to read as follows:

§ 5.12 Petition for license.

* * * * *

(b) A petition for license must include the fee set forth in § 1.17(g) of this chapter, the petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner. The petition should be presented in letter form.

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■ 56. Section 5.15 is amended by revising paragraph (c) to read as follows:

§ 5.15 Scope of license.

* * * * *

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(g) of this chapter), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181. The change in the scope of a license will be effective as of the date of the grant of the petition.

* * * * *

■ 57. Section 5.25 is amended by revising paragraph (a)(4), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 5.25 Petition for retroactive license.

(a) * * *

(4) The required fee (§ 1.17(g) of this chapter).

(b) The explanation in paragraph (a) of this section must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

■ 58. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2, 6, 32, 41.

■ 59. Section 10.18 is amended by revising paragraph (a) to read as follows:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of § 1.4(d), § 1.4(e), or § 2.193(c)(1) of this chapter.

* * * * *

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 60. The authority citation for 37 CFR Part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 61. Section 41.20 is amended by revising paragraph (a) to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: $400.00

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PART 104—LEGAL PROCESSES

■ 62. The authority citation for 37 CFR part 104 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101, except as otherwise indicated.

■ 63. Section 104.3 is revised to read as follows:

§ 104.3 Waiver of rules.

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, *sua sponte* or on petition of an interested party to the Director, subject to such requirements as the General Counsel may impose. Any such petition must be accompanied by a petition fee of $130.00.

Dated: September 9, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–20936 Filed 9–20–04; 8:45 am]

BILLING CODE 3510–16–P

Federal Register

Tuesday,
September 21, 2004

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–4250–01; I.D. 081304C]

RIN 0648–AS27

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement the 2005–2006 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. The proposed rule includes the levels of the acceptable biological catch (ABC) and optimum yields (OYs). The commercial OYs (the total catch OYs reduced by tribal allocations and by amounts expected to be taken in recreational and resource survey compensation fisheries) proposed in this rule would be allocated between the limited entry and open access fisheries and between different sectors of the limited entry fleet. Proposed management measures for 2005–2006 are intended to: achieve but not exceed OYs; prevent overfishing; rebuild overfished species; reduce and minimize the bycatch and discard of overfished and depleted stocks; provide equitable harvest opportunity for the recreational and commercial fishing sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Comments on all issues except on the 2006 Oregon commercial/recreational black rockfish harvest guidelines must be received no later than 5 p.m., local time (l.t.,) on October 21, 2004. Comments on the 2006 Oregon commercial/recreational black rockfish harvest guidelines must be received no later than 5 p.m., l.t. on December 30, 2004.

ADDRESSES: You may submit comments, identified by I.D. 081304C, by any of the following methods:

- E-mail: *Groundfish0506.nwr@noaa.gov* Include 081304C in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Yvonne deReynier
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Yvonne deReynier.

Information relevant to this proposed rule, which includes a draft environmental impact statement, a regulatory impact review, and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6129; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*. and at the Council's website at *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires the Council to set harvest specifications and management measures for groundfish at least biennially. In some cases, the Council may choose to set harvest specifications and management measures for some species, such as Pacific whiting, on an annual basis. For most of the 80+ species managed under the FMP, however, fishery specifications will be set biennially. The Council moved to this biennial management process via Amendment 17 to the FMP, which NMFS approved on August 19, 2003. The first biennial fishing period to which this process applies is January 1, 2005, through December 31, 2006.

In 2004 and prior years, the groundfish harvest specifications and management measures were implemented via publication in the **Federal Register**. Similar to 2004, the 2005–2006 harvest specifications and management measures will be implemented through a final rule published in the **Federal Register**. However, that final rule will codify the harvest specifications and management measures in Federal regulations at 50 CFR part 660, subpart G for Pacific Coast groundfish, not simply via publication in the **Federal Register** itself. In order to ensure that the agency would have space in the codified regulations for the groundfish harvest specifications and management measures, NMFS published a correcting amendment at 69 FR 42345 (July 15, 2004) to reorganize those regulations. As a result of this reorganization, more broadly applicable management measures are found in 50 CFR 660.370, followed by season frameworks and regulations for black rockfish, 660.373. Groundfish harvest specifications for 2005 and beyond will be found in § 660.380, followed by fishery-specific management measures in §§ 660.381 through 660.385. Coordinates delineating the Groundfish Conservation Areas (GCAs) are found in §§ 660.390 through 660.394. Commercial fisheries allocations, which were formerly codified in § 660.323(b)(4) and § 660.332, are now found in §§ 660.320 through 660.323. As in 2004 and prior years, the Council's ABC and OY policies, new stock assessments since the setting of the 2004 specifications, bycatch reduction measures, fishery-specific management measures, and other issues related to this 2005–2006 management package are discussed later in the preamble to this proposed rule.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. Specifications and management measures proposed for 2005–2006 are designed to rebuild overfished stocks consistent with statutory requirements through constraining direct and incidental mortality, and to achieve as much of the OYs as practicable for healthier groundfish stocks managed under the FMP. In order to protect overfished species, allowable harvest levels of healthy species will only be achieved where such harvest will not deter rebuilding of overfished and depleted stocks. Commercial management measures for 2005–2006 include landings limits, size limits, gear

restrictions, and time/area closures. Recreational management measures include bag limits, size limits, gear restrictions, and time/area closures. NMFS is proposing to continue the coastwide depth-based management program that it introduced in 2003, which closes portions of the continental shelf to fishing for groundfish and to fishing for many non-groundfish species in fisheries that take groundfish incidentally. These closures are intended to protect and rebuild overfished groundfish species.

ABC Policy and Overfished Species Rebuilding

The Council assesses the biological condition of the Pacific Coast groundfish fishery and develops annual estimates of the acceptable biological catch (ABC) for major groundfish stocks and identifies the annual harvest levels or OYs for the species or species groups that it manages. When setting the 2005 and 2006 ABCs, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (FMSY). The OYs were set at levels that are expected to prevent overfishing; they are equal to or less than the ABCs. For overfished species, the OYs were set to allow each stock to rebuild within a period of time specific to that stock.

The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the current estimated biomass. In 2005 and 2006, the following default harvest rate proxies, based on the Council's Scientific and Statistical Committee (SSC) recommendations, were used: F40% for flatfish and Pacific Whiting, F50% for rockfish (including thornyheads), and F45% for other groundfish such as sablefish and lingcod. A rate of F40% may be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is therefore a more aggressive rate than F45% or F50%. The FMP allows default harvest rate proxies to be modified as scientific knowledge improves for a particular species.

A fishing mortality or harvest rate will mean different things for different stocks, depending on the productivity of a particular species. For fast growing species (those with individuals that mature quickly and produce many young that survive to an age where they are caught in the fishery) a higher fishing mortality rate may be used, such as F40%. Fishing mortality rate policies must account for several complicating factors, including the capacity of mature individuals to produce young over time and the optimal stock size necessary for the highest level of productivity within that stock.

For some groundfish species, there was little or no detailed biological data available on which to base ABCs, and therefore only rudimentary stock assessments were prepared. For other species, the ABC levels were established on the basis of historical landings. As described below, a precautionary approach has been taken in setting ABCs and OYs for species with no, or only rudimentary, stock assessments.

For stocks with less rigorous or rudimentary stock assessments, the Council's policy had been to assume that fishing mortality was equal to natural mortality (F=M); however, further analysis by the SSC in 2000 established that assuming fishing mortality to be 75 percent of natural mortality (F=0.75M) was a more appropriate risk-neutral proxy for fishing mortality. This proxy was therefore adopted by the Council to establish ABCs for stocks with less rigorous assessments. As described below, a precautionary approach has been taken in setting ABCs and OYs for species with no, or only rudimentary, stock assessments.

The 2005 and 2006 ABCs are based on the best scientific information available to the Council at its April and June 2004 meetings. The ABCs in Tables 1 and 2 represent total fishing mortality (landed catch plus discards). Where the stock assessments included Canadian waters, the ABCs are appropriately reduced from the coastwide ABC, and apply only to U.S. waters. Stock assessment information considered in determining the ABCs may be obtained from the Council. Stock assessment documents and related reports were made available to the public prior to the Council's April 2004 meeting. Additional information on the groundfish stocks may be found in the EIS prepared for this action and in documents that were available at the April and June 2004 Council meetings (see **ADDRESSES**).

OY Policy

The Council uses a precautionary policy, which was adopted in 1999, for setting OYs. The precautionary policy, referred to as the 40–10 policy, is intended to prevent species or stocks from becoming overfished. If the stock biomass is larger than the biomass needed to produce MSY (B_{MSY}), the OY may be set equal to or less than ABC. The Council uses 40 percent of the unfished biomass as a default proxy for BMSY, also referred to as $B_{40\%}$. A stock with a current biomass between 25 percent of the unfished level and B_{MSY} (the precautionary threshold) is said to be in the "precautionary zone." The Council's 40–10 policy reduces the fishing mortality rate when a stock is at or below its precautionary threshold. The further the stock is below the precautionary threshold, the greater the reduction in OY relative to the ABC, until, at B10%, the OY would be set at zero. This is, in effect, a default rebuilding policy that will foster a more rapid return to the B_{MSY} level than would fishing at the ABC level. The Council generally uses this default policy for species in the precautionary zone. For overfished species, those that have been assessed as below $B_{25\%}$, the Council has developed species-specific rebuilding plans. For further information on the 40–10 policy see the preamble of the final rule to implement Amendment 16–1 to the FMP (February 26, 2004, 69 FR 8861) or the FMP at Section 4.5.

The Council may recommend setting the OY higher than what the default OY harvest policy specifies, if justified, and as long as the OY does not exceed the ABC (which is set at F_{MSY}), complies with the requirements of the Magnuson-Stevens Act, and is consistent with the National Standard Guidelines. On a case-by-case basis, additional precaution may be warranted if there is uncertainty in the data or a higher risk of a species being overfished. If a stock falls below 25 percent of its unfished biomass ($B_{25\%}$) and is declared overfished, the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within one year from the declaration date. Rebuilding plans for overfished species generally have stock-specific allowable harvest rates based on a rebuilding analysis.

Based on its SSC's recommendations, the Council has used a precautionary adjustment policy that requires the OYs for those stocks with rudimentary stock assessments to be set at 75 percent of their ABCs. For further information on precautionary adjustments for rudimentarily assessed stocks, see the preamble discussion of the Annual Specification and Management Measures published on January 11, 2001 (66 FR 2338).

When determining numerical OYs for individual species and species groups for which the ABC is based on a non-quantitative assessment, the Council may apply precautionary adjustments. Since 2000, the Council has adjusted the OYs for several unassessed stocks to 50 percent of the historical average catch levels.

ABCs and OYs under Multi-year Management

A biennial management cycle adopted under Amendment 17 to the FMP, is being used to establish the 2005 and 2006 harvest specifications and management measures. At the beginning of the two year management cycle, two one-year ABCs and OYs will be adopted for each species or species group the Council proposes to manage. The annual OYs will be applied in the same manner as has been done in previous years. If an OY is not achieved or is exceeded in the first year, the underage or overage will not be transferred to the following year, as this could result in severe fishing and management problems in the second year. However, when appropriate, management measures will be adjusted in order to achieve, but not exceed, OYs the following year.

New stock assessments will be prepared during the first year of the biennial cycle. In the second year, the new assessments will be reviewed and adopted for use in the next biennial management cycle. During the fall of 2004, the Council plans to develop a process for reviewing current harvest levels in the middle of a biennial cycle based on new stock assessments information.

2005 and 2006 ABCs and OYs

The species that had ABCs and OYs in 2004 continue to have ABCs and OYs in 2005 and 2006. Changes that have been made since 2004 that affect the ABCs and OYs for 2005 and 2006 include: (1) the completion of full stock assessments for cabezon and lingcod; (2) the Council's approval of FMP Amendment 16–3, which includes rebuilding plans for widow rockfish, bocaccio, cowcod and yelloweye rockfish; (3) the signing of the U.S.-Canada catch sharing agreement for whiting and a 2004 assessment that estimates the whiting stock biomass to be above the rebuilding threshold; (4) changes in the catch distribution of canary rockfish between commercial and recreational fisheries; (5) the application of precautionary adjustments to Pacific Cod, "other flatfish" and "other fish" OYs; and (6) the adoption of state specific harvest guidelines for black rockfish.

Cabezon

The first stock assessment for cabezon was prepared in 2003 and used an age structured model fitted to data on harvest levels, abundance, and catch length. Due to differences in catch history, trends in fishing effort, and biological parameters (mainly growth rates), the coastwide stock assessment was divided into northern and southern portions with the division being made at the Oregon-California border (42° N. lat.). This division allowed state-specific data, where available, to be incorporated into the assessment. Because few data were available to assess the stock in waters north of the Oregon-California border, the Stock Assessment Team (STAT) recommended that only the southern portion of the assessment be used for 2005 and 2006 harvest specifications. North of 42° N. Lat., cabezon will continue to be managed as part of the "other fish" complex for 2005 and 2006.

Although considerable effort was taken to compile relevant data and information on cabezon, the lack of a dedicated fishery-dependent biomass index resulted in a cabezon specific assessment that differs from assessments for most other West Coast groundfish stocks. The cabezon assessment relies on fishery dependent abundance indices based on recreational CPUE, and limited information on larval abundance. Although no dedicated biomass indices exist for cabezon, the alternate data sources used in the assessment were considered sufficient for use in a stock assessment model. Various types of uncertainty resulting from limited data were recognized and dealt with through the use of sensitivity analyses.

Because of uncertainty in deriving assessment parameters for natural mortality and stock productivity, three different model scenarios in which these parameters varied were brought forward for consideration. The model variation recommended by the SSC (referred to as the "posterior distribution nine" analysis in the original assessment) was considered to be a reasonable way to incorporate uncertainty. However, the SSC indicated that a full Bayesian analysis would be preferred in the future.

At its November 2003 meeting, the Council and the SSC reviewed the results of the new stock assessment. The SSC expressed concern that the time series of recreational logbook data used in the model may have been incorrectly truncated to 1960 rather than extending back to 1947, excluding the 1947–1959 time period when cabezon harvests were highest. The SSC believed that inclusion of these data could change the model output relevant to stock depletion. Following consideration of the model, the Council recommended that the recreational logbook data be re-evaluated for the March 2004 meeting.

On February 25, 2004, the SSC held a public teleconference to review revisions to the cabezon stock assessment. The new assessment results presented by the STAT indicated that inclusion of the earlier years' data (1947–1959) did not have a major impact on the conclusions of the assessment, particularly in regard to stock depletion. For example: the 2003 spawning biomass was estimated to be 34.7 percent of the unfished biomass with the inclusion of the earlier years of logbook data and 33.4 percent with the data truncated to 1960. Because the application of the 40–10 harvest policy is linked to the percent of unfished biomass, the OY would increase from 60.5 mt to 74.5 mt with the inclusion of the earlier data (a 23–percent increase).

The STAT recommended not including the pre–1960 data, because they believed that the pre–1960 data were self-reported by the fishermen and had not been verified by independent sampling. However, the recreational logbook data from 1947–1951 for the areas between San Francisco and San Diego have been reviewed by (CDFG) and the data were found to have been very accurate (within 4 percent for all species and 10 percent for cabezon). After reviewing the available information, the SSC indicated that there was adequate evidence to believe that the pre–1960s data should be included in the assessment model. The SSC recommended, and the Council adopted for 2005 and 2006, the model runs that included the new catch data and CPUE index dating back to 1947.

For 2005 and 2006, the Council considered cabezon ABC alternatives based on the newly adopted stock assessment with the application of different harvest rate proxies. These included: a low ABC alternative of 88 mt for 2005 and a 94 mt ABC for 2006, based on a harvest rate proxy of $F_{50\%}$; and a high ABC alternative of 103 mt for 2005 and 108 mt for 2006, based on a harvest rate proxy of $F_{45\%}$.

Three alternative OYs were considered for each year. The low OY alternatives of 44 mt for 2005 and 63 mt for 2006 were based on a harvest rate proxy of $F_{50\%}$ with the application of the 60–20 harvest policy. The 60–20 harvest policy is used by the state of California for nearshore species in which the biomass is estimated to be within their precautionary zone, below 60 percent of their unfished biomass. The 60–20 harvest policy is similar to the 40–10 harvest policy described above, in that it reduces the fishing mortality rate when a stock is at or below its precautionary threshold. The difference is that the precautionary threshold is set at 60 percent of a stocks' unfished biomass rather than at 40

percent. The OY is reduced in relation to the ABC, until, at $B_{20\%}$, the OY would be set at zero. The mid-range OY alternatives of 69 mt for both 2005 and for 2006 were based on a constant harvest level recommended by the California Department of Fish and Game (CDFG). The high OY alternatives of 91 mt for 2005 and 107 mt for 2006 were based on the harvest rate proxy of $F_{45\%}$ with the application of the 40–10 harvest policy.

The Council considered these cabezon alternatives at its April 2004 meeting and recommended an ABC of 103 mt for 2005 and 108 mt for 2006, with a constant harvest OY of 69 mt for each year. Using a constant harvest level over the 2 year period is expected to help stabilize the fishery, which primarily occurs in state waters off California, and management measures.

Lingcod

A new coastwide stock assessment, based on a Coleraine statistical catch-at-age model, was prepared for lingcod in 2003. Although there appears to be no genetic difference between fish in the north and south, separate northern and southern assessment models were used to describe the population trends. The northern assessment applied to the stock in the Vancouver and Columbia areas (U.S. waters north of 43° N. lat.), and the southern assessment applied to the stock in the Eureka, Monterey, and Conception areas (U.S. waters south of 43° N. lat.). The coastwide biomass was calculated by summing the outputs of the two models. Because historical data are more sparse for the southern areas than for the northern areas, model uncertainty was higher in the south than in the north.

At the Council's November meeting, the SSC discovered that recruitment variability, a key parameter specified in the model, was mis-specified (too low) in both the northern and southern models. As a result, the recruitment values used in the rebuilding analysis were too small and suggested that the stock was rebuilding at a slower rate. Because the error in recruitment variability could have affected the STAR panel recommendation, the SSC recommended that the model be re-evaluated by the STAR panel. The SSC specifically requested that the recruitment variability parameter and the improvement in fit that accompanied the shift to dome shaped selectivity curves be evaluated. The SSC also recommended that the rebuilding analysis be recalculated using the output of the revised model. The Council adopted the SSC recommendations that the revisions be completed and reviewed by the STAR panel in time for the Council's March 2004 meeting.

On February 25, 2004, the SSC held a public tele-conference to review revisions to the lingcod stock assessment. The STAT reviewed the increase in the recruitment variable at increments of 0.1. The model fit improved as the recruitment variable increased, but deteriorated above 0.5. Overall, larger recruitment variables better accounted for the observed data, with 0.5 indicating a strong 1999 year class, consistent with catch at age data from the shelf survey and commercial fisheries. As a result of the revised assessment, the spawning stock biomass was estimated to be at 31 percent of its unfished biomass in the north and 19 percent of its unfished biomass in the south.

The STAT ran the rebuilding analysis with the new recruitment variable of 0.5, and computed coastwide rebuilding values based on the sum of the output of the two models. Rebuilding projections for the northern areas, if considered in isolation, indicate that the stock is above the rebuilt threshold of B40%. However, the southern portion of the stock has not yet rebuilt. When the total biomass is viewed coastwide, the stock is less than 1 percent below the rebuilt target of $B_{40\%}$.

Due to the different biological characteristics between the areas, the SSC continues to support summing the results of the two assessments to derive the coastwide value. The coastwide ABCs based on the newly adopted stock assessment are 2,922 mt (1,874 north and 1,048 south) in 2005 and 2,716 mt, (1,694 north and 1,021 south) in 2006.

The SSC recommended using different harvest rates for the two areas. When specific data are available, region-specific regulations could be beneficial to the biology of the stock. If regional differences are not recognized, overfishing could occur in the south.

The coastwide OY alternatives considered by the Council included: a low OY of 918 mt (574 mt for the north and 344 mt for the south) for 2005 and 940 mt (574 mt for the north and 366 mt for the south) for 2006; a mid-range OY of 2,588 mt (1,874 mt for the north and 714 mt for the south) for 2005 and 2,414 mt (1,694 mt for the north and 719 mt for the south)for 2006; and a high OY of 2,626 mt (1,874 mt for the north and 762 mt for the south) for 2005 and 2,459 mt (1,694 mt for the north and 764 mt for the south) for 2006. The low OY alternative, which was consistent with the lingcod rebuilding plan adopted under Amendment 16–2, was based on the harvest control rules of F=0.0531 in the north and F=0.0610 in the south and a >70 percent probability of rebuilding within the maximum allowable time (T_{MAX}). The mid-range OY alternative was based on a harvest control rule of F=0.17 in the north and F=0.15 in the south and a 70 percent probability of rebuilding within T_{MAX}. The high OY was based on a harvest control rule of F=0.18 in the north and F=0.16 in the south, and a 60 percent probability of rebuilding within T_{MAX}.

The Council considered the alternative OYs and recommended the mid-range OY, with the modification that the OY be fixed at 2,414 mt (the 2006 value which was the lower of the two values) for both years. A constant harvest level over the two year period is expected to better stabilize the fishery and the management measures. The Council indicated that the lingcod harvest guidelines needed to be conservative because: the 1999 year class is moving through the fishery and recruitment is uncertain, there is uncertainty in catch projections and assessment, and they do not want an increase in effort in the fishery. Although lingcod is considered to be a coastwide stock, the Council indicated that the OY should be set to avoid the disproportionate catch of lingcod coming from the northern or southern areas.

The OY of 2,414 mt for both 2005 and 2006 results in the same target rebuilding year as is currently in regulation at 50 CFR 660.365(c) (69 FR 19347, April 13, 2004). However taking into account the new stock assessment, this action proposes to revise the harvest control rule from F=0.0531 to F=0.17 in the north and from F=0.061 to F=0.15 in the south. Further discussion on rebuilding measures can be found in the "Overfished Species" section of this document.

The Council recommended establishing separate northern and southern lingcod OYs, with the north-south division occurring at 42° N. lat, the Oregon-California border. Because this north-south division is different from the north-south division used in the stock assessment (43° N. lat), a formula based on the catch-per-unit-of-effort data from the Alaska Fishery Science Center's 1995–2001 shelf survey was used to estimate the proportion of lingcod in the southern assessment that is found in the area between 42° N. lat and 43° N. lat. As a result, 107 mt was deducted from the OY based on the southern stock assessment and was added to the OY based on the northern stock assessment. The resulting OYs are: 612 mt for southern area in waters off

California, and 1,801 mt for northern area waters off Washington and Oregon.

For the states to better manage their recreational fisheries to stay within their respective OYs, the Council also recommended setting recreational harvest guidelines for the same areas. With state specific harvest guidelines, each state can monitor their recreational catches and adjust state management measures to keep the harvests within the harvest guideline. For the recreational fisheries in the northern area the harvest guideline will be 206 mt in 2005 and 239 mt in 2006. For the recreational fisheries in the southern area, the harvest guideline will be 422 mt in both 2005 and 2006. For further detail see Tables 1 and 2 and the associated footnotes.

For the commercial fishery harvest guideline, the amount of lingcod remaining in the northern and southern OY after the deductions for the recreational harvest guideline, will be combined into a single coastwide harvest guideline. The commercial fisheries will then be managed on a coastwide basis.

Widow Rockfish

Widow rockfish was declared an overfished species in 2001. In 2003, a coastwide stock assessment and rebuilding analysis were prepared and the widow rockfish biomass was estimated to be at 24.7 percent of its unfished biomass coastwide in 2002.

Three different model scenarios, which used different power coefficients to estimate juvenile mortality in survey data, were the basis for the 2005 and 2006 ABC and OY alternatives. A juvenile mortality power coefficient is a measure for estimating the amount of juvenile fish that could mature and enter the fishery in the future. The three model scenarios chosen by the SSC were called models 7, 8 (the base model), and 9. The use of power coefficients for estimating juvenile mortality using the midwater juvenile trawl survey data was discussed by the SSC. The SSC concluded that the different values were equally likely, leaving no statistical basis for choosing among the three different models. However, the SSC determined that there was a biological basis for recommending a power coefficient range between the values of 2.0 and 4.0.

The ABC alternatives were based on the different model scenarios discussed above with the application of an $F_{50\%}$ F_{MSY} proxy. The ABCs for 2005 were: 2,833 mt from model 7 with a power coefficient of 2.0, 3,218 mt from model 8 with a power coefficient of 3.0, and 3,668 mt from model 9 with a power coefficient of 4.0. The ABCs for 2006 were: 2,670 mt from model 7 with a power coefficient of 2.0, 3,059 mt from model 8 with a power coefficient of 3.0, and 3,510 mt from model 9 with a power coefficient of 4.0.

The OYs considered by the Council were consistent with the rebuilding plan parameters adopted for widow rockfish under Amendment 16–3. Amendment 16–3 considered rebuilding plan alternatives that included each of the three model scenarios (7, 8, & 9) and an array of PMAX probabilities, between 60 and 90 percent.

The OY alternatives considered by the Council for 2005 and 2006 were as follows: a low OY of 0 mt for both years based on model 7 with a 90 percent probability of rebuilding by T_{MAX}, a target rebuilding year of 2030, and with a harvest rate of F=0; the mid-range OYs of 285 mt for 2005 and 289 mt for 2006 based on model 8 with a 60 percent probability of rebuilding by TMAX, a target rebuilding year of 2038, and with a harvest rate of F=0.0093; and the high OYs of 505 mt for 2005 and 513 mt for 2006 based on model 9 with a 60 percent probability of rebuilding by T_{MAX}, a target rebuilding year of 2034, and with a harvest rate of F=0.0146. After consideration of the widow rockfish rebuilding plan under Amendment 16–3, the Council recommended adopting the ABC and OYs resulting from the application of model 8 and a T_{MAX} of 60 percent. The recommended ABCs were 3,218 mt for 2005 and 3,059 mt for 2006 and the recommended OYs were 285 mt for 2005 and 289 mt for 2006.

Amendment 16–3 to the FMP was adopted by the Council in April 2004. NMFS is in the process of developing final regulations to implement widow rockfish rebuilding parameters in Federal regulations. The rebuilding plan establishes a target rebuilding year of 2038 and a harvest control rule of F=0.0093. A proposed rule was published on July 7, 2004 (69 FR 40851) and will be followed by a final rule in autumn 2004. The 2005 OY of 285 mt and the 2006 OY of 289 mt results in the same target rebuilding year and harvest control rule as proposed in the widow rockfish rebuilding plan. Further discussion on rebuilding measures may be found in the "Overfished Species" section of this document.

Bocaccio

The ABC and OY alternatives considered for 2005 and 2006 were based on the most recent bocaccio assessment, which was prepared in 2003 for the Conception and Monterey areas. The bocaccio rockfish spawning stock biomass was estimated to be at 7.4 percent of its unfished biomass in the Monterey and Conception areas in 2002.

In 2003, two different base-run assessment models were developed to address contradictions between the recreational data, which showed a substantial increase in abundance of bocaccio, and the triennial survey data, which has remained relatively flat and showed little change in abundance in the last three years of assessment data. The first model (STARb1) omitted data from the triennial survey and held the estimated recruitment constant to 1959, whereas the second model (STARb2) omitted the recreational CPUE data and held the recruitment constant to 1969. In addition, a third model (STATc), was recommended by the assessment author after the STAR panel review had been completed and reviewed by Statistical Assessment Team. The STATc model combined the attributes of both models and both data sources, the estimated recruitment held constant to 1959, and placing a lower emphasis on the stock-recruitment relationship. For 2004, after an in-depth discussion that considered the trade offs among the alternative model approaches and other factors, the SSC concluded that an intermediate alternative warranted consideration, and that the STATc model was a reasonable approach.

The Council considered three ABCs for each year based on the different stock assessment models with the application of an F_{MSY} proxy of $F_{50\%}$. First, the low ABC alternatives of 447 mt for 2005 and 443 mt for 2006, which were based on the STARb2 model. Second, the mid-range ABC alternatives of 566 mt for 2005 and 549 mt for 2006 which were based on the STATc model. Third, the high ABC alternatives value of 745 mt for 2005 and 733 mt for 2006 which were from the STARb1 model. The Council recommended the mid-range ABC of 566 mt for 2005 and 549 mt for 2006.

NMFS prepared a bocaccio rebuilding analysis for the Council in 2004. The OYs considered by the Council were based on the results of the 2003 assessment and the rebuilding plans proposed under Amendment 16–3. The Council considered a range of OYs for 2005 and 2006 that was consistent with the range of alternatives being considered for the bocaccio rebuilding plan under Amendment 16–3. The rebuilding plan alternatives were based on different base-run assessment models and a range of probabilities, between 60 and 90 percent, of rebuilding within the maximum allowable time (T_{MAX}). The following OY alternatives were considered by the Council: the low OYs

of 134 mt for 2005 and 140 mt for 2006, based on the STARb2 model with an 90 percent probability of rebuilding by T_{MAX}; the mid-range OYs of 307 mt for 2005 and 308 mt for 2006, based on the STATc model with an 70 percent probability of rebuilding by TMAX; and the high OYs of 713 mt for 2005 and 704 mt for 2006, based on the STARb1 model with an 60 percent probability of rebuilding by T_{MAX}.

After consideration of the bocaccio rebuilding plan under Amendment 16–3 to the FMP, the Council recommended a rebuilding plan, based on the STATc model, with a 70 percent probability of rebuilding the stock to its spawning stock biomass by 2032 (T_{MAX}) with a targetrebuilding year of 2032, and a harvest control rule of F=0.0498. The resulting ABCs, which are equivalent to the mid-range alternative above, are 566 mt for 2005 and 549 mt for 2006. The resulting OYs are 307 mt for 2005 and 289 mt for 2006. The final rule to implement Amendment 16–3 will implement in Federal regulations rebuilding parameters for bocaccio that establish a target rebuilding year (2023) and a harvest control rule (F=0.0093).

Cowcod

The 2005 and 2006 ABC and OY alternatives for cowcod were based on the most recent stock assessment which was prepared in 1999, for the Conception area. In 1999, the cowcod spawning stock biomass was estimated to be at less than 10 percent of its unfished biomass and was therefore declared as overfished on January 4, 2000 (65 FR 221).

In 2003, a rebuilding review was conducted for cowcod. This review thoroughly examined the recreational and commercial fishery removals in relation to the ABC and OY levels that were established for rebuilding. The review concluded that the total removals of cowcod have declined in accordance with the rebuilding-based harvest specifications that were first established in 2000. In addition, fishery closures in the Cowcod Conservation Areas (CCAs) were expected to add further protection to the stock. However, data were not available from the CCA areas to estimate the benefit of these closures to the cowcod stock. For further information on the 2003 rebuilding review for cowcod, see the preamble discussion of the proposed Annual Specifications and Management Measures published on January 8, 2004 (69 FR 1380).

The cowcod ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993–1997. The OYs considered by the Council were based the 2000 rebuilding analysis and the rebuilding plans proposed under Amendment 16–3. At the Council's April 2004 meeting, the 2005 and 2006 harvest specifications for cowcod were considered at the same time as the cowcod rebuilding plan under Amendment 16–3. The range of OYs for 2005 and 2006 were consistent with the parameters adopted for the cowcod rebuilding plan under Amendment 16–3. The low OY alternative was 4.2 mt (2.1 mt in the Monterey area and 2.1 mt in the Conception area) for both 2005 and 2006 and was based on a 60 percent probability of rebuilding by T_{MAX}. The high OY was 4.8 mt (2.4 mt in the Monterey area and 2.4 mt in the Conception area) for both 2005 and 2006 and was based on a 55 percent probability of rebuilding by T_{MAX}. Due to limited data and the limitations of the stock assessment model, alternatives with rebuilding probabilities greater than 60 percent could not be derived. The final rule to implement Amendment 16–3 will implement in Federal regulations rebuilding parameters for cowcod that establish a target rebuilding year as 2090, which is consistent with a 60 percent probability of rebuilding the stock to Bmsy by T_{MAX} (2099), and a harvest control rule of F=0.009. Further discussion on rebuilding measures can be found in the "Overfished Species" section of this document.

Yelloweye Rockfish

A full stock assessment was last prepared for yelloweye rockfish in 2001 and was updated for 2002. In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555), after which NMFS prepared a yelloweye rockfish rebuilding analysis.

The 2005 yelloweye rockfish ABC of 54 mt and the 2006 ABC of 55 mt were projected from the 2002 stock assessment update with the application of a harvest rate proxy of $F_{50\%}$. The OYs considered by the Council were based on the 2002 revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16–3. The Council considered the following range of OYs for 2005 and 2006 that encompassed the range of rebuilding parameters being considered for the yelloweye rockfish rebuilding plan under Amendment 16–3: the low OYs of 24 mt for 2005 and 25 mt for 2006, which were based on a 90 percent probability of rebuilding by TMAX (2071); the mid-range OYs of 27 mt for 2005 and 28 mt for 2006, which were based on a 70 percent probability of. rebuilding by TMAX; and the high OYs of 28 mt for 2005 and 29 mt for 2006, which were based on a 60 percent probability of rebuilding by T_{MAX}.

At the Council's April 2004 meeting, the 2005 and 2006 harvest specifications for yelloweye rockfish were considered at the same time as the yelloweye rockfish rebuilding plan under Amendment 16–3. The rebuilding plan recommended by the Council would specify that the target rebuilding year (2058) be consistent with a 80 percent probability of rebuilding the stock to Bmsy by T_{MAX} (2071), and a harvest control rule of F=0.0153 be applied to determine the annual OYs. When the rebuilding parameters recommended under Amendment 16–3 were applied, the resulting OYs were 26 mt for 2005 and 27 mt for 2006 (the mid range OY), which falls between the low and mid-range OYs initially considered by the Council. Further discussion on rebuilding measures may be found in the "Overfished Species" section of this document.

Pacific Whiting

In general, whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) patterns and a relatively short life span when compared to other overfished groundfish species. In 1987, the whiting biomass was at a historical high level due to an exceptionally large number of fish that spawned in 1980 and 1984 (fish spawned during a particular year are referred to as a year class). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001.

In 2002, a whiting stock assessment was prepared. It estimated the female spawning biomass to be less than 20 percent of the unfished biomass. As a result of the 2002 assessment, the whiting stock was believed to be below the overfished threshold in 2001 and was, therefore, declared overfished on April 15, 2002 (67 FR 18117). Since 2001, while the whiting stock was managed under the 40–10 default harvest policy discussed earlier, the biomass increased substantially as a strong 1999 year class had matured and entered the spawning population.

An age-structured assessment model was used to prepare a new coastwide stock assessment in 2004. The stock

assessment was examined by a joint U.S./Canada Pacific Hake (Whiting) Stock Assessment Review (STAR) panel in early February of 2004 and considered to be complete and suitable for use by the Council and its advisory bodies for ABC projections. However, the amount of whiting that the hydroacoustic survey was able to measure relative to the total whiting in the surveyed area (survey catchability coefficient or "q") was identified as a major source of uncertainty in the stock assessment.

At the Council's March 2004 meeting, two sets of ABC/OY projections, with different assumptions about the survey catchability, were brought forward for decision making. This range of projections was intended to represent a plausible range of the stock's status. The more optimistic or less risk averse model run assumed that q equaled 0.6, while the less optimistic or more risk averse model run assumed that q equaled 1.0. A catchability coefficient of 1.0 is the value that had been used in the previous assessments.

As a result of the new whiting stock assessment, the estimated abundance of whiting has increased substantially since the last assessment. The stock was estimated to be 47 percent of its unfished biomass in 2003 (2.7 million mt of age 3+ fish) when a survey catchability coefficient of 1.0 was applied and at 51 percent (4.2 million mt of age 3+ fish) of its unfished biomass in 2003 when a survey catchability coefficient of 0.6 was applied. Under both scenarios, the whiting biomass in 2003 was estimated to be above the target rebuilding biomass. However, in the absence of a large year class after 1999, the stock is projected to decline. With the publication of the 2004 harvest specifications for whiting (April 30, 2004; 69 FR 23667), NMFS announced that the whiting stock was estimated to above the target rebuilding biomass in 2003 and is no longer considered to be an overfished stock. Consequently, the adoption of a whiting rebuilding plan as an FMP amendment is no longer necessary.

During 2003, while whiting was under NMFS's overfished designation, the Court entered an order in the case of *Natural Resources Defense Council* v. *Evans*, 290 F. Supp. 2d 1051, 1057 (N.D. Calif. 2003), requiring NMFS to approve or adopt a rebuilding plan for whiting by November 30, 2004 pursuant to 16 U.S.C. 1854(c) of the Magnuson-Stevens Act. After concluding that whiting was rebuilt, NMFS asked the Court to amend its order. The Court granted the request by lifting the requirement that NMFS prepare a rebuilding plan for whiting on June 30, 2004.

In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of whiting. The whiting catch sharing arrangement that was agreed upon provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries. At this time, both countries are taking steps to bring this agreement into force. Until the agreement is ratified and implementing legislation effective, the negotiators recommended that each country informally implement the agreed upon provisions.

In anticipation of the ratification of the U.S.-Canada agreement and a new stock assessment, and given the small amount of whiting that is typically landed under trip limits prior to the April 1 start of the primary season, the Council is delaying adoption of a final ABC and OY until its March 2005 meeting. If the international agreement is ratified and implementing legislation is effective, ABC and OY values that are consistent with the agreement will be adopted. If the international agreement is not in force by March 2005, the Council will adopt final ABC and OY values for 2005 that are based on the new stock assessment and within the range that was considered in the EIS for the 2005 and 2006 management measures. The final ABC and OY values for 2005 and 2006 would be implemented through two final rules that are separate from the final rule for the rest of the groundfish specifications.

The range of ABCs and OYs considered by the Council and analyzed in the EIS for both 2005 and 2006 included: a low ABC/OY of 181,287 mt, which represents 50 percent of the medium ABC/OY; a medium ABC/OY of 362,573 mt, based on the results of the 2004 assessment with the OY being set equal to the ABC because the stock biomass is greater than 40 percent of the unfished biomass; and a high OY of 725,146 mt, which is twice the amount of the medium ABC/OY. The availability of overfished species as incidental catch, particularly Pacific ocean perch (POP), canary, darkblotched, and widow rockfish, will likely constrain the whiting OY during 2005 and 2006. In recent years, the most constraining overfished species for the whiting fishery have been canary and widow rockfish. Under this proposed rule, the amount of canary rockfish that would be available to the whiting fishery was estimated to be 7.3 mt and the amount of widow rockfish was estimated to be 231.8 mt in 2005 and 243.2 mt in 2006.

Canary Rockfish

A coastwide canary rockfish stock assessment and rebuilding analysis were prepared in 2002. The ABC of 270 mt for 2005 and 279 mt for 2006 were forecast from the 2002 assessment with the application a $F_{50\%}$ harvest rate proxy.

On April 13, 2004, a canary rockfish rebuilding plan was adopted under Amendment 16–2 to the FMP (69 FR 19347). Regulations implementing this rebuilding plan established a target rebuilding year of 2074 with a harvest control rule of F=0.0220. There is a 60 percent probability that canary rockfish will rebuild to B_{MSY} by T_{MAX}. To allow the stock to rebuild, the OY must be set very low. Because canary rockfish are distributed coastwide and are incidentally caught with a wide variety of fishing gears, the low OYs will be constraining the groundfish fisheries for several years.

The Council considered alternative OYs based on different arrangements for dividing catch between the commercial and recreational fisheries. How the catch is divided between the commercial and recreational sectors results in different OYs. This difference is because the recreational fisheries take smaller-sized canary rockfish than the commercial fisheries, resulting in a greater per ton impact on the canary stock over the rebuilding period. The alternative OYs are based on the newly adopted canary rockfish rebuilding plan and have the same rebuilding impacts on canary rockfish as anticipated by the plan. The catch sharing arrangements initially considered by the Council for 2005 and 2006 included: a 50 percent recreational/50 percent commercial division that results in a 43 mt OY, and a 39 percent recreational/61 percent commercial division that results in a 48 mt OY. At its June 2004 meeting, the Council developed management measures that were expected to result in a 39 percent recreational/61 percent commercial division of the canary rockfish OY. The total catch of canary rockfish was then projected for the directed commercial and recreational groundfish fisheries under the new management measures. The amount estimated to be taken in non-groundfish and tribal fisheries, and the amount estimated to be taken during research activities that are scheduled to occur in 2005 and 2006 were also projected. When the total catch projections were summed for each year, they were less than the 48 mt OY. The OYs for 2005 and 2006 were calculated using the projected catch estimates under the proposed management measures, the

resulting OYs were 46.8 mt for 2005 and 47.1 mt for 2006.

A residual amount remained in each year and was divided, with 50 percent going to the recreational fisheries and 50 percent going to the commercial fisheries. The 2005 residual amount of 2.5 mt will be held in reserve, with 1.25 mt being available as needed for the recreational and 1.25 mt being available as needed for the commercial fisheries. Similarly, the 2006 residual amount of 1.8 mt will be held in reserve, with 0.9 mt being available as needed for the recreational and 0.9 mt being available as needed for the commercial fisheries.

For the recreational fishery, two regional harvest guidelines will be established for canary rockfish in both 2005 and 2006. These recreational harvest guidelines are needed to give the states more ability and direct responsibility for managing the recreational fisheries that occur off their coasts to prevent overfishing. For the area north of 42° N. lat., the recreational harvest guideline will be 8.5 mt and for the area south of 42° N. lat, the recreational harvest guideline will be 9.3 mt.

Pacific Cod, "other flatfish" and "other fish"

Of the 80 plus groundfish species managed under the groundfish FMP, ABC values have been established for only about 25 species. Many of the remaining species are managed within complexes and are not usually not listed by species on fish landing receipts. Information from fishery independent surveys is generally lacking for these stocks, because of their low abundance or because they are not vulnerable to survey sampling gear. Detailed biological information is generally lacking for these stocks (typically, the spawning biomass, level of recruitment, or the current fishing mortality rate are unknown and not routinely available), and ABC levels have typically been established on the basis of average historical landings.

The ABC levels for Pacific cod, "other flatfish" and "other fish" have been based on historical landings. When determining numerical OYs for individual species and species groups for which the ABC is based on non-quantitative assessment, the Council may apply precautionary adjustments. Since 2000, the Council has adjusted the OYs for several unassessed stocks to 50 percent of the historical average catch levels. Although the ABCs for Pacific cod, "other flatfish" and "other fish" have been based on historical landings, precautionary adjustments have not been used in the past to establish OYs.

For 2005 and 2006, the Council considered alternative OYs for Pacific cod, "other flatfish" and "other fish" that were based on a 50 percent precautionary adjustment. The range of OYs considered by the Council and analyzed in the EIS for Pacific cod in both 2005 and 2006 included: a low OY of 1,600 mt, which represents the ABC with a 50 percent precautionary adjustment and a high OY of 3,200 mt, in which the OY is set equal to the ABC. In most years since the mid–1990s, less than 500 mt of Pacific cod have been landed. Recent harvest levels for the Canadian fishery have been set as low as 240 mt to allow for the stock to rebuild and have been combined with closed areas during the spawning season. The Council considered recent harvest levels as well as harvest specifications established for what is believed to be the same Pacific cod stock in Canadian waters and recommended that an OY of 1,600 mt be adopted for Pacific cod. An OY of 1,600 mt would be adequate to accommodate recent landings, while not being so high as to encourage targeting.

The range of OYs considered by the Council and analyzed in the EIS for "other fish" in both 2005 and 2006 included: a low OY of 7,350 mt, which represents the ABC with a 50 percent precautionary adjustment and a high OY of 14,700 mt, in which the OY is set equal to the ABC. The Council considered the recent landings, which ranged between approximately 2,500 mt in 1999 and 1,300 mt in 2002, prior to recommending that an OY of 7,350 mt be adopted for "other fish".

"Other flatfish" is an aggregate species group of unassessed flatfish species that includes pacific sanddab, rex sole, curlfin sole, starry flounder, butter sole, rock sole, sand sole and flathead sole. Since implementation of the FMP in 1982, an ABC of 7,700 mt has been used. This is a landed catch value based on historical landings that are believed to have occurred during the 1970s. Landings of "other flatfish" species have varied considerably since 1981, with declines observed for most species. The reasons for the reductions are unknown, but could reflect lower abundance, a shift in the availability of the "other flatfish" species, fishing fleet changes, reduced market demand or a combination of these factors.

For 2005 and 2006, the Council considered total catch ABCs that were also based on historical landings. The total catch ABC is based on historical landed catch values but also incorporates estimated discard mortality for species in the complex. The range of ABCs and OYs considered by the Council and analyzed in the EIS for "other flatfish" in both 2005 and 2006 are: a low ABC/OY of 4,400 mt/2,200 mt, in which the OY has a 50 percent precautionary adjustment; a mid-range ABC of 6,781, based on the highest 1981–2003 landings of sanddabs and rex sole and on the 1994–1998 average landings for the remaining species in the group with an OY of 4,909 mt, which has a 25 percent precautionary adjustment for 0sanddabs and rex sole and a 50 percent precautionary adjustment to the remaining species; and a high ABC/OY of 12,000 mt in which the OY is set equal to the ABC.

The Council recommended adopting the mid-range ABC of 6,781 mt with the OY value of 4,909 mt. Landings of "other flatfish" between 1981 and 2003 have ranged between 3,917 in 1982 to 1,600 in 2000 and 2003. Therefore the proposed OY is not expected to have a substantial impact on the fishery participants. With reduced opportunities in other fisheries, this more conservative OY is less likely to encourage new interest in targeting these species.

Black Rockfish

In 2005 and 2006 state harvest guidelines will be specified for black rockfish. Because black rockfish is primarily taken in state waters, state specific harvest guidelines are expected to allow the states to better manage their respective recreational and commercial fisheries. For the area north of 46°16′ N. lat. (Washington/Oregon boarder), the OY is 540 mt. For the area south of 46°16′ N. lat (waters off Oregon and California) the OY is 753 mt. The black rockfish OY for the waters off Oregon and California is being subdivided with 437 mt (58 percent) being applied to the waters off Oregon (between 46°16′ N. lat and 42° N. lat). and 316 mt (42 percent) being applied to the waters off California (south of 42° N. lat.)

For the waters off Oregon, 332 mt is estimated to be taken in the recreational fishery in 2005 and 290–360 mt in 2006, resulting in a commercial harvest guideline of 105 mt in 2005 and a range of 67–137 mt for 2006. The 2006 Oregon values are being presented as a range because the Oregon State rulemaking process did not coincide with the Council's 2004 management measures development process. The Oregon Fish and Wildlife Commission will make recommendations on in-state allocation issues in December 2004. Therefore, the division of Oregon black rockfish harvest guideline between commercial and recreational fisheries is presented as a range at this time and the proposed rule comment period for this issue only

will be held until December 30, 2004. The Oregon Fish and Wildlife Commission will meet on December 10 at the Oregon Department of Fish and Wildlife (ODFW) office in Salem. The schedule of meetings, the process for providing written or oral testimony, as well as the agenda and meeting materials for the upcoming meeting, are available online at the following ODFW website address: Information on the Oregon recommendation can be obtained from the following web site in early December: *www.dfw.state.or.us/Comm.schedule.htm.*

For the waters off California, the 316 mt harvest guideline of black rockfish will be divided with 190 mt (60 percent) being applied to the area north of 40°10 min N. lat. and 126 mt (40 percent) being applied to the area south of 40°10 min N. lat. For the area between 42° N. lat. and 40°10′ N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial harvest guideline 116 mt. For the area south of 40°10 min N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial harvest guideline of 25 mt. For the waters off Washington, 30,000 lb (13.6 mt) is being set as a harvest guideline for the tribal fisheries.

Landed Catch OYs

Landed catch values are not presented in this document. In the revised 2004 bycatch accounting model, target and overfished species estimates are based on landed catch amounts. Bycatch rates are no longer applied to the total catch OY to obtain the landed catch values. [Note: Discussion of the revised model can be found later in this document, the bycatch and discard accounting section.]

Overfished Species

The status of the groundfish stocks are evaluated against the requirements of the Magnuson-Stevens Act, NMFS's national standard guidelines, and the FMP. A species or stock is considered to be overfished if its current biomass is less than 25 percent of the unfished biomass. The Magnuson-Stevens Act requires that a rebuilding plan be prepared within one year after the Council is notified by NMFS that a particular species is overfished.

Eight Pacific coast groundfish stocks continue to be designated as "overfished": POP, bocaccio, lingcod, canary rockfish, cowcod, darkblotched rockfish, widow rockfish, and yelloweye rockfish. Pacific whiting is no longer designated as overfished.

Amendment 16–1 to the FMP was prepared in part to respond to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans* (N.D. Cal. 2001). Amendment 16 1 established a process for and standards by which the Council will specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amended the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations. Amendment 16 1 was intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular national standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 17, 2003.

For each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under the national standard guidelines were applied (T_{MAX}) and the year in which the stock would be rebuilt under the adopted rebuilding plan (T_{Target}). These estimated rebuilding parameters serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen.

NMFS approved Amendment 16–2 on January 30, 2004, and published a final rule for Amendment 16–2 on April 13, 2004 (69 FR 19347). Amendment 16–2 added the rebuilding parameters for lingcod, canary rockfish, darkblotched rockfish, and POP to section 4.5.4. of the FMP, along with other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and rebuilding strategy.

Amendment 16–1 specified two rebuilding parameters (of those that are listed above in the FMP) that are to be codified in Federal regulations for individual species rebuilding plans, the target year for rebuilding and the harvest control rule that is to be used during the rebuilding period. Amendment 16–2 added these rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370. The target rebuilding year is the year in which there is a 50 percent likelihood that the stock will have been rebuilt with a given mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters are to be used to establish the annual OYs. Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate harvest levels for a species or species groups, including those harvest levels established for rebuilding overfished species.

The FMP provides that after a new stock assessment, the Council and NMFS may conclude that either or both of the parameters defined in regulation should be revised. Revisions will be implemented through the Federal rulemaking process, and the updated values codified in the Federal regulation. Generally, the target year should only be changed in unusual circumstances. Two such unusual circumstances include (1) if, it is determined, based on new information, that the existing target year is later that the maximum rebuilding time (TMAX), (2) or if the harvest control rule calculated from the new information is estimated to result in such a low OY as to cause substantial socio-economic impacts. Any change to a harvest control rule must be fully supported by a corresponding analysis and updated through the Federal rulemaking process which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements.

Amendment 16–2 has been followed by Amendment 16–3. At the Council's April 2004 meeting, rebuilding plans under Amendment 16–3 for bocaccio, cowcod, widow rockfish and yelloweye rockfish were adopted and include the parameters listed below.

A notice of availability for the EIS for Amendment 16–3 was published on June 18, 2004 (69 FR 34116). A proposed rule to codify provisions of Amendment 16–3 was published in the **Federal Register** on July 7, 2004 (69 FR 40851), and will be followed by a final rule in autumn 2004.

2005–2006 Management of Overfished Species

Rebuilding plans adopted under Amendments 16 2 and 16–3 are implemented through Federal regulations. The new stock assessments for lingcod (discussed above in the "2005 and 2006 ABCs and OYs" section) have resulted in revisions to some of the rebuilding parameters specified by Amendment 16 2.

Preliminary rebuilding measures for the overfished species are summarized below. Management measures designed to rebuild overfished species, or to prevent species from becoming overfished, may restrict the harvest of relatively healthy stocks that are harvested with overfished species. As a result of the constraining management measures imposed to protect and rebuild overfished species, a number of the OYs may not be achieved in 2005 or 2006.

OY Management for Overfished Species

Management measures adopted for 2005 and 2006 are expected to keep the incidental catch of overfished species within the adopted OYs. Managing a fishery inseason is dependent on the availability and accuracy of catch data. As new data become available and are used to track catch levels throughout the year, management strategies may need to be adjusted to keep the harvest of healthy stocks and the incidental catch of overfished species at or below their specified OYs.

Managing the fishery to stay within the OYs of overfished species is difficult because the OYs of many overfished species are low. After reviewing the estimated mortality from all directed and incidental groundfish fisheries and research activities, the Council recommended adopting management measures that are predicted to result in total fishing mortality levels that are lower than the annual OYs for some overfished species. Designing management measures for certain overfished species that result in total mortality levels that are lower than that species' OY leaves a residual amount of fish from the OY. Leaving this residual amount at the beginning of the fishing year can reduce the risk that the fisheries will exceed the OY, particularly when there are difficulties in catch accounting or when new information becomes available that changes NMFS' understanding of total catch. The residual amounts below OYs for each overfished species are provided in the footnotes to Tables 1a and 2a.

POP

Date declared overfished: March 3, 1999

Areas affected: Vancouver and Columbia

Status of stock: Following the 2003 assessment, the stock was believed to be at 25 percent of unfished biomass level.

B_0: 37,230 units of spawning output

B_{MSY}: 14,892 units of spawning output

T_{MIN}: 2011

T_{MAX}: 2042

P_{MAX}: >70 percent

T_{TARGET}: 2027

Harvest control rule: F=0.0257

ABC: 966 mt in 2005, 934 mt in 2006

OY: 447 mt in 2005, 447 mt in 2006

Management measures for 2005 and 2006: POP is a slope species that occurs in similar depths as darkblotched rockfish, although POP has a more northern geographic distribution than darkblotched rockfish. The 2005 and 2006 management measures that are intended to limit the bycatch of POP include the continued use of RCAs, cumulative trip limits, and routine management authority to close the primary whiting fisheries if there are overfished species bycatch concerns.

POP are primarily taken with trawl gear north of 40°10′ N. lat. The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of POP was historically highest. However, the boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about geographical and seasonal distribution of bycatch.

Minor slope rockfish and POP limits are set at levels that are expected to allow vessels targeting DTS species (Dover sole, thornyheads, sablefish) to retain their incidentally caught slope rockfish while being low enough to discourage targeting. Measures that constrain the DTS trawl fishery to stay within the shortspine thornyhead OY are also expected to keep the catch of POP in both 2005 and 2006 well below its OYs. As needed, trip limits for co-occurring species may be adjusted to reduce POP rockfish bycatch.

With this action, NMFS is establishing routine management measure authority to close a whiting primary season fishery, before the sector's whiting allocation is reached, to address concerns about the impacts on overfished species, including POP.

POP are not an important component of the tribal or recreational fisheries.

Darkblotched Rockfish

Date declared overfished: January 11, 2001 (66 FR 2338)

Areas affected: Coastwide

Status of the stock: Following a 2003 stock assessment, the coastwide stock was believed to be at 11 percent of its unfished biomass level.

B_0: 30,775 mt

B_{MSY}: 12,310 mt

T_{MIN}: 2011

T_{MAX}: 2047

P_{MAX}: >80 percent

T_{TARGET}: 2030

Harvest control rule: F=0.032

ABC: 269 mt in 2005, 294 mt in 2006

OY: 269 mt in 2005, 294 mt in 2006

Management measures in 2005 and 2006: Darkblotched rockfish occur on the outer continental shelf (shelf) and continental slope (slope), mainly north of Point Reyes, CA (38° N. lat). Because of their deeper distribution, they are caught exclusively by commercial vessels. Most landings have been made by bottom trawl vessels targeting flatfish on the shelf and minor rockfish and DTS species on the continental slope. Management measures intended to limit bycatch of darkblotched rockfish and keep fishing mortality within the OYs specified for 2005 and 2006 include the continued use of RCAs, cumulative trip limits, and routine management authority to close the primary whiting fisheries when there are overfished species bycatch concerns.

The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of darkblotched rockfish was highest. The boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about geographical and seasonal distribution of bycatch.

Minor slope rockfish cumulative trip limits are set at levels that are expected to allow vessels targeting DTS species to retain their incidentally caught slope rockfish while being low enough to discourage targeting. Measures that constrain the DTS trawl fishery to stay within the shortspine thornyhead OY are also expected to keep the catch of darkblotched rockfish in both 2005 and 2006 well below its OYs. As needed, trip limits for co-occurring species may be adjusted to reduce the catch of darkblotched rockfish.

With this action, NMFS is establishing routine management measure authority to close a whiting primary season fishery, before the sector's whiting allocation is reached, to address concerns about the impacts on overfished species, including darkblotched rockfish.

Canary Rockfish

Date declared overfished: January 4, 2000 (65 FR 221)

Affected area: Coastwide

Status of the stock: 8 percent of its unfished biomass level in 2002.

B_0: 31,550 mt

B_{MSY}: 12,620 mt

T_{MIN}: 2057

T_{MAX}: 2076

P_{MAX}: 60 percent

T_{TARGET}: 2074

Harvest control rule: F=0.0220

ABC: 270 mt in 2005, 279 mt in 2006

OY: 46.8 mt in 2005, 47.1 mt in 2006

Management measures in 2005 and 2006: Canary rockfish prefer rocky areas on the shelf and are encountered in a wide variety of commercial and recreational fisheries. Management measures intended to limit bycatch of canary rockfish include the use of RCAs, cumulative trip limits, gear restrictions, reduced seasons, and routine management authority to close the primary whiting fisheries when there are overfished species bycatch concerns.

Bottom trawling is prohibited in the trawl RCA, which covers much of the shelf and depths where canary rockfish have been most frequently caught. The nontrawl RCA boundaries are intended to move the nontrawl fleets off of the continental shelf, where overfished species susceptible to nontrawl gear are found.

Cumulative limits are structured to discourage targeting while allowing very low levels of incidental take to be landed. For the area south of 40°10′ N. lat., limited entry fixed gear trip limits are set so that they draw vessels away from continental shelf species, placing emphasis on available slope species. The limited entry fixed gear fleet north of 40°10′ N. lat. will be prohibited from retaining canary rockfish. Differential trip limits have been used for large and small footrope trawl gear throughout the year. Trawl flatfish trip limits are lower inshore of the trawl RCA, where canary rockfish are most commonly distributed, than offshore of the RCA. By allowing greater limits for large footrope gear and prohibiting its use in nearshore areas, there is an incentive for vessels to fish in deeper waters, beyond the range of canary rockfish. To reduce incidental take of canary rockfish inshore of the RCA, flatfish vessels operating in that area are required to use selective flatfish trawl gear and are allowed to access lower trip limits than those fishing offshore of the RCA. Because NMFS is proposing to require trawlers to use selective flatfish trawl gear in the nearshore areas, flatfish trawl trip limits for vessels using small footrope trawl gear north of 40°10′ N. lat are higher than in recent years. This new trawl net design, which was tested in 2003 through an exempted fishing permit, features a headrope set back from a flattened net body to capture low-swimming flatfish while allowing rockfish, including canary rockfish, to escape over the upper edge of the trawl net.

Trawling with open access non-groundfish gear for pink shrimp will be allowed within the RCA because they use state required finfish excluder devices to reduce their groundfish bycatch, particularly bycatch of canary and other rockfishes. Off California, trawling for California halibut, and sea cucumber will be prohibited within the trawl RCA. Ridgeback prawn trawling will south of 34°27′ N. lat. will be constrained by an RCA between boundary lines approximating the 100 fm (183 m) and 150 fm (274 m) depth contours throughout the year.

Recreational fisheries are managed through bag limits, size limits and seasons. As necessary, seasons can be shortened and bag limits reduced to stay within the OYs. The retention of canary rockfish, in Washington waters, will be prohibited. Off Oregon, recreational fishing for groundfish will be depth-restricted June through September, when the fishery will be closed offshore of a boundary line approximating the 40 fm (73 m) depth contour. Recreational fisheries participation is heaviest during these months and this closure is intended to move the groundfish fisheries inshore to protect canary rockfish. The California Department of Fish and Game (CDFG) proposed for 2005 and 2006 a package of management measures to strongly constrain their recreational fisheries (see recreational section below). Season and area closures differ between California regions to better protect overfished species according to where those species occur and where fishing effort is strongest. Retention of canary rockfish in the California and Oregon recreational fisheries will not be permitted.

With this action, NMFS is establishing routine management measure authority to close a whiting primary season fishery, before the sector's whiting allocation is reached, to address concerns about the impacts on overfished species.

Lingcod

Date declared overfished: March 3, 1999.

Areas affected: Coastwide

Status of the stock: A coastwide assessment was conducted in 2003 and estimated that the stock was at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south.

B_0: 41,071 mt coastwide, 20,801 mt north and 20,270 mt south

B_{MSY}: 16,428 mt coastwide, 8,321 mt north and 8,108 mt south

T_{MIN}: 2004 north and 2006 south

T_{MAX}: 2009

P_{MAX}: 70 percent

T_{TARGET}: 2009

Harvest control rule: F=0.17 north and F=0.15 south

ABC: 2,922 mt in 2005, 2,716 mt in 2006

OY: 2,414 mt in 2005 and in 2006

Management measures in 2005 and 2006: Lingcod are irregularly distributed coastwide in hard bottom areas and around rocky reefs and are encountered in a variety of commercial and recreational fisheries. While lingcod is not yet rebuilt, it is abundant enough that it does not seriously constrains fisheries for co-occurring species.

Management measures intended to limit bycatch of lingcod for 2005 and 2006 include the continued use of RCAs, cumulative trip limits, reduced seasons, and gear restrictions. Measures to reduce the catch of canary rockfish are also expected to provide protection to co-occurring overfished species such as lingcod. Similarly, the trip limit structures intended to constrain the incidental catch of canary rockfish is expected to benefit lingcod.

Trawl limits for lingcod are still at incidental take levels to discourage vessels from targeting lingcod while accommodating true incidental catch. As in past years, in the northern area limited entry fixed gear and open access fisheries will be prohibited from landing lingcod in January-April and in November-December to protect lingcod during their spawning and nest-guarding season. Similar to the northern area, lingcod retention is only permitted during May-October in the south. Lingcod are vulnerable to these gears during the winter nesting period, but have a high rate of survival when released alive. RCA restrictions described above for canary rockfish also protect lingcod.

Lingcod is also an important recreational species coastwide. Recreational bag limits, size limits and season restrictions will continue to be used. Regional management of the California recreational fisheries is expected to better protect overfished species by allowing the most restrictive management actions to be taken in the areas where typical fishing effort and overfished species impacts are strongest. Recreational fishing for lingcod will be closed in the winter months throughout to protect lingcod during its spawning and nesting season.

Bocaccio

Date declared overfished: March 3, 1999

Areas affected: Monterey and Conception

Status of stock: 7.4 percent of its unfished biomass in 2003

B_{MY}: 13,387 Billion eggs in 2003

B_{MSY}: 5,355 Billion eggs in 2003

T_{MIN}: 2018

T_{MAX}: 2032

P_{MAX}: 70 percent

T_{TARGET}: 2023
Harvest control rule: 0.0498
ABC: 566 mt in 2005, 549 mt in 2006
OY: 307 mt in 2005, 309 mt in 2005

Management measures for 2005 and 2006: Bocaccio is a shelf species that is most commonly found from 54 fm (99 m) to 82 fm (150 m) of water over the shelf. Bocaccio have historically been taken in the commercial trawl and fixed gear and recreational fisheries. To reduce bocaccio bycatch, fishing opportunities in the depths where bocaccio are most commonly encountered have been reduced though the use of RCAs, cumulative trip limits, and gear restrictions.

RCAs will continue to be used in 2005 and 2006 to restrict fishing on the shelf. Because bocaccio are more frequently caught by fixed gears in waters off the central California coast, proposed closures for the non-trawl fleet are more broad in this area. Off California, trawling for California halibut, and sea cucumber is prohibited within the trawl RCA. Pink shrimp trawling will be allowed within the RCA providing the vessels use state required finfish excluder devices. Ridgeback prawn trawling will south of 34° 27′ N. lat. will be constrained by an RCA between boundary lines approximating the 100 fm (183 m) and 150 fm (274 m) depth contours throughout the year.

NMFS expects that management measures to protect canary rockfish will restrict the incidental catch of bocaccio and keep it well below the OY. Because of this, the Council is allowing some targeting of the co-occurring chilipepper rockfish stock. Vessels that target chilipepper with large footrope gear offshore of the RCA or with midwater trawl gear will be allowed higher chilipepper landings limits in May-August. Only minimal levels of bocaccio retention, to accommodate incidental catch, will be permitted.

For the recreational fisheries, CDFG proposes to strongly constrain their recreational fisheries through the use of season and area closures that differ between California regions. Regional management of the California recreational fisheries is expected to better protect overfished species by allowing restrictive management actions to be taken in the areas where fishing effort and overfished species impacts are greatest.

Cowcod

Date declared overfished: January 4, 2000
Areas affected: Point Conception to the U.S.-Mexico boundary.
Status of stock: 4–11 percent of unfished biomass in 1999
B_0: 3.367 mt
B_{MSY}: 1,350 mt
T_{MIN}: 2062
T_{MAX}: 2099
P_{MAX}: 60 percent
T_{TARGET}: 2090
Harvest control rule: F=0.009
ABC: 24 mt in 2005 and 2006
OY: 4.2 mt in 2005 and 2006

Management measures in 2005 and 2006: All directed cowcod fishing opportunities have been eliminated since 2001. Retention of cowcod is prohibited for all commercial and recreational fisheries. In addition, management measures to reduce canary and bocaccio rockfish catch are also expected to benefit cowcod.

To protect cowcod from incidental harvest, two Cowcod Conservation Areas (CCAs) (the Eastern CCA and the Western CCA) in the Southern California Bight have been delineated to encompass key cowcod habitat areas and known areas of high catches. Fishing for groundfish is prohibited within the CCAs, except that minor nearshore rockfish, cabezon, and greenling may be taken from waters where the bottom depth is less than 20 fathoms (36.9 m).

In 2003, a rebuilding review was conducted for cowcod. This was a thorough examination of the recreational and commercial fishery related removals in relation to the ABC and OY levels that were established for rebuilding. The review concluded that the total removals of cowcod have declined in accordance with the rebuilding based harvest specifications.

Widow Rockfish

Date declared overfished: January 11, 2001
Areas affected: Coastwide
Status of stock: 22.4 percent of the unfished biomass in 2002
B_0: 43,530 million eggs
B_{MSY}: 17,432 million eggs
T_{MIN}: 2026
T_{MAX}: 2042
P_{MAX}: 60 percent
T_{TARGET}: 2038
Harvest control rule: F=0.0093
ABC: 3,218 mt in 2005, 3,059 mt in 2006
OY: 285 mt in 2005, 289 mt in 2006

Management measures in 2005 and 2006: Management measures intended to limit bycatch of widow rockfish and keep fishing mortality within the OYs specified for 2005 and 2006 included the continued use of RCAs, cumulative trip limits, and routine management authority to close the primary whiting fisheries when there are bycatch concerns.

Because bottom trawl opportunities for shelf rockfish continue to be extremely limited outside the RCAs, the use of RCAs are expected to be beneficial to the recovery of widow rockfish. Cumulative trip limits for commercial limits for widow rockfish are intended to accommodate incidental catch and do not provide an incentive for directed fishing. Similarly, cumulative limits for yellowtail rockfish, a species that co-occurs with widow rockfish, have been severely constrained.

An incidental catch allowance of widow rockfish will continue to be provided for the primary whiting season. Final whiting ABCs and OYs are expected to be adopted at the Council's March 2005 and 2006 meetings. NMFS anticipates setting the 2005 and 2006 Pacific whiting OYs so that they are constrained by the amount of widow rockfish available for incidental retention, as the agency did in 2004 (April 30, 2004, 69 FR 23667).

With this action, NMFS is establishing routine management measure authority to close a whiting primary season fishery, before the sector's whiting allocation is reached, to address concerns about the impacts on overfished species.

Yelloweye Rockfish

Date declared overfished: January 11, 2002
Areas affected: Coastwide
Status of stock: 24.1 percent of its unfished biomass in 2002
B_0: 3,875 mt
B_{MSY}: 1,550 mt
T_{MIN}: 2027
T_{MAX}: 2071
P_{MAX}: 80 percent
T_{TARGET}: 2058
Harvest control rule: F=0.0153
ABC: 54 mt in 2005, 55 mt in 2006
OY: 26 mt in 2005, 27 mt in 2006

Management measures in 2005 and 2006: Yelloweye rockfish are more available to the fixed gears and recreational fisheries than to the trawl fishery. Management measures intended to limit bycatch of yelloweye rockfish and to keep fishing mortality within the OY specified for 2005 and 2006 include the continued use of RCAs and cumulative trip limits in the commercial fisheries and bag limits in the recreational fisheries.

The retention of yelloweye rockfish in the commercial nontrawl fisheries will continue to be prohibited throughout the year. In addition, sublimits for yelloweye rockfish will be applied to the minor nearshore shelf rockfish trip limit for the limited entry trawl fisheries to discourage any interest in targeting yelloweye rockfish.

The yelloweye rockfish conservation area (YRCA) will continue to be used for

2004 in waters off the coast of Washington. Off Washington, recreational fishing for groundfish and halibut will continue to be prohibited inside the YRCA, a C-shaped closed area off the northern Washington coast. Off Oregon, recreational fishing for groundfish will be depth-restricted June through September, when the fishery will be closed offshore of a boundary line approximating the 40 fm (73 m) depth contour. Recreational fisheries participation is heaviest during these months and this closure is intended to move the groundfish fisheries inshore to protect canary and yelloweye rockfish. Regional management of the California recreational fisheries is expected to better protect overfished species by allowing the restrictive management actions to be taken in the areas where fishing effort and overfished species impacts are greatest. Retention of yelloweye rockfish in the California and Oregon recreational fisheries will not be permitted.

Overfishing

None of the 2005–2006 ABCs are set higher than FMSY or its proxy, none of the OYs are set higher than the corresponding ABCs, and the management measures in this proposed rule are designed to keep harvest levels within specified OYs. Overfishing is difficult to detect inseason for many groundfish, particularly for minor rockfish species, because most species are not individually identified on landing. Species compositions, based on proportions encountered in samples of landings and extrapolated observer data, are applied during the year. However, final results are not available until after the end of the year. Thus, this proposed rule discusses overfishing that occurred in 2003, not 2004. If overfishing occurred on any groundfish species in 2004, it will be listed in NMFS's annual report to Congress on the status of U.S. Fisheries.

During the 2003 fishing season, overfishing occurred on lingcod and black rockfish. There are no formal allocations for lingcod between the commercial and recreational fisheries; however the 2003 total catch OY of 651 mt for lingcod was separated into: 355 mt expected catch for the recreational fisheries, 3 mt for the amount estimated to be taken in research, 4.3 mt for the amount estimated to be taken in commercial non-groundfish fisheries, 5.2 mt expected catch in the tribal fisheries, resulting in a 284 mt non-tribal commercial OY. Catch of lingcod in 2003 research fisheries is estimated to have been 4.5 mt. Non-tribal and tribal commercial catch for 2003 is estimated to have been 165.7 mt, which is well beneath the combined 289.2 mt expected for those fisheries. Recreational lingcod landings for 2003 are estimated to have been 1,012 mt, exceeding the expected recreational fisheries take by 657 mt. With this large overharvest in the recreational fisheries, total lingcod landings are estimated to have been 1,182.2 mt, exceeding the 841 mt coastwide lingcod ABC by 341.2 mt. Under the FMP, ABCs are set at FMSY and the lingcod ABC is set with an FMSY proxy of F45%. Fishing at a level that exceeds the MSY harvest rate is considered overfishing under the Magnuson-Stevens Act.

Because the black rockfish stock is above the FMP's precautionary level indicator of $B_{40\%}$, the black rockfish OY is set equal to its ABC. In 2003, the black rockfish coastwide ABC/OY was 1,115 mt. The available 2003 black rockfish harvest was not as tightly delineated as the 2003 lingcod harvest. Of the 1,115 mt available coastwide, 615 mt was estimated to be available from the Vancouver and Columbia management areas (north of 43° N. lat.) and 500 mt from the Eureka area (40° 10′—43° N. lat.) Black rockfish is a northern stock occurring primarily north of 40° 10′ N. lat. The 2003 non-tribal and tribal commercial fisheries took 174.4 mt of black rockfish, 128.9 mt of which was landed in the Eureka area. Data for the recreational fisheries are separated by state, rather than by fishery management area. The 2003 recreational fisheries took 516 mt off Oregon and Washington (waters north of 42° N. lat.) and 497 mt off California. Cumulatively, the fisheries landed 1,187.4 mt of black rockfish in 2003, exceeding that species' ABC by 72.4 mt.

For both the lingcod and black rockfish ABCs, the California recreational fisheries had the greatest effect in exceeding those ABCs. The 2003 California recreational fisheries landed 840 mt of the 1,012 mt of coastwide lingcod landings. Of the 1,016 mt of black rockfish available to the recreational fisheries coastwide, the California recreational fisheries took 497 mt.

Before finalizing the 2004 fishery specifications and management measures, NMFS reviewed preliminary data on the 2003 fisheries. The 2003 landings data available at that time, February 2004, were not considered complete for either the recreational or commercial fisheries. There was enough information on the California recreational fisheries, however, to give NMFS concern that those fisheries could again overharvest lingcod, black rockfish, and perhaps other species in 2004. NMFS discussed the California recreational fisheries data with CDFG in February 2004, and implemented restrictive lingcod management measures for those fisheries with its 2004 specifications and management measures final rule (69 FR 11064, March 9, 2004.) Effective April 1, 2004, NMFS and California reduced the lingcod bag limit off California from two fish to one fish and increased the size limit from 24 inches (61.4 cm) to 30 inches (76.8 cm).

Both the Council and the California Fish and Game Commission (Commission) discussed the need to further restrict California's recreational fisheries to protect lingcod, black rockfish, and other nearshore rockfish species at their meetings in March and April 2004. CDFG conveyed the Commission's recommendations to the Council at the Council's April meeting. The Council concurred with the Commission that both state and Federal regulations for California's recreational fishery needed to be more constraining to prevent overharvest of these species and other overfished stocks. Based on the Council's recommendations, NMFS made a series of bag limit reductions, area closures and season closures that were effective May 1, 2004, and which are detailed in two NMFS inseason action documents that were published on April 29, 2004 (69 FR 23440) and May 5, 2004 (69 FR 25013). The revised 2004 California recreational fisheries management measures provided the basis for the more restrictive and area-specific management measures proposed for 2005–2006 California fisheries. NMFS, the Council, and CDFG will monitor 2004 recreational fisheries data as they become available to assess whether 2005–2006 recreational fisheries management measures are sufficiently constraining to prevent the California fishery from excessive harvests in those years. In both 2005 and 2006, the commercial and recreational fisheries have been constrained to protect canary rockfish. NMFS and the Council expect that canary rockfish protections will constrain lingcod harvest. In both 2005 and 2006, a residual amount of lingcod remains in the lingcod OY beyond those amounts expected to be taken in commercial, recreational, tribal and scientific fishing. In 2005, that residual amount is 1,504.5 mt and in 2006, it is 1,528.3 mt. These residual amounts of available lingcod harvest may provide a buffer against overharvest in the California recreational fisheries.

Bycatch and Discard Management

The Magnuson-Stevens Act defines bycatch as "fish which are harvested in

a fishery, which are not sold or kept for personal use, and include economic discards and regulatory discards." By contrast, Pacific Coast groundfish fishery management and many other fishery management regimes commonly use the term bycatch to describe non-targeted species that are caught in common with (co-occur with) target species, some of which are landed and sold or otherwise used and some of which are discarded. The term "discard" is used to describe those fish harvested that are neither landed nor used.

NMFS's bycatch reduction program for West Coast groundfish is primarily intended to address the two major Magnuson-Stevens Act goals on bycatch:

(1) "Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch" (§ 301(a)(9)).

(2) [FMP's shall] "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided" (§ 303(a)(11)).

NMFS uses a three-part strategy to meet these Magnuson-Stevens Act mandates: (1) gather data through a standardized reporting methodology on the amount and type of bycatch occurring in the fishery; (2) assess this data through bycatch models to estimate when, where, and with which gear types bycatch of varying species occurs; and (3) implement management measures through Federal fisheries regulations that minimize bycatch and bycatch mortality to the extent practicable, and that keep the total mortality of groundfish within the OYs of the various groundfish species and species groups. This section of the preamble to this proposed rule describes recent NMFS activities in each of the three parts of this strategy.

Gathering Bycatch and Discard Data

NMFS uses the West Coast groundfish observer program (WCGOP,) established in August 2001 and required in the FMP in Section 6.5.1.2, as its primary standardized reporting methodology for bycatch in the groundfish fisheries. The WCGOP focuses on vessels participating in the shore-delivery cumulative limit fisheries for non-whiting groundfish. Although WCGOP deploys observers on vessels of all major gear types, the program initially focused on observing trawl vessel fishing activity. Over 90 percent of commercial West Coast groundfish landings, by weight, are taken by the limited entry trawl fleet. As WCGOP has developed, it has expanded into more observations in the limited entry nontrawl fleet. About 75 percent of WCGOP's observer hours tend to be spent on trawl vessels, with the remaining 25 percent primarily focused on limited entry longline and pot vessels. Through 2003, NMFS's observer coverage of the limited entry fixed gear fleet focused on vessels participating in the primary sablefish fishery. Participants in this fishery landed approximately 44 percent of the commercial groundfish taken by vessels other than groundfish trawlers in 2003. In 2004 and beyond, the agency will be adding observer coverage to the remainder of limited entry fixed gear fishing strategies and to the open access directed groundfish fisheries. These two sectors, the open access directed fishery and the limited entry fishery outside of the primary sablefish season, have similar fishing strategies. WCGOP is experimenting with ways to deploy observers on the small (<18 ft length overall) boats of the open access groundfish fisheries. More information on WCGOP is available online at: *www.nwfsc.noaa.gov/research/divisions/fram/Observer/.*

Vessels participating in the at-sea whiting fisheries (catcher-processors and motherships) have been voluntarily carrying observers since 1991. NMFS made observer coverage mandatory for at-sea processors on July 7, 2004 (69 FR 31751, June 27, 2004). For the shore-based whiting fisheries, NMFS experimented in 2004 with electronic monitoring in combination with dockside monitors. The Council will make its final recommendation on a full retention and monitoring program for the shore-based whiting fisheries at its October 31–November 5, 2004, meeting in Portland, OR. (A draft Environmental Assessment for this program is available online at: *ww.nwr.noaa.gov/1sustfsh/groundfish/gfNEPA.htm*). NMFS expects to implement regulations for this program in time for the 2005 whiting season. The WCGOP and the whiting observer programs, in combination with state fish ticket and logbook programs and fisheries-independent data, are used to support groundfish bycatch assessment models. Together, these programs comprise the first part of NMFS' bycatch management strategy, gathering scientific data on bycatch in the groundfish fisheries. In addition to these Federal programs, the Council relies on state recreational fisheries sampling programs, which use a combination of at-sea and at-dock samplers to gather catch and discard data on the recreational fisheries. These state-run programs are described in the DEIS for this action.

Modeling Bycatch and Discard Data

The second part of NMFS's bycatch management strategy is to use data on bycatch and discard in models intended to estimate the amount and type of bycatch occurring in the groundfish fisheries. NMFS first introduced a groundfish fisheries total catch assessment model (known as "the bycatch model") in late 2001 for the 2002 fishing season. NMFS has annually described the development and evolution of this model in its proposed rules to implement fishery specifications and management measures. [See 67 FR 1555, January 11, 2002, 68 FR 936, January 7, 2003, and 69 FR 1380, January 8, 2004 for historical information on the bycatch model.] As the WCGOP has evolved, so has the bycatch model. During its first year, the bycatch model focused on overfished species taken incidentally in the trawl fisheries, and was populated with data from observation experiments from the mid–1990s and prior years. By January 2003, NMFS had analyzed data from the first year of the WCGOP and the bycatch models for fishing years 2003 and 2004 were updated with WCGOP-generated data. Prior to 2004, the bycatch model had focused on co-occurrence ratios for overfished species taken in target species fisheries without also looking at potential discard of target species. For the 2004 fishing year, NMFS expanded the bycatch model to set discard rates for target species by depth. Like initial WCGOP efforts, the models for the 2002–2003 fishing years also focused on the trawl fisheries. For 2005–2006, NMFS has again updated the trawl bycatch model with trawl fisheries data from WCGOP. NMFS has also revised the new fixed gear bycatch model, initially used in 2004, for the 2005–2006 fisheries that analyzes observer data from the limited entry fixed gear fisheries.

Data in the trawl bycatch model comes from WCGOP and state fish ticket and logbook programs. The trawl bycatch model for the 2005–2006 fishing years includes updated data from these sources, with data from more recent years weighted more heavily in the model. In addition to updating the data supporting the model, NMFS made three minor revisions to the model's methods used to calculate and apply bycatch ratios.

NMFS's first revision to the trawl model was to calculate bycatch ratios with reference to the total catch of target species, rather than with reference to the landed catch of target species. This refinement has been made possible by observer data, which has given the agency better estimates of total catch. This revision does not change the amounts by which the ratios indicate managers should deduct discards from total catch. However, because the ratios are applied to the larger target (as opposed to landed) catch amounts of target species, there will not be a straightforward comparison between bycatch ratios for the fisheries in 2005 and beyond with those for 2004 and prior.

NMFS's second revision is based on improved data on overfished species distribution. For fisheries in 2005 and beyond, bycatch rates for the northern and southern areas will be divided at 40° 10′ N. lat. for all species except darkblotched rockfish. Northern and southern area bycatch rates for darkblotched rockfish, a slope species, will be divided at 38° N. lat. for depths greater than 150 fm (274 m), where darkblotched commonly occurs. Bycatch rates for trawlers operating north of 40° 10′ N. lat. have also been adjusted to account for new 2005–2006 gear requirements for vessels operating in the northern area and shoreward of the trawl RCA. Vessels operating in this northern area will be required to use "selective flatfish trawl gear," which the ODFW developed in cooperative experiments with the fishing industry.

NMFS's third revision is to reinstate seasonal distributions of bycatch rates. When NMFS had relied on pre-WCGOP observer data to populate its bycatch model, that data had been abundant enough to seasonally stratify co-occurrence ratios for overfished species taken in target species' fisheries. The model for the 2004 fishing year eliminated observer data from programs other than WCGOP in order to use the most recent data on the fishery. Because there was not enough WCGOP data for that model to show seasonal trends in co-occurrence ratios, the model was initially applied to the fisheries in 2004 without seasonal stratification of those ratios. Now that NMFS has sufficient WCGOP data to detect seasonal trends in co-occurrence ratios, the model revised inseason for 2004 fisheries and used to develop 2005–2006 management measures allows NMFS to reintroduce seasonally-stratified management. By seasonally-stratifying fishing effort, NMFS is better able to develop landings limits for target species that emphasize fishing in times and areas where those species may be taken with lower bycatch of overfished species.

NMFS expects to continue to review and evaluate its trawl bycatch model, and to update that model with new WCGOP data. For 2004 and beyond, NMFS also developed an independent bycatch model for the limited entry, primary fixed gear sablefish fishery. The trawl bycatch model is based in part on the two-month cumulative limit period structure of the trawl fishery. For these two-month periods, the Council and NMFS set landings limits for a range of species with the expectation that not all trawl participants will attain the limits for all species during each period. Conversely, the limited entry primary sablefish season is a 7–month cumulative limit period with limits set for one species. Few participants in this fishery fail to attain their tier limits within the 7 month season. Additionally, most participants are able to take their tier limits within several weeks' time, which allows each participant to choose when during the season he or she will directly target sablefish. The trawl bycatch model is essentially a model of the expected behavior of fishery participants how much of each species will be retained or discarded given varying cumulative limits for target species. The limited entry fixed gear primary sablefish season has a structure that allows different and more flexible behavior than the trawl cumulative limit fishery. As a result, NMFS needed to modify its approach to bycatch modeling to better reflect fishermen's behavior in the primary sablefish fishery.

NMFS faced several challenges in developing a bycatch model for the primary sablefish fishery. Unlike the trawl cumulative limit periods, the 7 month season is a new development. Prior to 2001, this fishery was an open competition derby of 5–10 days in duration. In 2001, NMFS approved Amendment 14 to the FMP, which allowed vessels with limited entry permits and sablefish endorsements to participate in a lengthened season during which they would have ample opportunity to take their tier limits. The 2001 season was 2.5 months long, but the seasons in 2002 and 2003 were 7 months long. The flexibility of these longer seasons, coupled with the relative lack of historical data on how vessels might behave during the longer season has made modeling vessel behavior more challenging than for the trawl fishery. And, unlike participants in the trawl fishery, primary sablefish season participants are not required to carry state logbooks. State trawl logbook data is used in the trawl bycatch model to assess basic fishing behavior across the fleet, such as where and when vessels are fishing.

To address the longer fixed gear sablefish season, the fixed gear bycatch model uses fleetwide, season-long estimates of discard and bycatch, applying those estimated rates to the total catch of sablefish allocated to the fishery. NMFS accounted for the newness of the longer sablefish season by weighting the observer data within the model such that data from 2003 observations was more heavily weighted than data from 2002 and 2001. At the April 2004 Council meeting, NMFS reported to the Council on its new fixed gear bycatch model and the results of its WCGOP observations of the primary sablefish season. The Council recommended that NMFS use observer program data in a model specific to the fixed gear fisheries to re-calculate 2004 sablefish tier limits based on revised estimates of sablefish discard. NMFS initially made the revised sablefish tier limits effective May 1 (69 FR 25013, May 5, 2004) and later had to revise those limits to correct a calculation error (69 FR 38857, June 29, 2004).

Proposed tier limits for the 2005–2006 primary sablefish season were based on the results of WCGOP observations of this fishery and on the fixed gear bycatch model. The tier limits were set to account for the sablefish discard in the primary fishery, with nontrawl RCA boundaries set to reduce bycatch of overfished species. For fishing in depths greater than 100 fm (183 m), the offshore boundary of the nontrawl RCA, the bycatch model showed bycatch of canary, darkblotched and yelloweye rockfish to be less than 0.2 percent of the catch of sablefish in weight, regardless of gear type or time of year fished. The bycatch of widow rockfish and POP was less than 0.1 percent of the catch of sablefish in weight, regardless of gear type or time of year fished. The bycatch of lingcod was higher, up to 1.6 percent of the weight of the sablefish catch, for vessels using pot gear. Observer data showed no catch of bocaccio or cowcod, but observations of this fleet were taken north of Fort Bragg, CA. Bocaccio and cowcod are southern species and NMFS is expanding its observer coverage southward to better determine whether they are taken incidentally in the primary sablefish fishery south of Fort Bragg, CA. Fishing observed in waters deeper than 150 fm (274 m) showed somewhat lower than expected bycatch ratios for shelf species and modestly higher than expected bycatch ratios for slope species, darkblotched rockfish and POP, regardless of gear type or time of year

fished. Even at 150 fm (274 m), POP bycatch was under 0.07 percent of sablefish catch by weight, and darkblotched rockfish bycatch was under 0.4 percent of sablefish catch by weight.

For the 2005–2006 non-trawl fisheries, cumulative trip limits for species other than sablefish were not changed as a result of the primary sablefish season bycatch model. NMFS does not believe that observer data from the primary sablefish season accurately reflects limited entry fixed gear fleet activities outside of the primary sablefish season, and is still gathering data to better characterize bycatch in that fishery. When observer data from the third year of WCGOP (September 2003 through August 2004) becomes available in early 2005, NMFS will analyze that data to determine whether it can develop a model for bycatch in the nontrawl limited entry and open access fisheries outside of the primary sablefish fishery. This nontrawl bycatch model could then be used to assess 2005–2006 landings limits and RCA boundaries to determine whether inseason changes were needed to adequately protect overfished species. Proposed 2005–2006 nontrawl landings limits for species other than sablefish are connected to trawl landings limits established by the trawl bycatch model. Nontrawl gear vessels are prohibited from retaining overfished species that are routinely caught by nontrawl gear and which cannot sustain incidental landings limits allowances, such as canary rockfish, yelloweye rockfish and cowcod.

Management Measures to Reduce Bycatch

As mentioned earlier in this section, the third part of NMFS's bycatch reduction strategy is a series of management programs intended to either directly control fishing activities or to create incentives for bycatch reduction. NMFS has implemented a wide array of fishery management measures intended to minimize bycatch and bycatch mortality over the past several years. The agency has supported full retention and/or full utilization exempted fishing permit (EFP) programs for the Washington arrowtooth flounder trawl, yellowtail rockfish trawl and longline dogfish fisheries, and for the California flatfish trawl fishery. NMFS has also supported an Oregon EFP to experiment with modifying trawl net design to reduce bycatch. A lower-bycatch trawl net requirement based on the results of that EFP would be introduced for 2005–2006 through the final rule for this action. This gear features a headrope set back from a flattened net body to capture low-swimming flatfish while allowing rockfish to escape over the upper edge of the trawl net. Because the net tends to be most effective at reducing rockfish bycatch in nearshore waters, it will be required only shoreward of the trawl RCA. CDFG will be experimenting with a similar flatfish-targeting net in 2004 and/or 2005. If the selective flatfish net proves equally effective at reducing rockfish bycatch south of 40°10′ N. lat., NMFS expects to implement future requirements for this gear in the southern area as well.

In addition to EFP-based experiments with gear types and fishing areas, NMFS has implemented shorter-than-year-round fishing seasons for various species and sectors of the groundfish fleet to protect overfished groundfish species. NMFS and the Council have also reduced overcapacity in the fleets, ultimately reducing the number of vessels on the water. Amendment 14 to the FMP implemented a permit stacking program for the limited entry fixed gear fleet that reduced the number of vessels participating in the primary sablefish fishery by about 40 percent. In late 2003, NMFS implemented a buyback of limited entry trawl vessels and their permits, reducing the groundfish trawl fleet by about 35 percent.

Since 2000, NMFS has required gear modifications that restrict the use of trawl gear in rockier habitat coastwide, and that constrain the catching capacity of recreational fishing gear off California. Higher groundfish landings limits have been made available for trawl vessels using gear or operating in areas where overfished species are less likely to be taken. Species-to-species landings limit ratios have been thoroughly examined in the bycatch model mentioned earlier, and are re-examined each year as new observer program data become available. And, NMFS has implemented a suite of coastwide marine protected areas known collectively as the GCAs, in which different types of groundfish fishing activities are prohibited.

Some of NMFS's bycatch minimization measures are provided in the FMP and others have been implemented through regulatory action. NMFS has been exploring whether to include more of these measures, as well as new bycatch reduction measures, into the FMP through a draft programmatic EIS on its bycatch reduction program (69 FR 9313, February, 27, 2004). In winter 2004–2005, NMFS will work with the Council to develop amendatory language for the FMP that comports with the Council's preferred alternative from the FEIS. NMFS anticipates that this FMP amendment, which will likely be numbered Amendment 18, will be made available to the public in the Council process this fall and through the Magnuson-Stevens Act public notice-and-comment process in 2005.

2005–2006 Fishery Management Measures

As in past years, the Council's overriding goal in developing the fishery management measures for 2005–2006 was to meet overfished species rebuilding plan objectives for those years. On April 30, 2004 (69 FR 23667), NMFS declared the Pacific whiting biomass to be above BMSY, which leaves eight West Coast groundfish species characterized as overfished. Overfished species rebuilding plans for each species are discussed earlier in this document. Within the constraints of protecting overfished species, the Council's management measures recommendations are also intended to allow fishery participants as much access to healthy stocks as possible.

Of the management measures intended to protect overfished species, protective measures for canary rockfish coastwide, yelloweye rockfish north of 40° 10′ N. lat., and bocaccio south of 40° 10′ N. lat. are the most constraining. Canary rockfish and bocaccio in particular are caught in a wide array of fisheries and are distributed broadly on the continental shelf. For 2005–2006, the Council has recommended continuing the use of RCAs that are gear specific and which close groundfish fishing over much of the continental shelf. As in 2004, there will be separate RCA closures for commercial trawl fisheries, commercial nontrawl fisheries, and recreational fisheries. These gear- and sector-specific closures are intended to reflect the varied effects that each sector has on particular overfished species. For example, yelloweye rockfish is a northern species that is taken almost exclusively with hook-and-line gear. As a result, the Washington recreational fisheries are still prohibited within the YRCA and nontrawl commercial fisheries are prohibited over northern continental shelf areas where yelloweye rockfish are commonly found. Limited entry vessels will continue to be monitored for compliance with RCA requirements by the West Coast vessel monitoring system (VMS). The Council plans to discuss expanding VMS requirements to the open access fisheries at its September and November 2004 meetings.

In addition to RCAs for the commercial and recreational fisheries, routine management measures for

commercial groundfish fisheries will continue to include trip limits, size limits, differential trip limits by gear type, and closed seasons. The recreational fisheries will use these same management measures, with bag limits in lieu of trip limits, plus boat limits, hook limits, and dressing requirements. On August 3, 2004 (69 FR 46448), NMFS published an emergency rule to establish routine management measures authority to close the whiting primary season fisheries by sector before the sector's whiting allocation is reached, to minimize impacts on overfished species. The action established a mechanism that can be used to quickly close the commercial whiting primary season fisheries if NMFS estimates that the incidental catch of an overfished species is too high. With this rule, NMFS is proposing to provide that same routine authority in 2005 and beyond. Also new for 2005 and beyond is a bycatch-reducing gear requirement for trawlers operating north of 40° 10′ N. lat., which is explained below in the section on Limited Entry Trawl Fishery Management Measures.

In addition to the management measures recommended by the Council, NMFS is proposing with this rule to prohibit the transfer of fish at sea, except for vessels participating in either the catcher-processor or mothership sectors of the whiting fisheries. At-sea transfers of groundfish are not traditional in West Coast fisheries and the fisheries data-gathering systems are not designed to accommodate the transfer and purchase of groundfish at-sea. West Coast groundfish landings, except for in the at-sea whiting fishery, are monitored as they are landed on shore. NMFS is proposing this measure to improve enforcement of landings limits and to better ensure that groundfish entering the market are tracked and accounted for.

The management measures proposed in this rule are only one piece of the overall management strategy for West Coast groundfish. NMFS will continue to require vessels to carry and operate VMS units to monitor fishing locations, and to carry observers when requested by NMFS. NMFS and the states will be conducting up to 23 stock assessments over the next two years, which will inform the 2007–2008 specifications and management measures process and provide a gauge for rebuilding progress. In December 2003, NMFS implemented a trawl vessel and permit buyback program that reduced fleet participation by about 35 percent. The agency will continue to work with the Council to craft capacity reduction measures for the different sectors of the fleet. Also in 2005, NMFS plans to complete an environmental impact statement EIS (EIS) on West Coast groundfish essential fish habitat. Information in this EIS should be useful to the Council in evaluating and improving its overfished species rebuilding measures and in setting its 2007–2008 management measures.

As discussed in the introductory Background text for this notice, NMFS has reorganized its regulations at 50 CFR 660 subpart G to accommodate codifying the fishery specifications and management measures into the Code of Federal Regulations. Routine management measures, as identified at § 660.370 and implemented in §§ 660.381 through 660.385 and in Tables 3–5 of subpart G, will continue to be available for revision through the inseason management process. Overfished species rebuilding parameters, which were formerly at § 660.370, are now at § 660.365. Overall fishery management measures are found at § 660.370. In addition to the fishery-specific management measures provided in §§ 660.381 through 660.385 and Tables 3–5 of subpart G, NMFS plans to continue its past practice of implementing separate management measures for black rockfish, sablefish, and Pacific whiting fisheries. Management measures specific to the black rockfish fisheries are found at § 660.371. Management measures for the nontrawl sablefish fisheries are found at § 660.372, although daily/weekly sablefish limits are found in Tables 4 and 5 (North) and Tables 4 and 5 (South) of subpart G. Management measures for the primary Pacific whiting season are found at § 660.373, although trip limits for vessels operating outside of the primary season are found in Tables 3 (North) and (South) of Subpart G. Coordinates bounding the Groundfish Conservation Areas are found at §§ 660.390 through 660.394.

Limited Entry Trawl Fishery Management Measures

Limited entry trawl fishery management measures for 2005–2006 reflect recent changes in the composition of the trawl fleet and information about its activities. As discussed earlier in this notice, NMFS has incorporated a second year's worth of observer data into the trawl bycatch model. Using this second year of data allows the model to better characterize the fishery by seasons by comparing data between years. This model stability allows NMFS to develop trawl trip limits that reflect co-occurrence ratios between healthy target species and overfished species, and which vary based on the size of the trawl RCA. Trawl trip limits are moderately higher than in recent years, largely because the trawl vessel/permit buyback program reduced the number of vessels participating in the fishery by about 35 percent. With fewer vessels participating in the fishery, each individual vessel may be allowed to access higher trip limits. Flatfish trawl trip limits for vessels using small footrope trawl gear shoreward of the trawl RCA and north of 40° 10′ N. lat. are higher than in recent years in part because NMFS is proposing to require trawlers to use gear that reduces rockfish bycatch in this area. The CDFG is conducting an experiment in 2004 with this same gear to determine whether it could be effective in reducing rockfish bycatch in flatfish trawl fisheries that occur south of 40° 10′ N. lat.

Of the overfished species found north of 40°10′ N. lat., the trawl RCA is designed primarily to protect canary rockfish, although its location also provides protection for other, northern overfished species such as widow, yelloweye and darkblotched rockfishes and lingcod. The trawl RCA has an eastern boundary of coordinates approximating 75 fm (137 m) in the winter months of January-February and November-December, and eastern boundary of coordinates approximating 100 fm (183 m) in March-October, and a western boundary of coordinates approximating 150 fm (274 m) throughout the year. Flatfish tend to aggregate for spawning in the winter and may be harvested during winter months with lower bycatch of non-target species. Trawl trip limits for flatfish are set higher during the winter months to allow vessels to target flatfish species OYs during times when bycatch of overfished species is lower.

Throughout the year, flatfish trip limits are lower shoreward of the trawl RCA than offshore of the RCA. Canary rockfish are most commonly distributed in 50–100 fm (91–183 m) depths, which means that vessels operating inshore of the RCA are more likely to encounter canary rockfish than those operating seaward of the RCA. To reduce incidental take of canary rockfish shoreward of the RCA, vessels operating in the area north of 40° 10′ N. lat. are required to use selective flatfish trawl gear. Selective flatfish trawl gear catches flatfish with lower rockfish bycatch rates; therefore, the flatfish limits north of 40°10′ N. lat. are higher than they would have been without this gear requirement. Because canary rockfish is more likely to be taken in the flatfish fisheries than in the deepwater complex

fisheries, the trawl RCA is larger during the winter months, when trawl vessels are provided more flatfish fishing opportunities.

Seaward of their RCA, trawlers north of 40° 1'' N. lat. target continental slope species in addition to flatfish species. Continental slope species include DTS complex species, minor slope rockfish, and POP. Of these, darkblotched rockfish (a minor slope rockfish species) and POP are considered overfished. DTS complex species 2005–2006 limits are most constrained by the need to keep the fisheries within the shortspine thornyhead OY. Minor slope rockfish and POP limits are set at levels that are expected to allow vessels targeting DTS species to retain their incidentally caught slope rockfish. Because the trawl RCA includes areas of slope rockfish abundance and because the shortspine thornyhead OY constrains DTS complex fishing, NMFS expects 2005–2006 darkblotched rockfish and POP catch to stay well below the OYs for those species. DTS limits for 2005–2006 will be higher during the summer months when vessels have less access to flatfish. As in past years, trawl vessels are only permitted to use large footrope gear seaward of their RCA, but prohibited from using large footrope gear shoreward of the RCA.

Canary rockfish rebuilding requirements and the shortspine thornyhead OY are also the most constraining factors for the trawl fishery south of 40° 10′ N. lat. Canary rockfish is a shelf rockfish species, like bocaccio, and NMFS expects that management measures to protect canary rockfish will constrain the fisheries such that the bocaccio OY is not achieved in 2005 or 2006. Off the mainland coast of California, the trawl RCA boundaries are similar to those north of 40° 10′ N. lat.: bounded by coordinates approximating 75 and 150 fm (137 and 274 m) in January-February and November December, and by coordinates approximating 100 and 150 fm (183 and 274 m) in March-October. Between 40° 10′ N. lat. and 34° 27′ N. lat., the State of California also prohibits trawling between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. South of 34° 27′ N. lat., the trawl RCA around islands extends from the shoreline to a boundary approximating the 150 fm (274 m) depth contour. As in past years, groundfish trawling will be prohibited within the Cowcod Conservation Areas (CCAs), defined at §§ 660.390 through 660.394.

Trawl management measures for flatfish trawl fisheries south of 40° 10° N. lat. are similar to those set for the northern area. Landings limits are higher and the trawl RCA is more restrictive during winter months to allow vessels access to more abundant flatfish stocks during their aggregation period without increasing overfished species bycatch. Trawlers who operate south of 40° 10′ N. lat. requested that the Council develop continental slope species limits that were the same for each two-month cumulative period throughout the year, within the constraints of the shortspine thornyhead OY. Southern area trawlers have less dangerous winter weather than those operating north of 40° 10′ N. lat., thus are more able to choose a management strategy of unchanging landings limits within the constraints of overfished species rebuilding requirements. Because management measures that protect canary rockfish will also notably restrict the incidental catch of bocaccio, the Council is allowing some targeting of a healthy stock that co-occurs with bocaccio, chilipepper rockfish. Vessels that target chilipepper with large footrope gear seaward of the RCA or with midwater trawl gear will be allowed higher chilipepper landings limits in May-August.

Taken as a whole, trawl management measures to protect canary rockfish are also expected to provide protections to co-occurring overfished species coastwide. Continental shelf overfished species (lingcod, bocaccio, cowcod, widow rockfish, and yelloweye rockfish) will be protected by RCAs and trip limit structures intended to constrain the incidental catch of canary rockfish. Cowcod will continue to be protected by CCA closures off the Southern California Bight. While lingcod is not yet rebuilt, it is abundant enough that it no longer constrains fisheries for co-occurring species. Trawl limits for lingcod are still at incidental take levels to discourage vessels from targeting lingcod.

Widow rockfish will also benefit from some management measures to protect canary rockfish; however, widow rockfish is commonly taken in midwater trawl fisheries and requires additional protective management measures. Coastwide, landings limits for continental shelf rockfish are kept at incidental levels for bottom trawl gear, except for the chilipepper opportunity described earlier. North of 40° 10′ N. lat., where widow rockfish are more commonly found, NMFS proposes to provide incidental widow rockfish landings limits for the primary whiting midwater trawl fishery. In 2004, NMFS set the Pacific whiting OY much lower than the stock's abundance would have allowed in order to protect co-occurring widow rockfish (69 FR 23367, April 30, 2004). NMFS anticipates setting the 2005 and 2006 Pacific whiting OYs such that the whiting harvest levels continue to be constrained by the amount of widow rockfish available for incidental retention.

Management measures for the limited entry trawl fishery, including gear requirements, are found at § 660.381, with management measures specific to the primary Pacific whiting season found at § 660.373. Trawl trip limits are found in Table 3 (North) and Table 3 (South) of Subpart G of Part 660.

Limited Entry Fixed Gear Fishery Management Measures

Like their trawler counterparts, participants in the limited entry fixed gear fishery have their fishing opportunities most constrained by the need to protect canary rockfish. Darkblotched rockfish and POP are not as much of a concern for nontrawl gear, as these species are almost exclusively taken with trawl gear. Yelloweye rockfish, however, tends to be more susceptible to hook-and-line gear than to trawl gear. Thus, the Council developed management measures for nontrawl fisheries primarily oriented at protecting canary rockfish coastwide, yelloweye rockfish north of 40° 10′ N. lat., and bocaccio and cowcod south of 40°10' N. lat.

The nontrawl RCA, which applies to both limited entry and open access nontrawl gear, would have the same boundaries in 2005–2006 as it had in 2004. Between the U.S. border with Canada and 46° 16′ N. lat. (Washington/Oregon border), the nontrawl RCA extends from the shoreline to a boundary approximating the 100 fm (183 m) depth contour. Between 46° 16′ N. lat. and 40° 10′ N. lat., the nontrawl RCA lies between boundaries approximating the 30 fm (55 m) and 100 fm (183 m) depth contours. Between 40° 10′ N. lat. and 34° 27′ N. lat., the shoreward boundary of the nontrawl RCA is a line approximating the 30 fm (55 m) depth contour in January-April and September-December) and the 20 fm (37 m) in May-August. Throughout the year, the western boundary of the nontrawl RCA for the area between 40° 10′ N. lat. and 34° 27′ N. lat. is a boundary approximating the 150 fm depth contour. South of 34° 27′ N. lat., the nontrawl RCA lies between boundaries approximating the 60 fm (110 m) and 150 fm (274 m) depth contours. These RCA boundaries are intended to encourage the nontrawl fleets to fish off of the continental shelf, to protect overfished shelf species susceptible to nontrawl gear. Bocaccio is more frequently caught between 40° 10′

N. lat. and 34° 27′ N. lat. than south of 34° 27′ N. lat., thus the Council proposed a more broad closed area for waters off the central California coast. The CCAs off the Southern California Bight will again be closed to commercial groundfish fishing to prevent vessels from fishing in areas of higher cowcod abundance.

Landings limits for the limited entry fixed gear fleet north of 40°10′ N. lat. provide vessels with access to continental slope and nearshore species, while closing access to continental shelf species. Retention of canary and yelloweye rockfish is prohibited throughout the year. As in past years, landing lingcod will be prohibited in January-April and in November-December to protect lingcod during their spawning and nest-guarding season.

For waters south of 40° 10′ N. lat., the Council also developed landings limits intended to draw vessels away from continental shelf species. Retention of canary rockfish, yelloweye rockfish, and cowcod is prohibited throughout the year and only minimal levels of bocaccio retention are permitted. Also similar to the northern area, lingcod retention is only permitted during May-October. Unlike in 2004, closed seasons in the southern area would be aligned both north and south of 34°27′ N. lat. Landings of minor nearshore, minor shelf, bocaccio, widow, and yellowtail rockfish, as well as of California scorpionfish will be prohibited in March-April from 40°10′ N. lat to the U.S. border with Mexico.

As discussed earlier in the section on bycatch and discard management, NMFS has developed a new bycatch model for the limited entry primary sablefish season. This model indicates somewhat lower overfished species bycatch rates in the primary sablefish season than the agency had previously estimated. However, the sablefish stock assessment, which was prepared in 2001 and updated for 2002, indicates a declining ABC/OY for sablefish over 2005–2006. Thus the limited entry sablefish tier limits will be lower in 2005 than in 2004 and lower again in 2006. The proposed tier limits for 2005 are: Tier 1 at 64,100 lb (29,075 kg), Tier 2 at 29,100 lb (13,200 kg), and Tier 3 at 16,600 lb (7,530 kg). The proposed tier limits for 2006 are: Tier 1 at 62,700 lb (28,440 kg), Tier 2 at 28,500 lb (12,927 kg), and Tier 3 at 16,300 lb (7,394 kg). The primary sablefish season is open from April 1 through October 31, north of 36° N. lat. Both north and south of 36° N. lat., the daily and/or weekly sablefish trip limits are proposed to be the same in 2005 and 2006 as in 2004. The daily trip limit fishery often does not reach its full allocation, so NMFS does not expect that allowing the same landings limits as in 2004 will risk exceeding the sablefish OY. These and all other landings limits may be adjusted inseason to keep catch within allowable levels.

Management measures for the limited entry fixed gear fishery, including gear requirements, are found at § 660.382, with management measures specific to the primary sablefish season found at § 660.372. Trip limits are found in Table 4 (North) and Table 4 (South) of Subpart G of Part 660.

Open Access Nontrawl Gear (Hook-and-Line, Troll, Pot, Setnet, Trammel Net) Fisheries Management Measures

The open access nontrawl fishery is managed separately from the limited entry fixed gear fishery, but overfished species protection measures are similar for both sectors. The nontrawl RCA boundaries that apply to the limited entry fixed gear fleet also apply to the open access nontrawl fleet, as do the CCAs. Also similar to the limited entry fleet, greater landings limits are provided for continental slope and nearshore species, with closed seasons and lower limits for continental shelf species, including the same closed periods for lingcod as in the limited entry fixed gear fisheries. North of 40° 10′ N. lat., salmon trollers will be permitted to retain and land up to 1 lb (.45 kg) of yellowtail rockfish for every 2 lb (.9 kg) of salmon landed, up to 200 lb (91 kg) per month, both within and outside of the RCA. As in past years, thornyheads may not be taken or retained in the open access fisheries north of 34° 27′ N. lat.

Open access cumulative limits may sometimes be set higher than those for limited entry vessels. If a vessel with a limited entry permit uses open access gear (including nongroundfish trawl gear) and the open access cumulative limit is larger, the vessel will be constrained by the smaller limited entry cumulative limit for the entire cumulative limit period. Management measures for the open access fisheries, including gear requirements, are found at § 660.383. Trip limits are found in Table 5 (North) and Table 5 (South) of Subpart G of Part 660.

Open Access Non-Groundfish Trawl Gear Fisheries Management Measures

Open access non-groundfish trawl gear (used to harvest ridgeback prawns, California halibut, sea cucumbers, and pink shrimp) is managed with "per trip" limits, cumulative trip limits, and area closures. These trip limits are similar to those in 2004. The species-specific open access limits apply but vessels may not exceed overall groundfish limits. As in past years, the pink shrimp fishery is subject to species-specific limits that are different from other open access limits for lingcod and sablefish. As in past years, thornyheads may not be taken or retained in the open access fisheries north of 34° 27′ N. lat.

Trawling with open access non-groundfish gear for pink shrimp will be permitted within the trawl RCA; however, the states require pink shrimp trawlers to use finfish excluder devices to reduce their groundfish bycatch, particularly to protect canary and other rockfishes. Off California, trawling for ridgeback prawns, California halibut, and sea cucumber is prohibited within the trawl RCA. All open access trawlers, except for those trawling for pink shrimp coastwide and ridgeback prawns south of 34° 27′ N. lat. are subject to the same trawl RCA boundaries. South of 34°27′ N. lat., ridgeback prawn trawl vessels, which operate in flat bottom areas, are subject to an RCA closure between boundaries approximating the 100 fm (183 m) and 150 fm (274 m) depth contours. These finfish excluders and RCA restrictions off California are particularly intended to protect southern and coastwide overfished species such as bocaccio, cowcod, canary rockfish, and lingcod. Cowcod prohibitions and closures continue to apply to all open access vessels. Management measures for the open access fisheries, including gear requirements, are found at § 660.383. Trip limits are found in Table 5 (North) and Table 5 (South) of subpart G of part 660.

Recreational Fisheries Management Measures

Recreational fisheries management measures are designed to protect overfished and nearshore species while also allowing favorable fishing seasons. Overfished species that tend to be vulnerable to recreational fisheries are lingcod, bocaccio, cowcod, and canary and yelloweye rockfish. Because sport fisheries are more concentrated in nearshore waters, the 2005–2006 recreational fishery management measures are also intended to provide protections for nearshore species such as black rockfish and cabezon. These protections are particularly important for fisheries off California, where the bulk of West Coast recreational fishing tends to occur. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, and size limits to best fit the needs and

constraints of their recreational fisheries.

Off Washington, recreational fishing for groundfish and halibut will continue to be prohibited inside the YRCA, a C-shaped closed area off the northern Washington coast. Coordinates for the YRCA are defined at 50 CFR 660.390. The groundfish bag limit off Washington will remain the same as in 2004: 15 aggregate bottomfish bag limit; 10 rockfish sub-limit with no retention of canary or yelloweye rockfish; 2 lingcod sub-limit, with a minimum size of 24 inches (61.4 cm). The lingcod seasons in 2005 and 2006 will be the same as in 2004, beginning on the Saturday in March closest to March 15th, and ending on the Saturday in October closest to October 15th. In 2005, recreational fishing for lingcod off Washington will be open from March 12 through October 15. In 2006, recreational fishing for lingcod will be open from March 18 through October 14. If the recreational harvest guideline for canary rockfish, yelloweye rockfish, or lingcod specified for the Washington/Oregon area is projected to be exceeded, the Washington Department of Fish and Wildlife (WDFW) will consult with ODFW on whether to take inseason action to adjust recreational fishery management measures or close all or parts of the recreational fisheries inseason.

Off Oregon, recreational fishing for groundfish will be depth-restricted June through September, when the fishery will be closed offshore of a boundary approximating the 40 fm (73 m) depth contour. Recreational fisheries participation is heaviest during these months and this closure is intended to move the groundfish fisheries inshore of the continental shelf to protect canary and yelloweye rockfish. Recreational fisheries off Oregon will retain their 10–marine fish bag limit, which includes all rockfish, greenling species, cabezons, and other marine species, but excludes salmon, lingcod, halibut, perches, sturgeon, sanddabs, striped bass, tuna, and baitfish. As in waters off Washington, retention of yelloweye and canary rockfish will be prohibited. The lingcod bag limit will remain at 2 fish per day, and the size limit will remain at 24 inches (61.4 cm). As discussed in the paragraph on Washington recreational fisheries, ODFW plans to consult with WDFW on inseason actions if canary rockfish, yelloweye rockfish, or lingcod harvest guidelines are projected to be exceeded.

The California Department of Fish and Game (CDFG) and its recreational fisheries constituents developed a series of management measures intended to constrain the recreational fisheries enough to keep total mortality within appropriate set asides and harvest guidelines. For 2005–2006, the Council adopted CDFG's recommendation to divide the recreational fisheries off California into four separate regions: the Oregon/California border to 40°10′ N. lat.; 40°10′ N. lat. to 36° N. lat.; 36° N. lat. to 34° 27′ N. lat., and; 34°27′ N. lat. to the U.S./Mexico border. Season and area closures differ between California regions to better protect overfished species according to where those species occur and where fishing effort is strongest. In addition to the region-specific management measures, the Council has proposed a California-wide combined bag limit for the Rockfish-Cabezon-Greenling complex of 10 fish per day. Bag limits are only available when seasons are open. Fishing for lingcod will be closed California-wide in January-March and in December to protect lingcod during its spawning and nesting season. As in Oregon and Washington, there will be a 2–fish lingcod bag limit and a size limit of 24 inches (61.4 cm) for sport fisheries off California. The season and area closures described below would apply only to ocean fishing vessels, not to divers or to shore-based anglers.

Between the Oregon/California border (42° N. lat.) and 40°10′ N. lat., the recreational fishery will be open July through October in waters shallower than a boundary approximating the 40 fm (73 m) depth contour. Between 40°10′ N. lat. and 36° N. lat., the recreational fishery will be open July through November, in waters shallower than a boundary approximating the 20 fm (37 m) depth contour. These northern California waters seasons and area closures are intended to protect lingcod and canary rockfish, as well as to limit the catch of black rockfish. The more shallow closure between 40°10′ N. lat. and 36° N. lat. is also intended to move vessels inshore of areas of greater bocaccio concentration.

Between 36° N. lat. and 34°27′ N. lat., the fishery will be open May through September in waters between two boundaries approximating the 20 fm (37 m) and 40 fm (74 m) depth contours. South of 34°27′ N. lat. to the U.S. border with Mexico, the fishery will be open from March through June, in waters between two boundaries approximating the 30 fm (55 m) and 60 fm (110 m) depth contours. In this same region, the fishery will continue to be open from July through September in waters shallower than a boundary approximating the 40 fm (74 m) depth contour. These time and area closures are intended to protect canary rockfish in the southern edge of its range and to protect bocaccio. Cowcod continue to be protected in the area south of 34°27′ N. lat. by the CCAs, which are closed throughout the year to recreational fishing for groundfish.

In the past few years, CDFG and NMFS have had to implement inseason management measures changes for the recreational fisheries to constrain fishing effort. Because there are over half a million anglers participating in California's recreational fisheries, it is often challenging for CDFG to ensure that all anglers are apprized of changes to management measures. CDFG proposed for 2005–2006 a package of management measures to strongly constrain their recreational fisheries in part to reduce the chance that it will later need to restrict the fishery and to ensure that participants know of the new restrictions. CDFG hopes that with their proposed package of restrictions there will be either no need for inseason actions, or only a need to liberalize management measures inseason. In March 2004, CDFG launched its new California Recreational Fisheries Survey (CRFS), which is intended to replace the Federal Marine Recreational Fisheries Statistical Survey (MRFSS). CDFG has been using new survey techniques to assess recreational fisheries catch and expects to begin releasing CRFS data in fall 2004. The MRFSS survey of recreational fisheries was designed to provide broad annual data on the recreational fisheries. CRFS, by contrast, is intended in part to support inseason tracking and management of recreational fisheries. CDFG anticipates reviewing its CRFS data and the 2005 and 2006 season structures as the seasons progress to ensure that management measures are adequately restrictive to protect overfished and other groundfish species.

Management measures for recreational fisheries off all three West Coast states are found at § 660.384.

Washington Coastal Tribal Fisheries Management Measures

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed fishing areas (described at 50 CFR 660.324).

For those species with tribal allocations, the tribal allocation is subtracted from the species OY before

limited entry and open access allocations are derived. The tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as to not exceed their allocations.

The tribal harvest guideline for black rockfish is the same in 2005 and 2006 as it was in 2004. Also similar to 2004, the tribal sablefish allocation is 10 percent of the total catch OY north of 36° N. lat., less 2.3 percent for estimated discard mortality. For 2005, the tribal sablefish allocation is 748.6 mt, less 17.2 mt for discard mortality, or 731.4 mt. For 2006, the tribal sablefish allocation is 736.3 mt, less 16.9 mt for discard mortality, or 719.4 mt.

From 1999 through 2004, the tribal whiting allocation has been based on a methodology originally proposed by the Makah Tribe in 1998. The methodology is an abundance-based sliding scale that determines the tribal allocation based on the overall U.S. OY, up to a maximum 17.5 percent tribal harvest ceiling at OY levels below 145,000 mt. The tribes have proposed using the same methodology in 2005 and 2006, and the allocation will be calculated based on that methodology once the final whiting OY is determined. No other tribes have proposed to harvest whiting in 2005 or 2006.

The sliding scale methodology used to determine the treaty Indian share of Pacific whiting is the subject of ongoing litigation. In *United States* v. *Washington*, Subproceeding 96–2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. United States v. Washington, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002, *Midwater Trawlers Cooperative* v. *Daley*, C96–1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002), and again in April 2003, *id.*, Order Granting Federal Defendants' and Makah's Motions for Summary Judgment and Denying Plaintiffs' Motions for Summary Judgment, April 15, 2003. The latter ruling has been appealed to the Ninth Circuit, but no decision has been rendered as yet. At this time NMFS remains under a Court order in Subproceeding 96–2 to continue use of the sliding scale methodology unless the Secretary of Commerce finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore, NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the methodology, it has been used to determine the 2005–2006 tribal allocations.

In addition, with respect to the 2005–2006 treaty Indian allocations of Pacific whiting, NMFS has reviewed the scientific information set forth in the Declaration of William L. Robinson dated April 26, 2002, and the Declaration of Dr. Richard D. Methot, Jr., dated April 18, 2002, which were submitted with the Federal Defendants' Statement Regarding Remand in *Midwater Trawlers Cooperative* v. *Department of Commerce*, No. C99–1415BJR and No. C99–1500BJR (Consolidated) (W.D. Wash.). NMFS has no additional information that would change the conclusions in these declarations on the distribution and migratory pattern of the stock. Therefore, NMFS is relying on the information in those declarations as the best scientific information currently available. Accordingly, NMFS finds that the 2005–2006 treaty Indian allocations of Pacific whiting, which are based on the sliding scale methodology that has been in use since 1999, are based on the best scientific information available, and are within the Indian treaty right as described in *Midwater Trawlers Cooperative* v. *Department of Commerce*, 282 F.3d 710, 718 (9th Cir. 2002). NMFS has rejected and continues to reject the so-called "biomass" method of calculating the treaty right. As stated in *U.S.* v. *Washington*, Subproceeding 96–2, 143 F. Supp.2d 1218, 1223–1224 (W.D. Wash. 2001), the biomass method is not required for conservation and underestimates the quantity of fish that pass through the tribal usual and accustomed fishing grounds, and hence it cannot serve as the basis for calculating the treaty share. Also, application of the biomass method to calculate the treaty Indian allocation of Pacific whiting would illegally discriminate against tribal fishing interests, since the biomass method is not used in management of the non-treaty fishery. Id.; also see *Makah* v. *Brown*, C85–1606R, Order on Five Motions Relating to Treaty Halibut Fishing at 6 (W.D.Wash. Dec. 29, 1993).

For some species, on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries are restricted to 600 lb (272 kg) per day and 1,800 lb (816 kg) per week, except for in the treaty salmon troll fishery, which would be limited to 1,000 lb (454 kg) per day and 4,000 lb (1,814 kg) per week. Tribal fisheries will be managed to a 50 mt lingcod harvest guideline in 2005 and 2006, although tribal fisheries may take as much as 100 mt if they determine that they are able to fish in times and areas where additional lingcod harvest does not result in increased take of canary rockfish above the level the tribes have projected will be taken in 2005 and 2006 (*i.e.*, 2.6 mt each year in tribal non-whiting fisheries).

For rockfish species, the 2005–2006 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under a 300 lb (136 kg) per trip limit each for canary rockfish, thornyheads, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100 lb (45 kg) per trip limit for yelloweye rockfish. A 300 lb per trip (136 kg) limit for canary rockfish is expected to result in landings of 3.1 mt in both 2005 and 2006. A 300 lb (136 kg) per trip limit for thornyheads is expected to result in landings of 6.7 mt in 2005 and 6.6 mt in 2006. Other rockfish limits are expected to result in the following landings levels: widow rockfish, 40 mt in both years; yelloweye rockfish, 2.4 mt in both years; yellowtail rockfish, 506 mt in both years; minor shelf rockfish excluding yelloweye, 1.3 mt in both years; minor slope rockfish, 23.5 mt. Trace amounts (<1 mt) of minor nearshore rockfish, POP, and darkblotched rockfish may also be landed in tribal commercial fisheries. For 2005 and beyond, tribal fishing regulations as recommended by the tribes and the Council and adopted by NMFS will be found in Federal regulations at 50 CFR 660.385.

Fishing Communities and Impacts

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the 10 national standards, one of which requires that conservation and management measures shall, consistent with the conservation requirements of the Act, "take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and, (B) to the extent practicable, minimize adverse economic impacts on such communities."

Fishing communities that rely on the groundfish resource and people who participate in the groundfish fisheries have weathered many regulatory changes in recent years. NMFS and the Council introduced the first overfished

species rebuilding measures in 2000, which severely curtailed the fisheries from previous fishing levels. Since then, NMFS has implemented numerous management measures and regulatory programs intended to rebuild overfished stocks and to better monitor the catch and bycatch of all groundfish species. These programs are expected to improve the status of West Coast groundfish overfished stocks over time and, by extension, the economic health of the fishing communities that depend on those stocks. Initially, however, the broad suite of new regulatory programs that NMFS has introduced since 2000 have: reduced overall groundfish harvest levels, increased costs of participating in the fisheries, and caused confusion for fishery participants trying to track new regulatory regimes.

For participants in and communities that depend on the trawl fisheries, fishing opportunities will be improved in 2005–2006 over 2003–2004. In December 2003, NMFS bought 91 trawl vessels and their Federal groundfish permits out of the fishery. This buyback reduced the fleet by about 35 percent, allowing increased landings limits for the remaining vessels. The Council developed trawl landings limits for 2005 and 2006 based on the trawl bycatch model. In 2005, the trawl bycatch model will be in its fourth year of use in the fisheries. The model includes more observer data and more recent fisheries data than in past years, which has stabilized estimated bycatch rates from past years' model estimates. Additionally, the Council has recommended a bycatch-reducing gear requirement for the trawl fisheries. The selective flatfish trawl net will be required for use in waters shoreward of the RCA north of 40°10° N. lat. This net has lower rockfish bycatch rates than traditional trawl gear, allowing the Council to set higher landings limits for the more abundant flatfish species that tend to co-occur with some overfished rockfish species. Some trawlers required to use selective flatfish trawl gear will be able to modify their current nets to meet the gear requirements, while others may need to purchase new nets to comply with the regulations. Between a reduced trawl fleet, a stabilized bycatch model, and reduced bycatch rates with the new gear requirements, trawlers will have higher target species fishing opportunities in 2005–2006 than in recent past years. Communities with processing facilities where trawlers make landings, such as Westport, Washington; Astoria and Newport, Oregon; and San Francisco and Moss Landing/Monterey, California, may expect to benefit from higher trawl landings limits in 2005–2006.

Landings limits in the limited entry fixed gear and open access commercial fisheries are proposed to remain stable from 2004 levels. Although the sablefish OY in 2005 is lower than in 2004 and lower still in 2006, estimated bycatch rates based on observer data are lower than NMFS's previous bycatch assumptions for the primary sablefish fishery. Thus, tier limits are lower in accordance with the lower OYs, but higher than they would have been before NMFS incorporated observer data into a model specific to this fishery. Communities that tend to receive non-trawl commercial landings, such as Bellingham and Neah Bay, Washington; Newport and Port Orford, Oregon; and Moss Landing and Crescent City, California may expect to see stable non-trawl landings levels through 2006.

Similar to the non-trawl commercial fleet, the recreational fisheries off Washington and Oregon are proposed to have the same management measures in 2005 and 2006 as in 2004. Groundfish taken in the northern recreational fisheries is often caught by anglers who are primarily targeting more glamorous trophy species, such as salmon or halibut. Thus the economic benefits to charter operations and the social benefits to all anglers of a stabilized groundfish fishery may be affected by as-yet-undetermined 2005–2006 salmon and halibut harvest levels. Coastal communities like Neah Bay, Westport, and Ilwaco, Washington, and Garibaldi, Newport, and Charleston, Oregon support recreational fishing interests and should benefit from the stable groundfish management regime.

Groundfish are available to marine anglers along the length of California's coast, but species composition varies with changing temperature and ecological regimes. California recreational fisheries have differing effects on groundfish abundance, depending on locally-available groundfish species and on alternative target non-groundfish species. For 2005 and 2006, the Council recommended California recreational fisheries measures intended to better tailor management to the species composition and angler participation in the different sections of California's coast. Off the northern coast, black rockfish and lingcod recreational catches have contributed significantly to excessive harvest in recent years. California's recreational fisheries north of 40°10′ N. lat. are proposed to be just four months in duration in 2005 and 2006, which may negatively affect charter operations and private anglers operating from communities such as Crescent City and Eureka. Between 40°10′ N. lat. and 36° N. lat., recreational fishing is dominated by anglers from the San Francisco Bay area. Recreational fishing ports such as Fort Bragg, Noyo River, Sausalito, Bodega Bay, Half Moon Bay, Santa Cruz, and Monterey will be open to groundfish fishing for a five month season. Between 36° N. lat. and 34°27′ N. lat., the recreational fisheries tend to affect more southern species, such as bocaccio. The fisheries in this area will be open for five months, affecting ports such as Morro Bay and Avila Beach. California's large southern cities lie south of 34°27′ N. lat., but recreational fisheries in this area tend to concentrate on big game fish like tuna. These southern fisheries take fewer groundfish, and thus are proposed to be open for seven months per year in 2005 and 2006. Recreational fishing ports south of 34°27′ N. lat. include Santa Barbara and the Channel Islands, Long Beach and Los Angeles, Dana Point, and San Diego.

The treaty tribal fisheries occur off the northern coast of Washington State. Neah Bay and Westport, Washington tend to receive the bulk of the tribal commercial groundfish landings. In 2005 and 2006, the tribal fisheries are expected to benefit from increased lingcod harvest levels and stabilized rockfish harvest levels. Treaty fisheries for sablefish and halibut catch the same overfished species as northern non-tribal hook-and-line fisheries. Thus, canary rockfish will be the constraining species for tribal fixed gear and trawl fisheries, with yelloweye rockfish protection measures also affecting tribal longline fisheries.

As described earlier in this document, NMFS has rearranged Federal groundfish regulations to make them more user-friendly. Groundfish regulations are separated by sector, so that there are new regulations sections for these sectors: limited entry trawl, limited entry fixed gear, open access, recreational, and tribal. NMFS and the Council are making efforts to improve their communication with the public and NMFS hopes that this reorganization will make its fishery regulations more accessible and easier to understand.

The Council prepared an EIS for this action, which includes a discussion of the economic and social effects of these specifications and management measures on coastal communities (see **ADDRESSES**).

Federal and State Jurisdiction

The management measures herein, as well as Federal regulations at 50 CFR part 660, subpart G, govern groundfish fishing vessels of the United States in the U.S. EEZ from 3–200 nautical miles offshore of the coasts of Washington, Oregon, and California. The States of Washington, Oregon, and California retain jurisdiction in state waters from 0–3 nautical miles offshore. This is true even though boundaries of some fishing areas cross between Federal and state waters. Under their own legal authorities, the states generally conform their state regulations to the Federal management measures, so measures that apply to Federal and state waters are the same. This is not true in every case, however, and fishers are advised to consult both state and Federal regulations if they intend to fish in both state and Federal waters.

Groundfish stocks are distributed throughout Federal and State waters. Therefore, the Federal harvest limits (OYs) include fish taken in both Federal and State waters, as do vessel trip limits for individual groundfish species. Other Federal management measures related to federally-regulated groundfish fishing also apply to landings and other shoreside activities in Washington, Oregon and California.

Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this rule proposes to move gear identification regulations from § 660.310 to § 660.382, 15 CFR 902.1(b) is proposed to be revised to reference correctly the new section resulting from this regulations reorganization.

Classification

These proposed specifications and management measures for 2005–2006 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR part 660 subpart G (the regulations implementing the FMP).

The Council prepared a DEIS for this proposed action; a notice of availability was published on August 27, 2004 (69 FR 52668). A copy of the DEIS is available on the Internet at *www.pcouncil.org/nepa/nepatrack.html.*

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

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

The Council prepared an IRFA that describes the 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. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

NMFS is proposing the 2005–2006 specifications and management measures to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYs, follows the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 1,700 vessels participated in the West Coast commercial groundfish fisheries in 2001. Of those, about 420 vessels were registered to limited entry permits issued for either trawl, longline, or pot gear. Of the remaining approximately 1,280 vessels, about 770 participated in the open access fisheries and derived more than 5 percent of their fisheries revenue from groundfish landings. All but 10–20 of the 1,700 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration (SBA). Of the 732 fish buyers that purchased groundfish in 2000, all but 19 purchased less than $2 million worth of total harvest, the SBA indicator of a small processing business. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. NMFS does not have data to determine whether these charter businesses may be characterized as "small businesses." Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

The Council considered five alternative specifications and management measures regimes for 2005 and 2006: the no action alternative, which would have implemented the 2004 regime for 2005 and 2006; the low OY alternative, which set a series of conservative groundfish harvest levels that were either intended to achieve high probabilities of rebuilding within T_{MAX} for overfished species or modest harvest levels for more abundant stocks; the high OY alternative, which set harvest levels that were either intended to achieve lower probabilities of rebuilding within T_{MAX} for overfished species or higher harvest levels for more abundant stocks, within Council harvest parameters described earlier in this document; the medium OY alternative, which set harvest levels intermediate to those of the low and high alternatives, and; the Council OY alternative (preferred alternative,) which was the same as the medium OY alternative, but with more precautionary OY levels for lingcod, Pacific cod, cowcod, canary and yelloweye rockfish. Each of these alternatives included both harvest levels (specifications) and management

measures needed to achieve those harvest levels, with the most restrictive management measures corresponding to the lowest OYs. The most notable difference between the Council's preferred alternative and the other alternatives is that alternative's requirement that trawl vessels operating north of 40°10′ N. lat. use selective flatfish trawl gear. Because selective flatfish trawl gear has lower rockfish bycatch rates than conventional trawl gear, the targeted flatfish amounts available to the trawl fisheries are higher under the Council's preferred alternative than under the other alternatives.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the DEIS for this action reviewed alternatives for expected increases in revenue and income from 2003 levels. The low OY alternative was expected to decrease annual commercial income from the no action alternative by $1.99 million in 2005 and 2006, decrease commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The high OY alternative was expected to increase annual commercial income from the no action alternative by $2.54 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.4 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The medium OY alternative was expected to increase annual commercial income from the no action alternative by $1.51 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's OY alternative was expected to increase annual commercial income from the no action alternative by $3.02 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.5 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's preferred alternative would have had commercial fisheries effects that were similar to or less beneficial than the medium OY alternative had the Council preferred alternative not included the requirement that trawl vessels north of 40°10′ N. lat. fish with selective flatfish trawl gear in nearshore waters. The Council's preferred alternative is intended to meet the conservation requirements of the Magnuson-Stevens Act while reducing to the extent practicable the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

The following collection-of-information requirement has already been approved by OMB for U.S. fishing activities:

a. Approved under 0648–0305 Gear identification requirements, estimated at 15 minutes per response (§ 660.382).

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: September 9, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES 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 § 660.302, the definition for " Trawl fishing line," is removed, the definitions for "Fishing gear," "Groundfish," "Land or landings," "North-South management area," and paragraph (3) of "Trip limits,", are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Fishing gear includes the following types of gear and equipment used in the groundfish fishery:

(1) *Bobbin trawl.* The same as a roller trawl, a type of bottom trawl.

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.322 is a bottom trawl.

(3) *Breastline.* A rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(4) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(5) *Codend.* (See § 600.10).

(6) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(7) *Double-bar mesh.* Two lengths of twine tied into a single knot.

(8) *Double-walled codend.* A codend constructed of two walls of webbing.

(9) *Fixed gear (anchored nontrawl gear).* Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(10) *Gillnet.* (See § 600.10).

(11) Headrope. A rope or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(12) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(13) *Longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(14) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(15) *Midwater (pelagic or off-bottom) trawl.* A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on the net.

(16) *Non-groundfish trawl gear.* Any trawl gear other than bottom or midwater trawl gear authorized for use in the limited entry groundfish trawl fishery. Non-groundfish trawl gear generally includes trawl gear used to target pink shrimp, ridgeback prawns, California halibut and sea cucumber.

(17) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(18) *Pot.* A trap.

(19) *Roller trawl (bobbin trawl).* A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(20) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(21) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(22) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(23) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(24) *Trap (or pot).* A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(25) *Trawl fishing line.* A length of chain or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(26) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

* * * * *

Groundfish means species managed by the PCGFMP, specifically:

(1) Sharks: leopard shark, *Triakis semifasciata*; soupfin shark, *Galeorhinus zyopterus*; spiny dogfish, *Squalus acanthias.*

(2) Skates: big skate, *Raja binoculata*; California skate, *R. inornata*; longnose skate, *R. rhina.*

(3) Ratfish: ratfish, *Hydrolagus colliei.*

(4) Morids: finescale codling, *Antimora microlepis.*

(5) Grenadiers: Pacific rattail, *Coryphaenoides acrolepis.*

(6) Roundfish: cabezon, *Scorpaenichthys marmoratus*; kelp greenling, *Hexagrammos decagrammus*; lingcod, *Ophiodon elongatus*; Pacific cod, *Gadus macrocephalus*; Pacific whiting, *Merluccius productus*; sablefish, *Anoplopoma fimbria.*

(7) Rockfish: In addition to the species below, longspine thornyhead, *S. altivelis*, and shortspine thornyhead, *S. alascanus*, "rockfish" managed under the PCGFMP include all genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California, even if not listed below. The Scorpaenidae genera are Sebastes, Scorpaena, Scorpaenodes, and Sebastolobus. Where species below are listed both in a major category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10′ N. lat.) those species are considered "minor" in the geographic area listed.

(i) Nearshore rockfish includes black rockfish, *Sebastes melanops* and the following minor shelf rockfish species:

(A) North of 40°10′ N. lat.:black and yellow rockfish, *S. chrysomelas*; blue rockfish, *S. mystinus*; brown rockfish, *S. auriculatus*; calico rockfish, *S. dalli*; China rockfish, *S. nebulosus*; copper rockfish, *S. caurinus*; gopher rockfish, *S. carnatus*; grass rockfish, *S. rastrelliger*; kelp rockfish, *S. atrovirens*; olive rockfish, *S. serranoides*; quillback rockfish, *S. maliger*; treefish, *S. serriceps.*

(B) South of 40°10′ N. lat., nearshore rockfish are divided into three management categories:

(*1*) Shallow nearshore rockfish consists of black and yellow rockfish, *S. chrysomelas*; China rockfish, *S. nebulosus*; gopher rockfish, *S. carnatus*; grass rockfish, *S. rastrelliger*; kelp rockfish, *S. atrovirens.*

(*2*) Deeper nearshore rockfish consists of black rockfish, *S. melanops*, blue rockfish, *S. mystinus*; brown rockfish, *S. auriculatus*; calico rockfish, *S. dalli*; copper rockfish, *S. caurinus*; olive rockfish, *S. serranoides*; quillback rockfish, *S. maliger*; treefish, *S. serriceps.*

(*3*) California scorpionfish, *Scorpaena guttata.*

(ii) Shelf rockfish includes bocaccio, *Sebastes paucispinis*; canary rockfish, *S. pinniger*; chilipepper, *S. goodei*; cowcod, *S. levis*; shortbelly rockfish, *S. jordani*; widow rockfish, *S. entomelas*; yelloweye rockfish, *S. ruberrimus*; yellowtail rockfish, *S. flavidus* and the following minor shelf rockfish species:

(A) North of 40°10′ N. lat.: bronzespotted rockfish, *S. gilli*; bocaccio, *Sebastes paucispinis*; chameleon rockfish, *S. phillipsi*; chilipepper, *S. goodei*; cowcod, *S. levis*; dusky rockfish, *S. ciliatus*; dwarf-red, *S. rufianus*; flag rockfish, *S. rubrivinctus*; freckled, *S. lentiginosus*; greenblotched rockfish, *S. rosenblatti*; greenspotted rockfish, *S. chlorostictus*; greenstriped rockfish, *S. elongatus*; halfbanded rockfish, *S. semicinctus*; harlequin rockfish, *S. variegatus*; honeycomb rockfish, *S. umbrosus*; Mexican rockfish, *S. macdonaldi*; pink rockfish, *S. eos*; pinkrose rockfish, *S. simulator*; pygmy rockfish, *S. wilsoni*; redstripe rockfish, *S. proriger*; rosethorn rockfish, *S. helvomaculatus*; rosy rockfish, *S. rosaceus*; silvergray rockfish, *S. brevispinis*; speckled rockfish, *S. ovalis*; squarespot rockfish, *S. hopkinsi*; starry rockfish, *S. constellatus*; stripetail rockfish, *S. saxicola*; swordspine rockfish, *S. ensifer*; tiger rockfish, *S. nigrocinctus*; vermilion rockfish, *S. miniatus.*

(B) South of 40°10′ N. lat.: bronzespotted rockfish, *S. gilli*; chameleon rockfish, *S. phillipsi*; dusky rockfish, *S. ciliatus*; dwarf-red rockfish, *S. rufianus*; flag rockfish, *S. rubrivinctus*; freckled, *S. lentiginosus*; greenblotched rockfish, *S. rosenblatti*; greenspotted rockfish, *S. chlorostictus*; greenstriped rockfish, *S. elongatus*; halfbanded rockfish, *S. semicinctus*; harlequin rockfish, *S. variegatus*; honeycomb rockfish, *S. umbrosus*; Mexican rockfish, *S. macdonaldi*; pink rockfish, *S. eos*; pinkrose rockfish, *S. simulator*; pygmy rockfish, *S. wilsoni*; redstripe rockfish, *S. proriger*; rosethorn rockfish, *S. helvomaculatus*; rosy rockfish, *S. rosaceus*; silvergray rockfish, *S. brevispinis*; speckled rockfish, *S. ovalis*; squarespot rockfish, *S. hopkinsi*; starry rockfish, *S. constellatus*; stripetail rockfish, *S. saxicola*; swordspine rockfish, *S. ensifer*; tiger rockfish, *S. nigrocinctus*; vermilion rockfish, *S. miniatus*; yellowtail rockfish, *S. flavidus.*

(iii) Slope rockfish includes darkblotched rockfish, *S. crameri*; Pacific ocean perch, *S. alutus*; splitnose rockfish, *S. diploproa* and the following minor slope rockfish species:

(A) North of 40°10′ N. lat.: aurora rockfish, *Sebastes aurora*; bank rockfish, *S. rufus*; blackgill rockfish, *S. melanostomus*; redbanded rockfish, *S. babcocki*; rougheye rockfish, *S. aleutianus*; sharpchin rockfish, *S. zacentrus*; shortraker rockfish, *S. borealis*; splitnose rockfish, *S. diploproa*; yellowmouth rockfish, *S. reedi.*

(B) South of 40°10′ N. lat.: aurora rockfish, *Sebastes aurora*; bank rockfish, *S. rufus*; blackgill rockfish, *S. melanostomus*; Pacific ocean perch, *S. alutus*; redbanded rockfish, *S. babcocki*; rougheye rockfish, *S. aleutianus*; sharpchin rockfish, *S. zacentrus*; shortraker rockfish, *S. borealis*; yellowmouth rockfish, *S. reedi.*

(8) Flatfish: arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*; butter sole, *Isopsetta isolepis*; curlfin sole, *Pleuronichthys decurrens*; Dover sole, *Microstomus pacificus*; English sole, *Parophrys vetulus*; flathead sole, *Hippoglossoides elassodon*; Pacific sanddab, *Citharichthys sordidus*; petrale sole, *Eopsetta jordani*; rex sole, *Glyptocephalus zachirus*; rock sole, *Lepidopsetta bilineata*; sand sole, *Psettichthys melanostictus*; starry flounder, *Platichthys stellatus.* Where Tables 3–5 of this subpart refer to landings limits for "other flatfish," those limits apply to all flatfish cumulatively taken except for those flatfish species specifically listed in Tables 1–2 of this subpart. (*i.e.*, "other flatfish" includes butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.)

(9) "Other fish": Where Tables 3–5 of this subpart refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1)-(8) except for those groundfish species specifically listed in Tables 1–2 of this subpart with an ABC for that area (generally north and/or south of 40°10′

N. lat.). (*i.e.*, "other fish" may include all sharks, skates, ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in the north and Pacific cod in the south.)

* * * * *

Land or landing means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

* * * * *

North-South management area means the management areas defined in paragraphs (1)(i) through (v) of this definition (Vancouver, Columbia, Eureka, Monterey Conception) or defined and bounded by one or more of the commonly used geographic coordinates set out in paragraphs (2)(i) through (xi) of this definition for the purposes of implementing different management measures in separate sections of the U.S. West Coast.

(1) *Management areas*—(i) *Vancouver.* (A) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(B) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. Lat.	W. Long.
1	48°29.62′	124°43.55′
2	48°30.18′	124°47.22′
3	48°30.37′	124°50.35′
4	48°30.23′	124°54.87′
5	48°29.95′	124°59.23′
6	48°29.73′	125°00.10′
7	48°28.15′	125°05.78′
8	48°27.17′	125°08.42′
9	48°26.78′	125°09.20′
10	48°20.27′	125°22.80′
	48°18.37′	125°29.97′
12	48°11.08′	125°53.80′
13	47°49.25′	126°40.95′
14	47°36.78′	127°11.97′
15	47°22.00′	127°41.38′
16	46°42.08′	128°51.93′
17	46°31.78′	129°07.65′

(C) The southern limit is 47°30′ N. lat.

(i) *Columbia.* (A) The northern limit is 47°30′ N. lat.

(B) The southern limit is 43°00′ N. lat.

(ii) *Eureka.* (A) The northern limit is 43°00′ N. lat.

(B) The southern limit is 40°30′ N. lat.

(iii) *Monterey.* (A) The northern limit is 40°30′ N. lat.

(B) The southern limit is 36°00′ N. lat.

(iv) *Conception.* (A) The northern limit is 36°00′ N. lat.

(B) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. Lat.	W. Long.
1	32°35.37′	117°27.82′
2	32°37.62′	117°49.52′
3	31°07.97′	118°36.30′
4	30°32.52′	121°51.97′

(2) Commonly used geographic coordinates. (i) Cape Alava, WA—48°10.00′ N. lat.

(ii) Queets River, WA—47°31.70′ N. lat.

(iii) Leadbetter Point, WA—46°38.17′ N. lat.

(iv) Washington/Oregon border—46°16.00′ N. lat.

(v) Cape Falcon, OR—45°46.00′ N. lat.

(vi) Cape Lookout, OR—45°20.25′ N. lat.

(vii) Cascade Head, OR—45°03.83′ N. lat.

(viii) Heceta Head, OR—44°08.30′ N. lat.

(ix) Cape Argo, OR—43°20.83′ N. lat.

(x) Cape Blanco, OR—42°50.00′ N. lat.

(xi) Humbug Mountain—42°40.50′ N. lat.

(xii) Marck Arch, OR—42°13.67′ N. lat.

(xii) Oregon/California border—42°00.00′ N. lat.

(xiii) Cape Mendocino, CA—40°30.00′ N. lat.

(xiv) North/South management line—40°10.00′ N. lat.

(xv) Point Arena, CA—38°57.50′ N. lat.

(xvi) Point San Pedro, CA—37°35.67′ N. lat.

(xvii) Pigeon Point, CA—37°11.00′ N. lat.

(xviii) Ano Nuevo, CA—37°07.00′ N. lat.

(xix) Point Lopez, CA—36°00.00′ N. lat.

(xx) Point Conception, CA—34°27.00′ N. lat. [Note: Regulations that apply to waters north of 34°27.00′ N. lat. are applicable only west of 120°28.00′ W. long.; regulations that apply to waters south of 34°27.00′ N. lat. also apply to all waters both east of 120°28.00′ W. long. and north of 34°27.00′ N. lat.]

* * * * *

Trip limits. * * *

* * * * *

(3) A weekly trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

* * * * *

3. In § 660.306, paragraphs (a)(6) and (a)(7) are revised and (a)(12) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(a) * * *

(6) Take and retain, possess, or land more groundfish than specified under §§ 660.370 through 660.373 or §§ 660.381 through 660.385, or under an EFP issued under § 660.350 or part 600 of this chapter.

(7) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, quota, harvest guideline, or OY applied.

* * * * *

(12) Transfer fish to another vessel at sea unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher-processor sectors, as described at § 660.373(a).

* * * * *

§ 660.310 [Removed]

4. Remove § 660.310.

* * * * *

5. Section 660.321 is revised to read as follows:

§ 660.321 Black rockfish harvest guideline.

From the commercial harvest of black rockfish off Washington State, a treaty Indian tribes' harvest guideline is set of 20,000 lb (9,072 kg) for the area north of Cape Alava, WA (48°09.50' N. lat) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.). This harvest guideline applies and is available to the treaty Indian tribes identified in § 660.324(b).

6. Section § 660.322 is added to read as follows:

§ 660.322 Sablefish allocations.

(a) *Tribal-nontribal allocation.* The sablefish allocation to Pacific coast treaty Indian tribes identified at § 660.324(b) is 10 percent of the sablefish total catch OY for the area

north of 36° N. lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality. The annual tribal sablefish allocations are provided in § 660.385(a).

(b) *Between the limited entry and open access sectors.* Sablefish is allocated between the limited entry and open access fisheries according to the procedure described in § 660.320(a).

(c) *Between the limited entry trawl and limited entry nontrawl sectors.* The limited entry sablefish allocation is further allocated 58 percent to the trawl sector and 42 percent to the nontrawl (longline and pot/trap) sector.

(d) *Between the limited entry fixed gear primary season and daily trip limit fisheries.* Within the limited entry nontrawl sector allocation, 85 percent is reserved for the primary season described in § 660.372(b), leaving 15 percent for the limited entry daily trip limit fishery described in § 660.372(c).

(e) *Ratios between tiers for sablefish endorsed limited entry permit holders.* The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in § 660.372.

7. In § 660.323, paragraph (a) is revised to read as follows:

§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment.

(a) *Allocations.* (1) Annual treaty tribal whiting allocations are provided in § 660.385(e).

(2) The non-tribal commercial harvest guideline for whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary whiting season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the **Federal Register**. The non-tribal Pacific whiting allocations in 2005 are as follows:

(i) *Catcher/processor sector*–TBA(24 percent);

(ii) *Mothership sector*–TBA (34 percent);

(iii) *Shore-based sector*–TBA (42 percent). No more than 5 percent (TBA) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2005.

* * * * *

8. In § 660.365, paragraph (c) is revised to read as follows:

§ 660.365 Overfished species rebuilding plans.

* * * * *

(c) *Lingcod.* The target date for rebuilding the lingcod stock to B_{MSY} is 2009. The harvest control rule to be used to rebuild the lingcod stock is an annual harvest rate of F=0.17 in the north and F=0.15 in the south.

* * * * *

9. In § 660.370, paragraphs (a), (c) introductory text, (c)(1), (d) and (f) are revised and (g) and (h) are added to read as follows:

§ 660.370 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council. Regulations under this subpart may be promulgated, removed, or revised during the fishing year. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the **Federal Register**.

* * * * *

(c) *Routine management measures.* In addition to the catch restrictions in §§ 660.371 through 660.373, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year via this process are implemented in paragraph (h) of this section and in §§ 660.371 through 660.373, §§ 660.381 through 660.385 and Tables 3–5 of this subpart. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries*—(i) T*rip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and "other fish" as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (c)(1)(i)(A) and (B) of this section.

(ii) *Differential trip landing limits and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks. To achieve the rebuilding of an overfished or depleted stock, the Pacific whiting primary seasons described at

§ 660.373(b), may be closed for any or all of the fishery sectors identified at § 660.373(a) before the sector allocation is reached.

* * * * *

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment. Automatic actions are used in the Pacific whiting fishery to close the fishery or reinstate trip limits when a whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached; or to reapportion unused allocation to other sectors of the fishery.

* * * * *

(f) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to restrictions in §§ 660.301 through 660.394, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in §§ 660.370 through 660.385 and in Tables 1–5 of this subpart.

(h) *Fishery restrictions.* (1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in § 660.302 and set in §§ 660.371 through 660.373, §§ 660.381 through 660.385 and Tables 3–5 of this subpart must not be exceeded.

(2) *Landing.* As stated at 50 CFR 660.302 (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.306(a)(12) unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher-processor sectors, as described at § 660.373(a).

(3) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period.

(4) *Weights and percentages.* All weights are round weights or round-weight equivalents unless otherwise specified. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Size limits, length measurement, and weight limits—(i) Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed.

(A) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(B) *Headed fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(C) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see § 660.384). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(ii) *Weight limits and conversions.* The weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor. To determine the round weight, multiply the processed weight times the conversion factor.

(iii) *Sablefish.* The following conversion applies to both the limited entry and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(iv) *Lingcod.* The following conversions apply in both limited entry and open access fisheries.

(A) For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(B) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(6) *Sorting.* Under § 660.306(a)(7), it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, OY, or quota applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state fish tickets. This provision applies to both the limited entry and open access fisheries. The following species must be sorted in 2005 and 2006:

(i) For vessels with a limited entry permit:

(A) Coastwide-widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and Pacific whiting

(B) North of 40°10′ N. lat.—POP, yellowtail rockfish, and, for fixed gear, blue rockfish;

(C) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, and cabezon.

(ii) For open access vessels (vessels without a limited entry permit):

(A) Coastwide-widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, black rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover

sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(B) North of 40°10′ N. lat.—blue rockfish, POP, yellowtail rockfish;

(C) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and cabezon;

(D) South of Point Conception, CA—thornyheads.

(7) *Operating in both limited entry and open access fisheries.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(8) *"Crossover provisions," operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.302 and 660.390 through 660.394. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see § 660.371).

(i) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(ii) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(iii) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(iv) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(A) If a vessel takes and retains minor slope rockfish north of 40°10.00′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10.00′ N. lat.

(B) If a vessel takes and retains minor slope rockfish south of 40°10.00′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10.00′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat.

(C) If a trawl vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Yellowtail rockfish is included in overall shelf rockfish limits for limited entry fixed gear and open access gear groups. Widow rockfish is included in overall shelf rockfish limits for all gear groups.

(D) If a trawl vessel takes and retains minor shelf rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish up to its cumulative limits south of 40°10′ N. lat., even if chilipepper rockfish is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

(v) *"DTS complex."* There are differential trawl trip limits for the "DTS complex" north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the "DTS complex."

(vi) *Flatfish complex.* There are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10′ N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the species in the flatfish complex.

10. Section 660.371 is revised to read as follows:

§ 660.371 Black rockfish fishery management.

The trip limit for black rockfish (Sebastes melanops) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in §§ 660.382 and 660.383. The crossover provisions in § 660.370(h)(8) do not apply to the black rockfish per-trip limits.

11. In § 660.372, the introductory paragraph, paragraphs (b)(1), and (b)(3)(i) are revised, (b)(3)(ii) is removed and paragraphs (b)(3)(iii) and (b)(3)(iv)

are redesignated as paragraphs (b)(3)(ii) and (b)(3)(iii), respectively, and paragraph (c) is revised to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

This section applies to the primary season for the fixed gear limited entry sablefish fishery north of 36° N. lat., except for paragraph (c), of this section, which also applies to the open access fishery north of 36° N. lat. and to both the limited entry and open access fisheries south of 36° N. lat. Limited entry and open access fixed gear sablefish fishing outside of the primary sablefish season north of 36° N. lat. is governed by routine management measures imposed under § 660.370.

* * * * *

(b) *Primary season limited entry, fixed gear sablefish fishery*—(1) *Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1 count against the cumulative limits associated with the permit(s) registered for use with that vessel.

* * * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to participate in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel. If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in the **Federal Register** for the tiers for those permits, except as limited by paragraph (b)(3)(iii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under paragraph (c) of this section. For 2005, the following limits are in effect: Tier 1 at 64,100 lb (29,075 kg), Tier 2 at 29,100 lb (13,200 kg), and Tier 3 at 16,600 lb (7,530 kg). For 2006, the following limits are in effect: Tier 1 at 62,700 lb (28,440 kg), Tier 2 at 28,500 lb (12,927 kg), and Tier 3 at 16,300 lb (7,394 kg).

* * * * *

(c) *Limited entry and open access daily trip limit fisheries both north and south of 36° N. lat.* (1) Before the start of the primary season, all sablefish landings made by a vessel authorized under paragraph (a) of this section to participate in the primary season will be subject to the restrictions and limits of the limited entry daily and/or weekly trip limit fishery for sablefish, which is governed by routine management measures imposed under § 660.370(c).

(2) Following the start of the primary season, all landings made by a vessel authorized under paragraph (a) of this section to participate in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the end of the primary season, whichever occurs earlier. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry daily and/or trip limit fishery for sablefish for the remainder of the calendar year.

(3) No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily and/or weekly trip limit fishery limits within the same 24 hour period of 0001 hours l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(4) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may participate in the limited entry, daily and/or weekly trip limit fishery for as long as that fishery is open during the year, subject to routine management measures imposed under § 660.370(c). Daily and/or weekly trip limits for the limited entry fishery north and south of 36° N. lat. are provided in Tables 4 (North) and 4 (South) of this subpart.

(5) Open access vessels may participate in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.370(c). Daily and/or weekly trip limits for the open access fishery north and south of 36° N. lat. are provided in Tables 5 (North) and 5 (South) of this subpart.

* * * * * *

12. In § 660.373, paragraphs (b)(1)(iii), (b)(3), and (d)(1) are added and paragraph (d)(2) is reserved to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(1) * * *

(iii) *2005 and 2006 primary whiting seasons.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken and the fishery season for that sector is closed by NMFS. In both 2005 and 2006, the primary seasons for the whiting fishery start on the same dates as follows:

(A) Catcher/processor sector – May 15;

(B) Mothership sector May 15;

(C) Shore-based sector June 15 north of 42° N. lat.; April 1 between 42° – 40°30′ N. lat.

* * * * *

(3) *2005–2006 trip limits in the whiting fishery.* The "per trip" limit for whiting before and after the regular (primary) season for the shore-based sector is announced in Table 4 of this subpart, and is a routine management measure under § 660.370(c). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka, CA area. The "per trip" limit for other groundfish species before, during and after the regular (primary) season are announced in Table 3 (North) and Table 3 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) During the primary whiting season for a sector of the fishery, then the midwater trip limits apply and are additive to the trip limits for other groundfish species for that fishing period (*i.e.*, vessels are not constrained by the lower midwater limits and can harvest up to a footrope-specific trawl limit plus the midwater trawl limit per species or species group for that cumulative limit period).

* * * * *

(d) * * *

(1) *2005–2006 whiting trip limits.* No more than 10,000 lb (4,536 kg) of

whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.302).

(2) [Reserved]

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13. A new § 660.380 is added to read as follows:

§ 660.380 Groundfish harvest specifications.

Fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management,) and the allocation of commercial OYs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nm offshore) as well as fish caught in the EEZ (3–200 nm offshore). Specifications and management measures are provided as Tables 1a and 1b, and 2a and 2b of this subpart.

14. A new § 660.381 is added to read as follows:

§ 660.381 Limited entry trawl fishery management measures.

(a) *General.* Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement. Most species taken in limited entry trawl fisheries will be managed with cumulative trip limits (see trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.370 (h)(5)), seasons (see Pacific whiting at § 660.373), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (d) of this section and §§ 660.390 through 660.394). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board and the area fished. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(1) of this section and § 660.390). The trip limits in Table 3 (North) and Table 3 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Trawl gear requirements and restrictions.* Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(1) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(2) *Mesh size.* Groundfish trawl gear must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20–gauge stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(5) *Small footrope trawl gear.* Small footrope gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(i) Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net and its breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the selective flatfish trawl net's headrope and the headrope must be at least 30 percent longer in length than the footrope. Selective flatfish trawl gear may not have a footrope that is longer than 105 ft (32.26 m) in length. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of Part 660, Subpart G.

(ii) [Reserved]

(6) *Midwater (or pelagic) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16–inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Cumulative trip limits and prohibitions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (*i.e.*, large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 3 (North) and Table 3 (South) provide cumulative and/or trip limits that are specific to different types of trawl gear: large footrope, small footrope (including selective flatfish), selective flatfish, and midwater. If Table 3 (North) and Table 3 (South) provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed.

(1) *Large footrope trawl gear.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the RCAs defined at paragraph (d) of this section and at §§ 660.390 through 660.394. The use of large footrope gear is permitted seaward of the RCAs coastwide.

(2) *Small footrope trawl gear.* North of 40°10′ N. lat., it is unlawful for any vessel using small footrope gear (except

selective flatfish gear) to fish for groundfish or have small footrope trawl gear (except selective flatfish gear) onboard while fishing shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.390 through 660.394. South of 40°10′ N. lat., small footrope gear is required shoreward of the RCA. Small footrope gear is permitted seaward of the RCA coastwide.

(i) North of 40°10′ N. lat., selective flatfish gear is required shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.390 through 660.394. South of 40°10′ N. lat., selective flatfish gear is permitted, but not required, shoreward of the RCA. The use of selective flatfish trawl gear is permitted seaward of the RCA coastwide.

(ii)*Reserved.*

(3) *Midwater trawl gear.* North of 40°10′ N. lat., midwater trawl gear is permitted only for vessels participating in the primary Pacific whiting fishery (for details on the Pacific whiting fishery see § 660.373). South of 40°10′ N. lat., the use of midwater trawl gear is prohibited shoreward of the RCA and permitted seaward of the RCA.

(4) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 (North) or Table 3 (South) of this subpart must not be exceeded. A vessel that is trawling within a Groundfish Conservation Area (GCA) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board.

(i) North of 40°10′ N. lat., a vessel may have more than one type of limited entry trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. If selective flatfish trawl gear is used by or is on board a vessel at any time north of 40°10′ N. lat. (either shoreward or seaward of RCA) and those trip limits are the most restrictive for a species or species group during the entire cumulative limit period, then selective flatfish trawl limits apply to that vessel for that species or species group for that entire cumulative limit period, regardless of whether other gear types are also used during that period. Midwater trawl gear is allowed only for vessels participating in the primary whiting season. On non-whiting trips (defined as any fishing trip that takes, retains, possess, or lands less than 10,000 lb (4,536 kg) of whiting), vessels with both large footrope and midwater trawl gear on board during a trip may access the large footrope limits while fishing with large footrope gear seaward of the RCA.

(ii) South of 40°10′ N. lat., a vessel may have more than one type of limited entry trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative limit for that gear. If a vessel has small footrope trawl gear on board, then it may not have any other trawl gear on board. For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300 lb (136 kg) of chilipepper rockfish with small footrope gear, it may harvest up to 11,700 lb (5,209 kg) of chilipepper rockfish with large footrope gear during July and August.) If a vessel fishes north of 40°10′ N. lat. with either selective flatfish or small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear.

(d) *Trawl Groundfish Conservation Areas (GCAs).* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The following GCAs apply to vessels participating in the limited entry trawl fishery.

(1) *Cowcod Conservation Areas (CCAs).* Vessels using limited entry trawl gear are prohibited from fishing within the CCAs. See § 660.390 for the coordinates that define the CCAs. Limited entry trawl vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50' N. lat., and bounded on the south by the latitude line at 32°59.50' N. lat. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except as authorized in this paragraph, when those waters are open to fishing.

(2) Farallon Islands. Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. (See § 660.390)

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390. [Note: California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish in this area.]

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates designed to approximate specific depth contours, where fishing with limited entry trawl gear is prohibited.

(i) Coastwide, it is unlawful to take and retain, possess, or land any species of fish taken with trawl gear within the trawl RCA, except as permitted for vessels participating in the primary whiting season. Throughout the year, boundaries for the trawl RCA are provided in Table 3 (North) and Table 3 (South) of this subpart, and may be modified by NMFS inseason pursuant to § 660.370(c). Trawl RCA boundaries are defined by specific latitude and longitude coordinates which are provided at §§ 660.390 through 660.394.

(ii) Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with mid-water trawl gear for Pacific whiting or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting caught with mid-water trawl gear or to taking and retaining yellowtail or widow rockfish with mid-water trawl gear when trip limits are authorized for those species.

(iii) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercede any state regulations that may prohibit trawling shoreward of the 3–nm state waters boundary line.

15. A new § 660.382 is added to read as follows:

§ 660.382 Limited entry fixed gear fishery management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 4 (North) and 4 (South) of this subpart), size limits (see § 660.370(h)(5)), seasons (see trip limits in Tables 4 (North) and 4 (South) of this subpart and primary sablefish season

details in § 660.372(b)), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (c) of this section and §§ 660.390 through 660.394). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (c)(2) of this section and § 660.390). Yelloweye rockfish and canary rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing and tier limits for the limited entry, fixed gear primary sablefish season north of 36° N. lat. are found in § 660.372. Vessels not participating in the primary sablefish season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.371. The trip limits in Table 4 (North) and Table 4 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Gear Restrictions*—(1) *General.* The following types of fishing gear are authorized in the limited entry fixed gear fishery, with the restrictions set forth in this section: longline and pot or trap. Vessels participating in the limited entry fixed gear fishery may also fish with open access gear subject to the gear restrictions at § 660.383(b), but will be subject to the most restrictive trip limits for the gear used as specified at § 660.370(h)(7).

(2) *Limited entry fixed gear.* (i) Fixed gear (longline, trap or pot) must be:

(A) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(B) Attended at least once every 7 days.

(ii) A buoy used to mark fixed gear under paragraph (b)(2)(i)(A) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(A) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(B) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(3) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(c) *Groundfish Conservation Areas.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

(1) *Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishermen.

(2) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. Fishing with limited entry fixed gear is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. Fishing with limited entry fixed gear for rockfish and lingcod is permitted shoreward of the 20–fm (37–m) depth contour. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat.

(3) *Non-trawl Rockfish Conservation Areas.* Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA), except that commercial fishing for "other flatfish" is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Limited entry fixed gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.] Boundaries for the non-trawl RCA throughout the year are provided in the header to Table 4 (North) and Table 4 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided at §§ 660.390 through 660.394.

(4) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. (See Table 4 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(5) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390, except that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. [Note: California state regulations also prohibit fishing for all greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish in this area.]

16. Section 660.383 is added to read as follows:

§ 660.383 Open access fishery management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in Tables 5 (North) and 5 (South) of this subpart), size limits (see § 660.370(h)(5)), seasons, gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (c) of this section and §§ 660.390 through 660.394). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (c)(2) of this section and § 660.390). Retention of yelloweye rockfish and canary rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, see § 660.372(c) and the trip limits in Tables 5 (North) and 5 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.371. The trip limits in Table 5 (North) and Table 5 (South) of this subpart apply to vessels participating in the open access fisheries and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

(b) *Gear restrictions.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50′ N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

(1) *Non-groundfish trawl gear.* Non-groundfish trawl gear is any trawl gear other than limited entry groundfish trawl gear as described at § 660.381(b) and as defined at § 660.302 for trawl vessels with limited entry groundfish permits. Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber. Non-groundfish trawl gear is exempt from the limited entry trawl gear restrictions at § 660.381(b).

(2) *Fixed gear.* (i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(A) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(B) Attended at least once every 7 days.

(ii) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(iii) A buoy used to mark fixed gear must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(A) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(B) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(3) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00.00′ N. lat.

(4) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(5) *Spears.* Spears may be propelled by hand or by mechanical means.

(c) *Open Access Groundfish Conservation Areas.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to participants in the open access fishery.

(1) *Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishermen.

(2) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. Fishing with open access gear is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. Fishing with open access gear, except trawl gear, for rockfish and lingcod is permitted shoreward of the 20–fm (37–m) depth contour. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat.

(3) *Non-trawl Rockfish Conservation Areas for the open access fisheries.* Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA), except that commercial fishing for "other flatfish" is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Open access non-trawl gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. Retention of groundfish caught by salmon troll gear is prohibited in the

designated RCAs, except that salmon trollers may retain yellowtail rockfish caught both inside and outside the non-trawl RCA subject to the limits in Tables 5 (North) and 5 (South) of this subpart. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5(South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates which are specified at §§ 660.390 through 660.394.

(4) *Trawl Rockfish Conservation Areas for the open access non-groundfish trawl fisheries.*

(i) Fishing with any open access trawl gear is prohibited within the trawl RCA coastwide, except as authorized in this paragraph. Coastwide, it is unlawful to take and retain, possess, or land any species of fish taken with trawl gear within the trawl RCA, except as permitted in this paragraph for vessels participating in the pink shrimp and ridgeback prawn trawl fisheries. Boundaries for the trawl RCA throughout the year in the open access fishery are provided in Table 5 (North) and Table 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Trawl RCA boundaries are defined by specific latitude and longitude coordinates which are specified below at §§ 660.390 through 660.394. The trawl rockfish conservation area (RCA) is closed coastwide to open access non-groundfish trawl fishing, except as follows:

(A) Pink shrimp trawling is permitted in the trawl RCA, and

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), the ridgeback prawn trawl fishery south of 34°27.00′ N. lat. may operate out to the 100 fm boundary line specified at § 660.393 (*i.e.*, the shoreward boundary of the trawl RCA is at the 100 fm boundary line all year for the ridgeback prawn trawl fishery in this area).

(ii) For the non-groundfish trawl gear fisheries, non-groundfish trawl gear RCAs, if applicable, are generally described in the non-groundfish trawl gear sections at the bottom of Tables 5 (North) and 5 (South) of this subpart. Retention of groundfish caught by non-groundfish trawl gear is prohibited in the designated RCAs, except that:

(A) pink shrimp trawl may retain groundfish caught both within and shoreward and seaward of the non-groundfish trawl RCA subject to the limits in Tables 5 (North) and 5 (South) of this subpart, and

(B)South of 34°27′ N. lat., ridgeback prawn trawl may retain groundfish caught both within the non-groundfish trawl RCA out to 100 fm (183 m) when the shoreward boundary of the trawl RCA is shallower than 100 fm (183 m) (*i.e.*, the shoreward boundary of the trawl RCA is at the 100 fm boundary line all year for the ridgeback prawn trawl fishery in this area) and shoreward and seaward of the non-groundfish trawl RCA subject to the limits in Tables 5 (North) and 5 (South) of this subpart.

(iii) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercede any state regulations that may prohibit trawling shoreward of the 3–nm state waters boundary line.

(5) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. (See Table 5 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(6) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390, except that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. [Note: California state regulations also prohibit fishing for all greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish in this area.]

(d) *Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for ridgeback prawns, California halibut, or sea cucumbers.* Trip limits for groundfish retained in the ridgeback prawn, California halibut, or sea cucumber fisheries are in the open access trip limit table, Table 5 (South) of this subpart. The table also generally describes the RCAs for vessels participating in these fisheries.

(1) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the ridgeback prawn fishery if:

(i) It is not fishing under a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear; and

(ii) The landing includes ridgeback prawns taken in accordance with California Fish and Game Code, section 8595, which states: "Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3."

(2) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50′ N. lat.); and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(3) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50′ N. lat.); and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(e) *Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp.* Trip limits for groundfish retained in the pink shrimp fishery are in Tables 5 (North) and 5 (South) of this subpart. Notwithstanding § 660.370(h)(7), a vessel that takes and retains pink shrimp and also takes and retains

groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

17. Section § 660.384 is added to read as follows:

§ 660.384 Recreational fishery management measures.

(a) *General.* Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally-managed groundfish. The bag limits include fish taken in both state and Federal waters.

(b) *Gear restrictions.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear. Spears may be propelled by hand or by mechanical means. More fishery-specific gear restrictions may be required by state as noted in paragraph (c) of this section (*e.g.* California's recreational "other flatfish" fishery).

(c) *State-specific recreational fishery management measures.* Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish. Off the coast of Washington, Oregon, and California, boat limits apply, whereby each fisher aboard a vessel may continue to use angling gear until the combined daily limits of groundfish for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply).

(1) *Washington.* For each person engaged in recreational fishing in the EEZ seaward of Washington, the groundfish bag limit is 15 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(i) *Recreational Groundfish Conservation Areas off Washington.*

(A) *Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish and halibut is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish within the YRCA. The YRCA is defined by latitude and longitude coordinates specified at § 660.390.

(B) *Recreational Rockfish Conservation Area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Washington, if recreational fishing for all groundfish is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour, a document will be published in the **Federal Register** inseason pursuant to § 660.370(c). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in § 660.391.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit. Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

(iii) *Lingcod.* Recreational fishing for lingcod is open between the closest Saturday to March 15 through the closest Saturday to October 15. For 2005, the lingcod season will be open from March 12 through October 15. For 2006, the lingcod season will be open from March 18 through October 14. In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon* (i) *Recreational Groundfish Conservation Areas off Oregon.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from June 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.391. Recreational fishing for all groundfish may be prohibited inseason seaward of the 20 fm (37 m) depth contour or a boundary line approximating the 30 fm (55 m) depth contour. If the closure seaward of the 20 fm (37 m) depth contour or a boundary line approximating the 30 fm (55 m) depth contour is implemented inseason, a document will be published in the **Federal Register** pursuant to § 660.370(c). Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed at § 660.391.

(ii) *Seasons.* Recreational fishing for groundfish is open from January 1 through December 31, subject to the closed areas described in paragraph (c)(2) of this section.

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes Pacific halibut, salmon, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20–fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [Note: There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: petrale sole, Pacific sanddab and starry flounder.] California state law may provide regulations similar to Federal regulations for the following state-managed species: ocean whitefish, California sheephead, and all greenlings of the genus *Hexogrammos.* Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) *Recreational Groundfish Conservation Areas off California.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to participants in California's recreational fishery.

(A) *Recreational Rockfish Conservation Areas.* The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for "other flatfish" is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.]

(*1*) *Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat.*, recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through October 31; and is closed entirely from January 1 through June 30 and from November 1 through December 31 (*i.e.*, prohibited seaward of the shoreline). Recreational fishing for all groundfish may be prohibited inseason seaward of a boundary line approximating the 30 fm (55 m) depth contour. If a closure seaward of the boundary line approximating the 30 fm (55 m) depth contour is implemented inseason, a document will be published in the **Federal Register** pursuant to § 660.370(c). Coordinates for the boundary line approximating the 30 fm (55 m) and 40 fm (73 m) depth contours are specified in § 660.391.

(*2*) *Between 40°10.00′ N. lat. and 36° N. lat.*, recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through November 30; and is closed entirely from January 1 through June 30 and from December 1 through December 31 (*i.e.*, prohibited seaward of the shoreline). Closures around the Farallon Islands (see paragraph (c)(3)(i)(C) of this section) and Cordell Banks (see paragraph (c)(3)(i)(D) of this section) also apply in this area.

(*3*) *Between 36° N. lat. and 34°27.00′ N. lat.*, recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited shoreward of the 20 fm (37 m) depth contour and seaward of a boundary line approximating the 40–fm (73–m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through September 30 (*i.e.*, fishing is permitted only between 20 fm and 40 fm); and is closed entirely from January 1 through April 30 and from October 1 through December 31 (*i.e.*, prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40–fm (73–m) depth contour are specified in § 660.391.

(*4*) *South of 34°27.00′ N. lat.*, recreational fishing for all groundfish (except California scorpionfish as specified in this paragraph and in paragraph (c)(3)(v) and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited shoreward of a boundary line approximating the 30 fm (55 m) depth contour and seaward of a boundary line approximating the 60–fm (110–m) depth contour along the mainland coast and along islands and offshore seamounts from March 1 through June 30; and is prohibited seaward of a boundary line approximating the 40–fm (73–m) depth contour from July 1 through September 30; except in the CCAs where fishing is prohibited seaward of the 20–fm (37–m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 29 and from October 1 through December 31 (*i.e.*, prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27.00′ N. lat. is prohibited seaward of a boundary line approximating the 40–fm (73–m) depth contour from October 1 through November 30, and seaward of the 20–fm (37–m) depth contour from December 1 through December 31, except in the CCAs where fishing is prohibited seaward of the 20–fm (37–m) depth contour when the fishing season is open. Recreational fishing for California scorpionfish south of 34°27.00′ N. lat. is closed entirely from January 1 through September 30 (*i.e.*, prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 30 fm (55 m), 40 fm (73 m), and 60–fm (110–m) depth contours are specified in §§ 660.391 and 660.392.

(B) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20–fm (37–m) depth contour: minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section). [NOTE: California state regulations also permit recreational fishing for all greenlings of the genus Hexogrammas shoreward of the 20–fm (37–m) depth contour in the CCAs.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

(C) *Farallon Islands.* Under California state law, recreational fishing for groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that recreational fishing for "other flatfish" is permitted around the Farallon Islands as specified in paragraph (c)(3)(iv) of this section. (Note: California state regulations also prohibit the retention of other greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.) For a definition of the Farallon Islands, see § 660.390.

(D) *Cordell Banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section. [Note: California state regulations also prohibit fishing for all greenlings of the genus *Hexagrammos*, California sheephead and ocean whitefish.]

(ii) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin.

(A) *Seasons.* When recreational fishing for the RCG Complex is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) *North of 40°10.00′ N. lat.*, recreational fishing for the RCG Complex is open from July 1 through October 31.

(*2*) *Between 40°10.00′ N. lat. and 36° N. lat.*, recreational fishing for the RCG Complex is open from July 1 through November 30 (*i.e.*, it's closed from January 1 through June 30 and from December 1 through December 31).

(*3*) *Between 36° N. lat. and 34°27.00′ N. lat.*, recreational fishing for the RCG Complex is open from May 1 through September 30 (*i.e.*, it's closed from January 1 through April 30 and from October 1 through December 31).

(*4*) *South of 34°27.00′ N. lat.*, recreational fishing for the RCG Complex is open from March 1 through September 30 (*i.e.*, it's closed from January 1 through February 29 and from October 1 through December 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish and cowcod is prohibited. North of 40°10′ N. lat., within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 3 may be cabezon. South of 40°10′ N. lat., within the 10 RCG Complex fish per day limit, no more than 1 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 3 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: bocaccio may be no smaller than 10 in (25 cm) total length; cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/Fileting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be fileted at sea. Rockfish skin may not be removed when fileting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: bocaccio filets may be no smaller than 5 in (12.8 cm) and brown-skinned rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *Lingcod*—(A) *Seasons.* When recreational fishing for lingcod is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) *North of 40°10.00′ N. lat.*, recreational fishing for lingcod is open from July 1 through October 31.

(*2*) *Between 40°10.00′ N. lat. and 36° N. lat.*, recreational fishing for lingcod is open from July 1 through November 30 (*i.e.*, it's closed from January 1 through June 30 and from December 1 through December 31).

(*3*) *Between 36° N. lat. and 34°27.00′ N. lat.*, recreational fishing for lingcod is open from May 1 through September 30 (*i.e.*, it's closed from January 1 through April 30 and from October 1 through December 31).

(*4*) *South of 34°27.00′ N. lat.*, recreational fishing for lingcod is open from March 1 through September 30 (*i.e.*, it's closed from January 1 through February 29 and from October 1 through December 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. The bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Fileting.* Lingcod filets may be no smaller than 16 in (41 cm) in length.

(iv) *"Other flatfish".* Coastwide off California, recreational fishing for "other flatfish" is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. Recreational fishing for "other flatfish" is permitted within the closed areas, subject to a limit of up to 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. "Other flatfish," except Pacific sanddab and starry flounder, are subject to the overall 20–fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species. There is no season restriction or size limit for "other flatfish;" however, it is prohibited to filet "other flatfish" at sea.

(v) *California scorpionfish.* California scorpionfish only occur south of 40°10.00′ N. lat.

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) *Between 40°10.00′ N. lat. and 36° N. lat.*, recreational fishing for California scorpionfish is open from July 1 through November 30 (*i.e.*, it's closed from January 1 through June 30 and from December 1 through December 31).

(*2*) *Between 36° N. lat. and 34°27.00′ N. lat.*, recreational fishing for California scorpionfish is open from May 1 through September 30 (*i.e.*, it's closed from January 1 through April 30 and from October 1 through December 31).

(*3*) *South of 34°27.00′ N. lat.*, recreational fishing for California scorpionfish is open from October 1 through December 31 (*i.e.*, it's closed from January 1 through September 30).

(B) *Bag limits, hook limits.* South of 40°10.00′ N. lat., in times and areas where the recreational season for California scorpionfish is open, the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Fileting.* California scorpionfish filets may be no smaller than 5 in (12.8 cm) and must bear an intact 1 in (2.6 cm) square patch of skin.

18. Section 660.385 is added to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes usual and accustomed fishing areas (described at 50 CFR 660.324). Tribal fishery allocations for sablefish and whiting, are provided in paragraphs (a) and (e) of this section, respectively, and the tribal harvest guideline for black rockfish is provided in paragraph (b)(1) of this section. Trip limits for certain species were recommended by the tribes and the Council for 2005–2006 and are specified here with the tribal allocations.

(a) *Sablefish.* In 2005, the tribal allocation is 731.4 mt and in 2006 the tribal allocation is 719.4 mt. These

allocations are, for each year, 10 percent of the total catch OY, less 2.3 percent estimated discard mortality.

(b) *Rockfish.* (1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40'00" N. lat.) and Leadbetter Point, WA (46°38'10" N. lat.). There are no tribal harvest restrictions for the area between Cape Alava and Destruction Island.

(2) Thornyheads are subject to a 300–lb (136–kg) trip limit.

(3) Canary rockfish are subject to a 300–lb (136–kg) trip limit.

(4) Yelloweye rockfish are subject to a 100–lb (45–kg) trip limit.

(5) The Makah Tribe will manage the midwater trawl fisheries as follows: yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000 lb (81,647 kg) per 2–month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300–lb (136–kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

(c) *Lingcod.* Lingcod are subject to a 600 lb (272 kg) daily trip limit and a 1,800 lb (816 kg) weekly limit, unless taken in the treaty salmon troll fisheries. Lingcod taken in the treaty salmon troll fisheries are subject to a 1,000 lb (454 kg) daily trip limit and a 4,000 lb (1,814 kg) weekly limit.

(d) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear are subject to the limits applicable to the non-tribal limited entry trawl fishery for Pacific cod, English sole, rex sole, arrowtooth flounder, and other flatfish that are published at the beginning of the year. Treaty fishing vessels are restricted to a 50,000 lb (22,680 kg) per 2–month limit for petrale sole for the entire year.

(e) *Pacific whiting.* Whiting allocations will be announced when the final OY is announced in the **Federal Register**.

19. Section 660.390 is revised to read as follows:

§ 660.390 Groundfish conservation areas.

In § 660.302, a groundfish conservation area is defined as "a geographic area defined by coordinates expressed in latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species." While some groundfish conservation areas may be designed with the intent that their shape be determined by ocean bottom depth contours, their shapes are defined in regulation by latitude/longitude coordinates and are enforced by those coordinates. Latitude/longitude coordinates designating the large-scale boundaries for rockfish conservation areas are found in §§ 660.391 through 660.394. Fishing activity that is prohibited or permitted within a particular groundfish conservation area is detailed in **Federal Register** documents associated with the harvest specifications and management measures process and at § 660.381 through § 660.384.

(a) *Yelloweye Rockfish Conservation Area.* The Yelloweye Rockfish Conservation Area (YRCA) is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

48°18.00′ N. lat.; 125°18.00′ W. long.;
48°18.00′ N. lat.; 124°59.00′ W. long.;
48°11.00′ N. lat.; 124°59.00′ W. long.;
48°11.00′ N. lat.; 125°11.00′ W. long.;
48°04.00′ N. lat.; 125°11.00′ W. long.;
48°04.00′ N. lat.; 124°59.00′ W. long.;
48°00.00′ N. lat.; 124°59.00′ W. long.;
48°00.00′ N. lat.; 125°18.00′ W. long.;
and connecting back to 48°18.00′ N. lat.; 125°18.00′ W.long.

(b) *Cowcod Conservation Areas.* The Cowcod Conservation Areas (CCAs) are two areas off the southern California coast intended to protect cowcod. The Western CCA is an area south of Point Conception defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

33°50.00′ N. lat., 119°30.00′ W. long.;
33°50.00′ N. lat., 118°50.00′ W. long.;
32°20.00′ N. lat., 118°50.00′ W. long.;
32°20.00′ N. lat., 119°37.00′ W. long.;
33°00.00′ N. lat., 119°37.00′ W. long.;
33°00.00′ N. lat., 119°53.00′ W. long.;
33°33.00′ N. lat., 119°53.00′ W. long.;
33°33.00′ N. lat., 119°30.00′ W. long.;
and connecting back to 33°50.00′ N. lat., 119°30.00′ W. long.

The Eastern CCA is an area west of San Diego defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

32°42.00′ N. lat., 118°02.00′ W. long.;
32°42.00′ N. lat., 117°50.00′ W. long.;
32°36.70′ N. lat., 117°50.00′ W. long.;
32°30.00′ N. lat., 117°53.50′ W. long.;
32°30.00′ N. lat., 118°02.00′ W. long.;
and connecting back to 32°42.00′ N. lat., 118°02.00′ W. long.

(c) *Farallon Islands.* The Farallon Islands, off San Francisco and San Mateo Counties, include Southeast Farallon Island, Middle Farallon Island, North Farallon Island and Noon Day Rock. Generally, the State of California prohibts fishing for groundfish between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands.

(d) *Cordell Banks.* Cordell Banks are located offshore of California's Marin County. Generally, fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates.The Cordell Banks closed area is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

38°03.18′ N. lat. and 123°20.77′ W. long.;
38°06.29′ N. lat. and 123°25.03′ W. long.;
38°06.34′ N. lat. and 123°29.32′ W. long.;
38°04.57′ N. lat. and 123°31.30′ W. long.;
38°02.32′ N. lat. and 123°31.07′ W. long.;
and connecting back to 37°56.94′ N. lat. and 123°25.48′ W. long.

(e) *Rockfish Conservation Areas.* RCAs are defined in the **Federal Register** through the harvest specifications and management measures process. RCAs may apply to a single gear type or to a group of gear types such as "trawl RCAs" or "non-trawl RCAs." Specific latitude and longitude coordinates for RCA boundaries that approximate the depth contours selected for both trawl, non-trawl, and recreational RCAs are provided in §§ 660.391 through 660.394. Also provided in §§ 660.391 through 660.394 of this subpart are references to islands and rocks that serve as reference points for the RCAs.

(1) *Trawl (Limited Entry and Open Access Nongroundfish Trawl Gears) Rockfish Conservation Area.* Trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours.

Boundaries for the trawl RCA throughout the year are provided in Tables 3 and 5 (North) and Tables 3 and 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

(2) *Non-Trawl (Limited Entry Fixed Gear and Open Access Non-trawl Gears) Rockfish Conservation Area.* Non-trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours. Boundaries for the non-trawl RCA throughout the year are provided in Tables 4 and 5 (North) and Tables 4 and 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

(3) *Recreational Rockfish Conservation Area.* Recreational RCAs are closed areas intended to protect overfished rockfish species. Recreational RCAs may either have (1) boundaries defined by general depth contours or (2) boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours. Boundaries for the recreational RCAs throughout the year are provided in the text in § 660.384(c) under each state (Washington, Oregon and California) and may be modified by NMFS inseason. Recreational RCA boundaries that are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

20. Section 660.391 is added to read as follows:

§ 660.391 Latitude/longitude coordinates defining the 27 fm (49 m) through 40 fm (73 m) depth contours.

Boundaries for RCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 27 fm (49 m) through 40 fm (73 m) depth contours.

(a) The 27 fm (49 m) depth contour used 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°12.39′ W. long.;

(2) 46°14.85′ N. lat., 124°12.39′ W. long.;

(3) 46°03.95′ N. lat., 124°03.64′ W. long.;

(4) 45°43.14′ N. lat., 124°00.17′ W. long.;

(5) 45°23.33′ N. lat., 124°01.99′ W. long.;

(6) 45°09.54′ N. lat., 124°01.65′ W. long.;

(7) 44°39.99′ N. lat., 124°08.67′ W. long.;

(8) 44°20.86′ N. lat., 124°10.31′ W. long.;

(9) 43°37.11′ N. lat., 124°14.91′ W. long.;

(10) 43°27.54′ N. lat., 124°18.98′ W. long.;

(11) 43°20.68′ N. lat., 124°25.53′ W. long.;

(12) 43°15.08′ N. lat., 124°27.17′ W. long.;

(13) 43°06.89′ N. lat., 124°29.65′ W. long.;

(14) 43°01.02′ N. lat., 124°29.70′ W. long.;

(15) 42°52.67′ N. lat., 124°36.10′ W. long.;

(16) 42°45.96′ N. lat., 124°37.95′ W. long.;

(17) 42°45.80′ N. lat., 124°35.41′ W. long.;

(18) 42°38.46′ N. lat., 124°27.49′ W. long.;

(19) 42°35.29′ N. lat., 124°26.85′ W. long.;

(20) 42°31.49′ N. lat., 124°31.40′ W. long.;

(21) 42°29.06′ N. lat., 124°32.24′ W. long.;

(22) 42°14.26′ N. lat., 124°26.27′ W. long.;

(23) 42°04.86′ N. lat., 124°21.94′ W. long.;

(24) 42°00.10′ N. lat., 124°20.99′ W. long.;

(25) 42°00.00′ N. lat., 124°21.03′ W. long.;

(26) 41°56.33′ N. lat., 124°20.34′ W. long.;

(27) 41°50.93′ N. lat., 124°23.74′ W. long.;

(28) 41°41.83′ N. lat., 124°16.99′ W. long.;

(29) 41°35.48′ N. lat., 124°16.35′ W. long.;

(30) 41°23.51′ N. lat., 124°10.48′ W. long.;

(31) 41°04.62′ N. lat., 124°14.44′ W. long.;

(32) 40°54.28′ N. lat., 124°13.90′ W. long.;

(33) 40°40.37′ N. lat., 124°26.21′ W. long.;

(34) 40°34.03′ N. lat., 124°27.36′ W. long.;

(35) 40°28.88′ N. lat., 124°32.41′ W. long.;

(36) 40°24.82′ N. lat., 124°29.56′ W. long.;

(37) 40°22.64′ N. lat., 124°24.05′ W. long.;

(38) 40°18.67′ N. lat., 124°21.90′ W. long.;

(39) 40°14.23′ N. lat., 124°23.72′ W. long.; and

(40) 40°10.00′ N. lat., 124°17.22′ W. long.

(b) The 30 fm (55 m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°24.79′ N. lat., 124°44.07′ W. long.;

(2) 48°24.80′ N. lat., 124°44.74′ W. long.;

(3) 48°23.94′ N. lat., 124°44.70′ W. long.;

(4) 48°23.51′ N. lat., 124°45.01′ W. long.;

(5) 48°22.59′ N. lat., 124°44.97′ W. long.;

(6) 48°21.75′ N. lat., 124°45.26′ W. long.;

(7) 48°21.23′ N. lat., 124°47.78′ W. long.;

(8) 48°20.32′ N. lat., 124°49.53′ W. long.;

(9) 48°16.72′ N. lat., 124°51.58′ W. long.;

(10) 48°10.00′ N. lat., 124°52.58′ W. long.;

(11) 48°05.63′ N. lat., 124°52.91′ W. long.;

(12) 47°53.37′ N. lat., 124°47.37′ W. long.;

(13) 47°40.28′ N. lat., 124°40.07′ W. long.;

(14) 47°31.70′ N. lat., 124°37.03′ W. long.;

(15) 47°25.67′ N. lat., 124°34.79′ W. long.;

(16) 47°12.82′ N. lat., 124°29.12′ W. long.;

(17) 46°52.94′ N. lat., 124°22.58′ W. long.;

(18) 46°44.18′ N. lat., 124°18.00′ W. long.;

(19) 46°38.17′ N. lat., 124°15.88′ W. long.;

(20) 46°29.53′ N. lat., 124°15.89′ W. long.;

(21) 46°19.27′ N. lat., 124°14.15′ W. long.;

(22) 46°16.00′ N. lat., 124°13.05′ W. long.;

(23) 46°07.00′ N. lat., 124°07.01′ W. long.;

(24) 45°55.95′ N. lat., 124°02.23′ W. long.;

(25) 45°54.53′ N. lat., 124°02.57′ W. long.;

(26) 45°50.65′ N. lat., 124°01.62′ W. long.;

(27) 45°48.20′ N. lat., 124°02.16′ W. long.;

(28) 45°46.00′ N. lat., 124°01.86′ W. long.;

(29) 45°43.47′ N. lat., 124°01.28′ W. long.;

(30) 45°40.48′ N. lat., 124°01.03′ W. long.;

(31) 45°39.04′ N. lat., 124°01.68′ W. long.;
(32) 45°35.48′ N. lat., 124°01.89′ W. long.;
(33) 45°29.81′ N. lat., 124°02.45′ W. long.;
(34) 45°27.96′ N. lat., 124°01.89′ W. long.;
(35) 45°27.22′ N. lat., 124°02.67′ W. long.;
(36) 45°24.20′ N. lat., 124°02.94′ W. long.;
(37) 45°20.60′ N. lat., 124°01.74′ W. long.;
(38) 45°20.25′ N. lat., 124°01.85′ W. long.;
(39) 45°16.44′ N. lat., 124°03.22′ W. long.;
(40) 45°13.63′ N. lat., 124°02.70′ W. long.;
(41) 45°11.04′ N. lat., 124°03.59′ W. long.;
(42) 45°08.55′ N. lat., 124°03.47′ W. long.;
(43) 45°02.82′ N. lat., 124°04.64′ W. long.;
(44) 45°03.38′ N. lat., 124°04.79′ W. long.;
(45) 44°58.06′ N. lat., 124°05.03′ W. long.;
(46) 44°53.97′ N. lat., 124°06.92′ W. long.;
(47) 44°48.89′ N. lat., 124°07.04′ W. long.;
(48) 44°46.94′ N. lat., 124°08.25′ W. long.;
(49) 44°42.72′ N. lat., 124°08.98′ W. long.;
(50) 44°38.16′ N. lat., 124°11.48′ W. long.;
(51) 44°33.38′ N. lat., 124°11.54′ W. long.;
(52) 44°28.51′ N. lat., 124°12.03′ W. long.;
(53) 44°27.65′ N. lat., 124°12.56′ W. long.;
(54) 44°19.67′ N. lat., 124°12.37′ W. long.;
(55) 44°10.79′ N. lat., 124°12.22′ W. long.;
(56) 44°09.22′ N. lat., 124°12.28′ W. long.;
(57) 44°08.30′ N. lat., 124°12.30′ W. long.;
(58) 44°00.22′ N. lat., 124°12.80′ W. long.;
(59) 43°51.56′ N. lat., 124°13.17′ W. long.;
(60) 43°44.26′ N. lat., 124°14.50′ W. long.;
(61) 43°33.82′ N. lat., 124°16.28′ W. long.;
(62) 43°28.66′ N. lat., 124°18.72′ W. long.;
(63) 43°23.12′ N. lat., 124°24.04′ W. long.;
(64) 43°20.83′ N. lat., 124°25.67′ W. long.;
(65) 43°20.49′ N. lat., 124°25.90′ W. long.;
(66) 43°16.41′ N. lat., 124°27.52′ W. long.;
(67) 43°14.23′ N. lat., 124°29.28′ W. long.;
(68) 43°14.03′ N. lat., 124°28.31′ W. long.;
(69) 43°11.92′ N. lat., 124°28.26′ W. long.;
(70) 43°11.02′ N. lat., 124°29.11′ W. long.;
(71) 43°10.13′ N. lat., 124°29.15′ W. long.;
(72) 43°09.27′ N. lat., 124°31.03′ W. long.;
(73) 43°07.73′ N. lat., 124°30.92′ W. long.;
(74) 43°05.93′ N. lat., 124°29.64′ W. long.;
(75) 43°01.59′ N. lat., 124°30.64′ W. long.;
(76) 42°59.73′ N. lat., 124°31.16′ W. long.;
(77) 42°53.75′ N. lat., 124°36.09′ W. long.;
(78) 42°50.00′ N. lat., 124°38.39′ W. long.;
(79) 42°49.37′ N. lat., 124°38.81′ W. long.;
(80) 42°46.42′ N. lat., 124°37.69′ W. long.;
(81) 42°46.07′ N. lat., 124°38.56′ W. long.;
(82) 42°45.29′ N. lat., 124°37.95′ W. long.;
(83) 42°45.61′ N. lat., 124°36.87′ W. long.;
(84) 42°44.28′ N. lat., 124°33.64′ W. long.;
(85) 42°42.75′ N. lat., 124°31.84′ W. long.;
(86) 42°40.50′ N. lat., 124°29.67′ W. long.;
(87) 42°40.04′ N. lat., 124°29.19′ W. long.;
(88) 42°38.09′ N. lat., 124°28.39′ W. long.;
(89) 42°36.72′ N. lat., 124°27.54′ W. long.;
(90) 42°36.56′ N. lat., 124°28.40′ W. long.;
(91) 42°35.76′ N. lat., 124°28.79′ W. long.;
(92) 42°34.03′ N. lat., 124°29.98′ W. long.;
(93) 42°34.19′ N. lat., 124°30.58′ W. long.;
(94) 42°31.27′ N. lat., 124°32.24′ W. long.;
(95) 42°27.07′ N. lat., 124°32.53′ W. long.;
(96) 42°24.21′ N. lat., 124°31.23′ W. long.;
(97) 42°20.47′ N. lat., 124°28.87′ W. long.;
(98) 42°14.60′ N. lat., 124°26.80′ W. long.;
(99) 42°13.67′ N. lat., 124°26.25′ W. long.;
(100) 42°10.90′ N. lat., 124°24.57′ W. long.;
(101) 42°07.04′ N. lat., 124°23.35′ W. long.;
(102) 42°02.16′ N. lat., 124°22.59′ W. long.;
(103) 42°00.00′ N. lat., 124°21.81′ W. long.;
(104) 41°55.75′ N. lat., 124°20.72′ W. long.;
(105) 41°50.93′ N. lat., 124°23.76′ W. long.;
(106) 41°42.53′ N. lat., 124°16.47′ W. long.;
(107) 41°37.20′ N. lat., 124°17.05′ W. long.;
(108) 41°24.58′ N. lat., 124°10.51′ W. long.;
(109) 41°20.73′ N. lat., 124°11.73′ W. long.;
(110) 41°17.59′ N. lat., 124°10.66′ W. long.;
(111) 41°04.54′ N. lat., 124°14.47′ W. long.;
(112) 40°54.26′ N. lat., 124°13.90′ W. long.;
(113) 40°40.31′ N. lat., 124°26.24′ W. long.;
(114) 40°34.00′ N. lat., 124°27.39′ W. long.;
(115) 40°30.00′ N. lat., 124°31.32′ W. long.;
(116) 40°28.89′ N. lat., 124°32.43′ W. long.;
(117) 40°24.77′ N. lat., 124°29.51′ W. long.;
(118) 40°22.47′ N. lat., 124°24.12′ W. long.;
(119) 40°19.73′ N. lat., 124°23.59′ W. long.;
(120) 40°18.64′ N. lat., 124°21.89′ W. long.;
(121) 40°17.67′ N. lat., 124°23.07′ W. long.;
(122) 40°15.58′ N. lat., 124°23.61′ W. long.;
(123) 40°13.42′ N. lat., 124°22.94′ W. long.;
(124) 40°10.00′ N. lat., 124°16.65′ W. long.;
(125) 40°09.46′ N. lat., 124°15.28′ W. long.;
(126) 40°08.89′ N. lat., 124°15.24′ W. long.;
(127) 40°06.40′ N. lat., 124°10.97′ W. long.;
(128) 40°06.08′ N. lat., 124°09.34′ W. long.;
(129) 40°06.64′ N. lat., 124°08.00′ W. long.;
(130) 40°05.08′ N. lat., 124°07.57′ W. long.;
(131) 40°04.29′ N. lat., 124°08.12′ W. long.;
(132) 40°00.61′ N. lat., 124°07.35′ W. long.;
(133) 39°58.60′ N. lat., 124°05.51′ W. long.;
(134) 39°54.89′ N. lat., 124°04.67′ W. long.;
(135) 39°53.01′ N. lat., 124°02.33′ W. long.;

(136) 39°53.20′ N. lat., 123°58.18′ W. long.;
(137) 39°48.45′ N. lat., 123°53.21′ W. long.;
(138) 39°43.89′ N. lat., 123°51.75′ W. long.;
(139) 39°39.60′ N. lat., 123°49.14′ W. long.;
(140) 39°34.43′ N. lat., 123°48.48′ W. long.;
(141) 39°30.63′ N. lat., 123°49.71′ W. long.;
(142) 39°21.25′ N. lat., 123°50.54′ W. long.;
(143) 39°08.87′ N. lat., 123°46.24′ W. long.;
(144) 39°03.79′ N. lat., 123°43.91′ W. long.;
(145) 38°59.65′ N. lat., 123°45.94′ W. long.;
(146) 38°57.50′ N. lat., 123°46.28′ W. long.;
(147) 38°56.80′ N. lat., 123°46.48′ W. long.;
(148) 38°51.16′ N. lat., 123°41.48′ W. long.;
(149) 38°45.77′ N. lat., 123°35.14′ W. long.;
(150) 38°42.21′ N. lat., 123°28.17′ W. long.;
(151) 38°34.05′ N. lat., 123°20.96′ W. long.;
(152) 38°22.47′ N. lat., 123°07.48′ W. long.;
(153) 38°16.52′ N. lat., 123°05.62′ W. long.;
(154) 38°14.42′ N. lat., 123°01.91′ W. long.;
(155) 38°08.24′ N. lat., 122°59.79′ W. long.;
(156) 38°02.69′ N. lat., 123°01.96′ W. long.;
(157) 38°00.00′ N. lat., 123°04.75′ W. long.;
(158) 37°58.41′ N. lat., 123°02.93′ W. long.;
(159) 37°58.25′ N. lat., 122°56.49′ W. long.;
(160) 37°50.30′ N. lat., 122°52.23′ W. long.;
(161) 37°43.36′ N. lat., 123°04.18′ W. long.;
(162) 37°40.77′ N. lat., 123°01.62′ W. long.;
(163) 37°40.13′ N. lat., 122°57.30′ W. long.;
(164) 37°42.59′ N. lat., 122°53.64′ W. long.;
(165) 37°35.67′ N. lat., 122°44.20′ W. long.;
(166) 37°29.62′ N. lat., 122°36.00′ W. long.;
(167) 37°22.38′ N. lat., 122°31.66′ W. long.;
(168) 37°13.86′ N. lat., 122°28.27′ W. long.;
(169) 37°11.00′ N. lat., 122°26.50′ W. long.;
(170) 37°08.01′ N. lat., 122°24.75′ W. long.;
(171) 37°07.00′ N. lat., 122°23.60′ W. long.;
(172) 37°05.84′ N. lat., 122°22.47′ W. long.;
(173) 36°58.77′ N. lat., 122°13.03′ W. long.;
(174) 36°53.74′ N. lat., 122°03.39′ W. long.;
(175) 36°52.71′ N. lat., 122°00.14′ W. long.;
(176) 36°52.51′ N. lat., 121°56.77′ W. long.;
(177) 36°49.44′ N. lat., 121°49.63′ W. long.;
(178) 36°48.01′ N. lat., 121°49.92′ W. long.;
(179) 36°48.25′ N. lat., 121°47.66′ W. long.;
(180) 36°46.26′ N. lat., 121°51.27′ W. long.;
(181) 36°39.14′ N. lat., 121°52.05′ W. long.;
(182) 36°38.00′ N. lat., 121°53.57′ W. long.;
(183) 36°39.14′ N. lat., 121°55.45′ W. long.;
(184) 36°38.50′ N. lat., 121°57.09′ W. long.;
(185) 36°36.75′ N. lat., 121°59.44′ W. long.;
(186) 36°34.97′ N. lat., 121°59.37′ W. long.;
(187) 36°33.07′ N. lat., 121°58.32′ W. long.;
(188) 36°33.27′ N. lat., 121°57.07′ W. long.;
(189) 36°32.68′ N. lat., 121°57.03′ W. long.;
(190) 36°32.04′ N. lat., 121°55.98′ W. long.;
(191) 36°31.61′ N. lat., 121°55.72′ W. long.;
(192) 36°31.59′ N. lat., 121°57.12′ W. long.;
(193) 36°31.52′ N. lat., 121°57.57′ W. long.;
(194) 36°30.88′ N. lat., 121°57.90′ W. long.;
(195) 36°30.25′ N. lat., 121°57.37′ W. long.;
(196) 36°29.47′ N. lat., 121°57.55′ W. long.;
(197) 36°26.72′ N. lat., 121°56.40′ W. long.;
(198) 36°24.33′ N. lat., 121°56.00′ W. long.;
(199) 36°23.36′ N. lat., 121°55.45′ W. long.;
(200) 36°18.86′ N. lat., 121°56.15′ W. long.;
(201) 36°16.21′ N. lat., 121°54.81′ W. long.;
(202) 36°15.30′ N. lat., 121°53.79′ W. long.;
(203) 36°12.04′ N. lat., 121°45.38′ W. long.;
(204) 36°11.87′ N. lat., 121°44.45′ W. long.;
(205) 36°12.13′ N. lat., 121°44.25′ W. long.;
(206) 36°11.89′ N. lat., 121°43.65′ W. long.;
(207) 36°10.56′ N. lat., 121°42.62′ W. long.;
(208) 36°09.90′ N. lat., 121°41.57′ W. long.;
(209) 36°08.14′ N. lat., 121°40.44′ W. long.;
(210) 36°06.69′ N. lat., 121°38.79′ W. long.;
(211) 36°05.85′ N. lat., 121°38.47′ W. long.;
(212) 36°03.08′ N. lat., 121°36.25′ W. long.;
(213) 36°02.92′ N. lat., 121°35.89′ W. long.;
(214) 36°01.53′ N. lat., 121°36.13′ W. long.;
(215) 36°00.59′ N. lat., 121°35.40′ W. long.;
(216) 36°00.00′ N. lat., 121°34.10′ W. long.;
(217) 35°59.93′ N. lat., 121°33.81′ W. long.;
(218) 35°59.69′ N. lat., 121°31.84′ W. long.;
(219) 35°58.59′ N. lat., 121°30.30′ W. long.;
(220) 35°54.02′ N. lat., 121°29.71′ W. long.;
(221) 35°51.54′ N. lat., 121°27.67′ W. long.;
(222) 35°50.42′ N. lat., 121°25.79′ W. long.;
(223) 35°48.37′ N. lat., 121°24.29′ W. long.;
(224) 35°47.02′ N. lat., 121°22.46′ W. long.;
(225) 35°42.28′ N. lat., 121°21.20′ W. long.;
(226) 35°41.57′ N. lat., 121°21.82′ W. long.;
(227) 35°39.24′ N. lat., 121°18.84′ W. long.;
(228) 35°35.14′ N. lat., 121°10.45′ W. long.;
(229) 35°30.11′ N. lat., 121°05.59′ W. long.;
(230) 35°25.86′ N. lat., 121°00.07′ W. long.;
(231) 35°22.82′ N. lat., 120°54.68′ W. long.;
(232) 35°17.96′ N. lat., 120°55.54′ W. long.;
(233) 35°14.83′ N. lat., 120°55.42′ W. long.;
(234) 35°08.87′ N. lat., 120°50.22′ W. long.;
(235) 35°05.55′ N. lat., 120°44.89′ W. long.;
(236) 35°02.91′ N. lat., 120°43.94′ W. long.;
(237) 34°53.80′ N. lat., 120°43.94′ W. long.;
(238) 34°34.89′ N. lat., 120°41.92′ W. long.;
(239) 34°32.48′ N. lat., 120°40.05′ W. long.;
(240) 34°30.12′ N. lat., 120°32.81′ W. long.;

(241) 34°27.00′ N. lat., 120°30.46′ W. long.;
(242) 34°27.00′ N. lat., 120°30.31′ W. long.;
(243) 34°25.84′ N. lat., 120°27.40′ W. long.;
(244) 34°25.16′ N. lat., 120°20.18′ W. long.;
(245) 34°25.88′ N. lat., 120°18.24′ W. long.;
(246) 34°27.26′ N. lat., 120°12.47′ W. long.;
(247) 34°26.27′ N. lat., 120°02.22′ W. long.;
(248) 34°23.41′ N. lat., 119°53.40′ W. long.;
(249) 34°23.33′ N. lat., 119°48.74′ W. long.;
(250) 34°22.31′ N. lat., 119°41.36′ W. long.;
(251) 34°21.72′ N. lat., 119°40.14′ W. long.;
(252) 34°21.25′ N. lat., 119°41.18′ W. long.;
(253) 34°20.25′ N. lat., 119°39.03′ W. long.;
(254) 34°19.87′ N. lat., 119°33.65′ W. long.;
(255) 34°18.67′ N. lat., 119°30.16′ W. long.;
(256) 34°16.95′ N. lat.; 119°27.90′ W. long.;
(257) 34°13.02′ N. lat., 119°26.99′ W. long.;
(258) 34°08.62′ N. lat., 119°20.89′ W. long.;
(259) 34°06.95′ N. lat., 119°17.68′ W. long.;
(260) 34°05.93′ N. lat., 119°15.17′ W. long.;
(261) 34°08.42′ N. lat., 119°13.11′ W. long.;
(262) 34°05.23′ N. lat., 119°13.34′ W. long.;
(263) 34°04.98′ N. lat., 119°11.39′ W. long.;
(264) 34°04.55′ N. lat., 119°11.09′ W. long.;
(265) 34°04.15′ N. lat., 119°09.35′ W. long.;
(266) 34°04.89′ N. lat., 119°07.86′ W. long.;
(267) 34°04.08′ N. lat., 119°07.33′ W. long.;
(268) 34°04.10′ N. lat., 119°06.89′ W. long.;
(269) 34°05.08′ N. lat., 119°07.02′ W. long.;
(270) 34°05.27′ N. lat., 119°04.95′ W. long.;
(271) 34°04.51′ N. lat., 119°04.70′ W. long.;
(272) 34°02.26′ N. lat., 118°59.88′ W. long.;
(273) 34°01.08′ N. lat., 118°59.77′ W. long.;
(274) 34°00.94′ N. lat., 118°51.65′ W. long.;
(275) 33°59.77′ N. lat., 118°49.26′ W. long.;
(276) 34°00.04′ N. lat., 118°48.92′ W. long.;
(277) 33°59.65′ N. lat., 118°48.43′ W. long.;
(278) 33°59.46′ N. lat., 118°47.25′ W. long.;
(279) 33°59.80′ N. lat., 118°45.89′ W. long.;
(280) 34°00.21′ N. lat., 118°37.64′ W. long.;
(281) 33°59.26′ N. lat., 118°34.58′ W. long.;
(282) 33°58.07′ N. lat., 118°33.36′ W. long.;
(283) 33°53.76′ N. lat., 118°30.14′ W. long.;
(284) 33°51.00′ N. lat., 118°25.19′ W. long.;
(285) 33°50.07′ N. lat., 118°24.70′ W. long.;
(286) 33°50.16′ N. lat., 118°23.77′ W. long.;
(287) 33°48.80′ N. lat., 118°25.31′ W. long.;
(288) 33°47.07′ N. lat., 118°27.07′ W. long.;
(289) 33°46.12′ N. lat., 118°26.87′ W. long.;
(290) 33°44.15′ N. lat., 118°25.15′ W. long.;
(291) 33°43.54′ N. lat., 118°23.02′ W. long.;
(292) 33°41.35′ N. lat., 118°18.86′ W. long.;
(293) 33°39.96′ N. lat., 118°17.37′ W. long.;
(294) 33°40.12′ N. lat., 118°16.33′ W. long.;
(295) 33°39.28′ N. lat., 118°16.21′ W. long.;
(296) 33°38.04′ N. lat., 118°14.86′ W. long.;
(297) 33°36.57′ N. lat., 118°14.67′ W. long.;
(298) 33°34.93′ N. lat., 118°10.94′ W. long.;
(399) 33°35.14′ N. lat., 118°08.61′ W. long.;
(300) 33°35.69′ N. lat., 118°07.68′ W. long.;
(301) 33°36.21′ N. lat., 118°07.53′ W. long.;
(302) 33°36.43′ N. lat., 118°06.73′ W. long.;
(303) 33°36.05′ N. lat., 118°06.15′ W. long.;
(304) 33°36.32′ N. lat., 118°03.91′ W. long.;
(305) 33°35.69′ N. lat., 118°03.64′ W. long.;
(306) 33°34.62′ N. lat., 118°00.04′ W. long.;
(307) 33°34.80′ N. lat., 117°57.73′ W. long.;
(308) 33°35.57′ N. lat., 117°56.62′ W. long.;
(309) 33°35.46′ N. lat., 117°55.99′ W. long.;
(310) 33°35.98′ N. lat., 117°55.99′ W. long.;
(311) 33°35.46′ N. lat., 117°55.38′ W. long.;
(312) 33°35.21′ N. lat., 117°53.46′ W. long.;
(313) 33°33.61′ N. lat., 117°50.45′ W. long.;
(314) 33°31.41′ N. lat., 117°47.28′ W. long.;
(315) 33°27.54′ N. lat., 117°44.36′ W. long.;
(316) 33°26.63′ N. lat., 117°43.17′ W. long.;
(317) 33°25.21′ N. lat., 117°40.90′ W. long.;
(318) 33°20.33′ N. lat., 117°35.99′ W. long.;
(319) 33°16.35′ N. lat., 117°31.51′ W. long.;
(320) 33°11.53′ N. lat., 117°26.81′ W. long.;
(321) 33°07.59′ N. lat., 117°21.13′ W. long.;
(322) 33°02.21′ N. lat., 117°19.05′ W. long.;
(323) 32°56.55′ N. lat., 117°17.70′ W. long.;
(324) 32°54.61′ N. lat., 117°16.60′ W. long.;
(325) 32°52.32′ N. lat., 117°15.97′ W. long.;
(326) 32°51.48′ N. lat., 117°16.15′ W. long.;
(327) 32°51.85′ N. lat., 117°17.26′ W. long.;
(328) 32°51.55′ N. lat., 117°19.01′ W. long.;
(329) 32°49.55′ N. lat., 117°19.63′ W. long.;
(330) 32°46.71′ N. lat., 117°18.32′ W. long.;
(331) 32°36.35′ N. lat., 117°15.68′ W. long.; and
(332) 32°32.85′ N. lat., 117°15.44′ W. long.

(c) The 30 fm (55 m) depth contour around the Farallon Islands off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 37°46.73′ N. lat., 123°6.37′ W. long.;
(2) 37°45.79′ N. lat., 123°07.91′ W. long.;
(3) 37°45.28′ N. lat., 123°07.75′ W. long.;
(4) 37°44.98′ N. lat., 123°07.11′ W. long.;
(5) 37°45.51′ N. lat., 123°06.26′ W. long.;
(6) 37°45.14′ N. lat., 123°05.41′ W. long.;
(7) 37°45.31′ N. lat., 123°04.82′ W. long.;
(8) 37°46.11′ N. lat., 123°05.23′ W. long.;
(9) 37°46.44′ N. lat., 123°05.63′ W. long.; and
(10) 37°46.73′ N. lat., 123°06.37′ W. long.

(d) The 30 fm (55 m) depth contour around Noon Day Rock off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 37°47.83′ N. lat., 123°10.83′ W. long.;
(2) 37°47.51′ N. lat., 123°11.19′ W. long.;
(3) 37°47.33′ N. lat., 123°10.68′ W. long.;
(4) 37°47.02′ N. lat., 123°10.59′ W. long.;
(5) 37°47.21′ N. lat., 123°09.85′ W. long.;
(6) 37°47.56′ N. lat., 123°09.72′ W. long.;
(7) 37°47.87′ N. lat., 123°10.26′ W. long.; and
(8) 37°47.83′ N. lat., 123°10.83′ W. long.

(e) The 30 fm (55 m) depth contour around the northern Channel Islands off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 34°00.98′ N. lat., 119°20.46′ W. long.;
(2) 34°00.53′ N. lat., 119°20.98′ W. long.;
(3) 34°00.17′ N. lat., 119°21.83′ W. long.;
(4) 33° 59.65′ N. lat., 119°24.45′ W. long.;
(5) 33°59.68′ N. lat., 119°25.20′ W. long.;
(6) 33°59.95′ N. lat., 119°26.25′ W. long.;
(7) 33°59.87′ N. lat., 119°27.27′ W. long.;
(8) 33°59.55′ N. lat., 119°28.02′ W. long.;
(9) 33°58.63′ N. lat., 119°36.48′ W. long.;
(10) 33°57.62′ N. lat., 119°41.13′ W. long.;
(11) 33°57.00′ N. lat., 119°42.20′ W. long.;
(12) 33°56.93′ N. lat., 119°48.00′ W. long.;
(13) 33°56.45′ N. lat., 119°49.12′ W. long.;
(14) 33°58.54′ N. lat., 119°52.80′ W. long.;
(15) 33°59.95′ N. lat., 119°54.49′ W. long.;
(16) 33°59.83′ N. lat., 119°56.00′ W. long.;
(17) 33°59.18′ N. lat., 119°57.17′ W. long.;
(18) 33°57.83′ N. lat., 119°56.74′ W. long.;
(19) 33°55.71′ N. lat., 119°56.89′ W. long.;
(20) 33°53.89′ N. lat., 119°57.68′ W. long.;
(21) 33°52.93′ N. lat., 119°59.80′ W. long.;
(22) 33°52.79′ N. lat., 120°01.81′ W. long.;
(23) 33°52.51′ N. lat., 120°03.08′ W. long.;
(24) 33°53.12′ N. lat., 120°04.88′ W. long.;
(25) 33°53.12′ N. lat., 120°05.80′ W. long.;
(26) 33°52.94′ N. lat., 120°06.50′ W. long.;
(27) 33°54.03′ N. lat., 120°10.00′ W. long.;
(28) 33°54.58′ N. lat., 120°11.82′ W. long.;
(29) 33°57.08′ N. lat., 120°14.58′ W. long.;
(30) 33°59.50′ N. lat., 120°16.72′ W. long.;
(31) 33°59.63′ N. lat., 120°17.88′ W. long.;
(32) 34°00.30′ N. lat., 120°19.14′ W. long.;
(33) 34°00.02′ N. lat., 120°19.68′ W. long.;
(34) 34°00.08′ N. lat., 120°21.73′ W. long.;
(35) 34°00.94′ N. lat., 120°24.82′ W. long.;
(36) 34°01.09′ N. lat., 120°27.29′ W. long.;
(37) 34°00.96′ N. lat., 120°28.09′ W. long.;
(38) 34°01.56′ N. lat., 120°28.71′ W. long.;
(39) 34°01.80′ N. lat., 120°28.31′ W. long.;
(40) 34°03.60′ N. lat., 120°28.87′ W. long.;
(41) 34°05.20′ N. lat., 120°29.38′ W. long.;
(42) 34°05.35′ N. lat., 120°28.20′ W. long.;
(43) 34°05.30′ N. lat., 120°27.33′ W. long.;
(44) 34°05.65′ N. lat., 120°26.79′ W. long.;
(45) 34°05.69′ N. lat., 120°25.82′ W. long.;
(46) 34°07.24′ N. lat., 120°24.98′ W. long.;
(47) 34°06.00′ N. lat., 120°23.30′ W. long.;
(48) 34°05.64′ N. lat., 120°21.44′ W. long.;
(49) 34°03.61′ N. lat., 120°18.40′ W. long.;
(50) 34°03.25′ N. lat., 120°16.64′ W. long.;
(51) 34°04.33′ N. lat., 120°14.22′ W. long.;
(52) 34°04.11′ N. lat., 120°11.17′ W. long.;
(53) 34°03.72′ N. lat., 120°09.93′ W. long.;
(54) 34°03.81′ N. lat., 120°08.96′ W. long.;
(55) 34°03.36′ N. lat., 120°06.52′ W. long.;
(56) 34°04.80′ N. lat., 120°04.00′ W. long.;
(57) 34°03.48′ N. lat., 120°01.75′ W. long.;
(58) 34°04.00′ N. lat., 120°01.00′ W. long.;
(59) 34°03.99′ N. lat., 120°00.15′ W. long.;
(60) 34°03.51′ N. lat., 119°59.42′ W. long.;
(61) 34°03.79′ N. lat., 119°58.15′ W. long.;
(62) 34°04.72′ N. lat., 119°57.61′ W. long.;
(63) 34°05.14′ N. lat., 119°55.17′ W. long.;
(64) 34°04.66′ N. lat., 119°51.60′ W. long.;
(65) 34°03.79′ N. lat., 119°48.86′ W. long.;
(66) 34°03.79′ N. lat., 119°45.46′ W. long.;
(67) 34°03.27′ N. lat., 119°44.17′ W. long.;
(68) 34°03.29′ N. lat., 119°43.30′ W. long.;
(69) 34°01.71′ N. lat., 119°40.83′ W. long.;
(70) 34°01.74′ N. lat., 119°37.92′ W. long.;
(71) 34°02.07′ N. lat., 119°37.17′ W. long.;
(72) 34°02.93′ N. lat., 119°36.52′ W. long.;
(73) 34°03.48′ N. lat., 119°35.50′ W. long.;
(74) 34°03.56′ N. lat., 119°32.80′ W. long.;
(75) 34°02.72′ N. lat., 119°31.84′ W. long.;
(76) 34°02.20′ N. lat., 119°30.53′ W. long.;
(77) 34°01.49′ N. lat., 119°30.20′ W. long.;
(78) 34°00.66′ N. lat., 119°28.62′ W. long.;
(79) 34°00.66′ N. lat., 119°27.57′ W. long.;
(80) 34°01.41′ N. lat., 119°26.91′ W. long.;
(81) 34°00.91′ N. lat., 119°24.28′ W. long.;
(82) 34°01.51′ N. lat., 119°22.06′ W. long.; and
(83) 34°01.41′ N. lat., 119°20.61′ W. long.

(f) The 30 fm (55 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°03.37′ N. lat., 118°37.76′ W. long.;
(2) 33°02.72′ N. lat., 118°38.12′ W. long.;
(3) 33°02.18′ N. lat., 118°37.46′ W. long.;
(4) 33°00.66′ N. lat., 118°37.36′ W. long.;
(5) 33°00.08′ N. lat., 118°36.94′ W. long.;
(6) 33°00.11′ N. lat., 118°36.00′ W. long.;

(7) 32°58.02′ N. lat., 118°35.41′ W. long.;
(8) 32°56.00′ N. lat., 118°33.59′ W. long.;
(9) 32°54.76′ N. lat., 118°33.58′ W. long.;
(10) 32°53.97′ N. lat., 118°32.45′ W. long.;
(11) 32°51.18′ N. lat., 118°30.83′ W. long.;
(12) 32°50.00′ N. lat., 118°29.68′ W. long.;
(13) 32°49.72′ N. lat., 118°28.33′ W. long.;
(14) 32°47.88′ N. lat., 118°26.90′ W. long.;
(15) 32°47.30′ N. lat., 118°25.73′ W. long.;
(16) 32°47.28′ N. lat., 118°24.83′ W. long.;
(17) 32°48.12′ N. lat., 118°24.33′ W. long.;
(18) 32°48.74′ N. lat., 118°23.39′ W. long.;
(19) 32°48.69′ N. lat., 118°21.75′ W. long.;
(20) 32°49.06′ N. lat., 118°20.53′ W. long.;
(21) 32°50.28′ N. lat., 118°21.90′ W. long.;
(22) 32°51.73′ N. lat., 118°23.86′ W. long.;
(23) 32°52.79′ N. lat., 118°25.08′ W. long.;
(24) 32°54.03′ N. lat., 118°26.83′ W. long.;
(25) 32°54.70′ N. lat., 118°27.55′ W. long.;
(26) 32°55.49′ N. lat., 118°29.04′ W. long.;
(27) 32°59.58′ N. lat., 118°32.51′ W. long.;
(28) 32°59.89′ N. lat., 118°32.52′ W. long.;
(29) 33°00.29′ N. lat., 118°32.73′ W. long.;
(30) 33°00.85′ N. lat., 118°33.50′ W. long.;
(31) 33°01.70′ N. lat., 118°33.64′ W. long.;
(32) 33°02.90′ N. lat., 118°35.35′ W. long.;
(33) 33°02.61′ N. lat., 118°36.96′ W. long.; and
(34) 33°03.37′ N. lat., 118°37.76′ W. long.

(g) The 30 fm (55 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°19.13′ N. lat., 118°18.04′ W. long.;
(2) 33°18.32′ N. lat., 118°18.20′ W. long.;
(3) 33°17.82′ N. lat., 118°18.73′ W. long.;
(4) 33°17.54′ N. lat., 118°19.52′ W. long.;
(5) 33°17.99′ N. lat., 118°21.71′ W. long.;
(6) 33°18.48′ N. lat., 118°22.82′ W. long.;
(7) 33°18.77′ N. lat., 118°26.95′ W. long.;
(8) 33°19.69′ N. lat., 118°28.87′ W. long.;
(9) 33°20.53′ N. lat., 118°30.52′ W. long.;
(10) 33°20.46′ N. lat., 118°31.47′ W. long.;
(11) 33°20.98′ N. lat., 118°31.39′ W. long.;
(12) 33°20.81′ N. lat., 118°30.49′ W. long.;
(13) 33°21.38′ N. lat., 118°30.07′ W. long.;
(14) 33°23.12′ N. lat., 118°29.31′ W. long.;
(15) 33°24.95′ N. lat., 118°29.70′ W. long.;
(16) 33°25.39′ N. lat., 118°30.50′ W. long.;
(17) 33°25.21′ N. lat., 118°30.79′ W. long.;
(18) 33°25.65′ N. lat., 118°31.60′ W. long.;
(19) 33°25.65′ N. lat., 118°32.04′ W. long.;
(20) 33°25.94′ N. lat., 118°32.96′ W. long.;
(21) 33°25.86′ N. lat., 118°33.49′ W. long.;
(22) 33°26.06′ N. lat., 118°34.12′ W. long.;
(23) 33°28.28′ N. lat., 118°36.60′ W. long.;
(24) 33°28.83′ N. lat., 118°36.42′ W. long.;
(25) 33°28.72′ N. lat., 118°34.93′ W. long.;
(26) 33°28.71′ N. lat., 118°33.61′ W. long.;
(27) 33°28.81′ N. lat., 118°32.95′ W. long.;
(28) 33°28.73′ N. lat., 118°32.07′ W. long.;
(29) 33°27.55′ N. lat., 118°30.14′ W. long.;
(30) 33°27.86′ N. lat., 118°29.41′ W. long.;
(31) 33°26.98′ N. lat., 118°29.06′ W. long.;
(32) 33°26.96′ N. lat., 118°28.58′ W. long.;
(33) 33°26.76′ N. lat., 118°28.40′ W. long.;
(34) 33°26.52′ N. lat., 118°27.66′ W. long.;
(35) 33°26.31′ N. lat., 118°27.41′ W. long.;
(36) 33°25.09′ N. lat., 118°23.13′ W. long.;
(37) 33°24.80′ N. lat., 118°22.86′ W. long.;
(38) 33°24.60′ N. lat., 118°22.02′ W. long.;
(39) 33°22.82′ N. lat., 118°21.04′ W. long.;
(40) 33°20.23′ N. lat., 118°18.45′ W. long.; and
(41) 33°19.13′ N. lat., 118°18.04′ W. long.

(h) The 40 fm (73 m) depth contour between 46°16′ N. lat. and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
(1) 46°16.00′ N. lat., 124°16.10′ W. long.;
(2) 46°15.29′ N. lat., 124°15.60′ W. long.;
(3) 46°11.90′ N. lat., 124°13.59′ W. long.;
(4) 46°06.93′ N. lat., 124°10.15′ W. long.;
(5) 46°05.33′ N. lat., 124°08.30′ W. long.;
(6) 45°58.69′ N. lat., 124°05.60′ W. long.;
(7) 45°57.71′ N. lat., 124°05.82′ W. long.;
(8) 45°53.97′ N. lat., 124°05.04′ W. long.;
(9) 45°49.75′ N. lat., 124°05.14′ W. long.;
(10) 45°47.88′ N. lat., 124°05.16′ W. long.;
(11) 45°47.07′ N. lat., 124°04.21′ W. long.;
(12) 45°46.00′ N. lat., 124°04.49′ W. long.;
(13) 45°44.34′ N. lat., 124°05.09′ W. long.;
(14) 45°40.64′ N. lat., 124°04.90′ W. long.;
(15) 45°33.00′ N. lat., 124°04.46′ W. long.;
(16) 45°32.27′ N. lat., 124°04.74′ W. long.;
(17) 45°29.26′ N. lat., 124°04.22′ W. long.;
(18) 45°20.25′ N. lat., 124°04.67′ W. long.;
(19) 45°19.99′ N. lat., 124°04.62′ W. long.;
(20) 45°17.50′ N. lat., 124°04.91′ W. long.;
(21) 45°11.29′ N. lat., 124°05.19′ W. long.;
(22) 45°05.79′ N. lat., 124°05.40′ W. long.;
(23) 45°05.07′ N. lat., 124°05.93′ W. long.;
(24) 45°03.83′ N. lat., 124°06.47′ W. long.;
(25) 45°01.70′ N. lat., 124°06.53′ W. long.;
(26) 44°58.75′ N. lat., 124°07.14′ W. long.;
(27) 44°51.28′ N. lat., 124°10.21′ W. long.;
(28) 44°49.49′ N. lat., 124°10.89′ W. long.;
(29) 44°44.96′ N. lat., 124°14.39′ W. long.;
(30) 44°43.44′ N. lat., 124°14.78′ W. long.;

(31) 44°42.27′ N. lat., 124°13.81′ W. long.;
(32) 44°41.68′ N. lat., 124°15.38′ W. long.;
(33) 44°34.87′ N. lat., 124°15.80′ W. long.;
(34) 44°33.74′ N. lat., 124°14.43′ W. long.;
(35) 44°27.66′ N. lat., 124°16.99′ W. long.;
(36) 44°19.13′ N. lat., 124°19.22′ W. long.;
(37) 44°15.35′ N. lat., 124°17.37′ W. long.;
(38) 44°14.38′ N. lat., 124°17.78′ W. long.;
(39) 44°12.80′ N. lat., 124°17.18′ W. long.;
(40) 44°09.23′ N. lat., 124°15.96′ W. long.;
(41) 44°08.38′ N. lat., 124°16.80′ W. long.;
(42) 44°08.30′ N. lat., 124°16.75′ W. long.;
(43) 44°01.18′ N. lat., 124°15.42′ W. long.;
(44) 43°51.60′ N. lat., 124°14.68′ W. long.;
(45) 43°42.66′ N. lat., 124°15.46′ W. long.;
(46) 43°40.49′ N. lat., 124°15.74′ W. long.;
(47) 43°38.77′ N. lat., 124°15.64′ W. long.;
(48) 43°34.52′ N. lat., 124°16.73′ W. long.;
(49) 43°28.82′ N. lat., 124°19.52′ W. long.;
(50) 43°23.91′ N. lat., 124°24.28′ W. long.;
(51) 43°20.83′ N. lat., 124°26.63′ W. long.;
(52) 43°17.96′ N. lat., 124°28.81′ W. long.;
(53) 43°16.75′ N. lat., 124°28.42′ W. long.;
(54) 43°13.98′ N. lat., 124°31.99′ W. long.;
(55) 43°13.71′ N. lat., 124°33.25′ W. long.;
(56) 43°12.26′ N. lat., 124°34.16′ W. long.;
(57) 43°10.96′ N. lat., 124°32.34′ W. long.;
(58) 43°05.65′ N. lat., 124°31.52′ W. long.;
(59) 42°59.66′ N. lat., 124°32.58′ W. long.;
(60) 42°54.97′ N. lat., 124°36.99′ W. long.;
(61) 42°53.81′ N. lat., 124°38.58′ W. long.;
(62) 42°50.00′ N. lat., 124°39.68′ W. long.;
(63) 42°49.14′ N. lat., 124°39.92′ W. long.;
(64) 42°46.47′ N. lat., 124°38.65′ W. long.;
(65) 42°45.60′ N. lat., 124°39.04′ W. long.;
(66) 42°44.79′ N. lat., 124°37.96′ W. long.;
(67) 42°45.00′ N. lat., 124°36.39′ W. long.;
(68) 42°44.14′ N. lat., 124°35.16′ W. long.;
(69) 42°42.15′ N. lat., 124°32.82′ W. long.;
(70) 42°40.50′ N. lat., 124°31.98′ W. long.;
(71) 42°38.82′ N. lat., 124°31.09′ W. long.;
(72) 42°35.91′ N. lat., 124°31.02′ W. long.;
(73) 42°31.34′ N. lat., 124°34.84′ W. long.;
(74) 42°28.13′ N. lat., 124°34.83′ W. long.;
(75) 42°26.73′ N. lat., 124°35.58′ W. long.;
(76) 42°23.85′ N. lat., 124°34.05′ W. long.;
(77) 42°21.68′ N. lat., 124°30.64′ W. long.;
(78) 42°19.62′ N. lat., 124°29.02′ W. long.;
(79) 42°15.01′ N. lat., 124°27.72′ W. long.;
(80) 42°13.67′ N. lat., 124°26.93′ W. long.;
(81) 42°11.38′ N. lat., 124°25.62′ W. long.;
(82) 42°04.66′ N. lat., 124°24.39′ W. long.;
(83) 42°00.00′ N. lat., 124°23.55′ W. long.;
(84) 41°51.35′ N. lat., 124°25.25′ W. long.;
(85) 41°44.10′ N. lat., 124°19.05′ W. long.;
(86) 41°38.00′ N. lat., 124°20.04′ W. long.;
(87) 41°18.43′ N. lat., 124°13.48′ W. long.;
(88) 40°55.12′ N. lat., 124°16.33′ W. long.;
(89) 40°41.00′ N. lat., 124°27.66′ W. long.;
(90) 40°36.71′ N. lat., 124°27.15′ W. long.;
(91) 40°32.81′ N. lat., 124°29.42′ W. long.;
(92) 40°30.00′ N. lat., 124°32.38′ W. long.;
(93) 40°29.13′ N. lat., 124°33.23′ W. long.;
(94) 40°24.55′ N. lat., 124°30.40′ W. long.;
(95) 40°22.32′ N. lat., 124°24.19′ W. long.;
(96) 40°19.67′ N. lat., 124°25.52′ W. long.;
(97) 40°18.63′ N. lat., 124°22.38′ W. long.;
(98) 40°15.21′ N. lat., 124°24.53′ W. long.;
(99) 40°12.56′ N. lat., 124°22.69′ W. long.;
(100) 40°10.00′ N. lat., 124°17.84′ W. long.;
(101) 40°09.30′ N. lat., 124°15.68′ W. long.;
(102) 40°08.31′ N. lat., 124°15.17′ W. long.;
(103) 40°05.62′ N. lat., 124°09.80′ W. long.;
(104) 40°06.57′ N. lat., 124°07.99′ W. long.;
(105) 40°00.86′ N. lat., 124°08.42′ W. long.;
(106) 39°54.79′ N. lat., 124°05.25′ W. long.;
(107) 39°52.75′ N. lat., 124°02.62′ W. long.;
(108) 39°52.51′ N. lat., 123°58.15′ W. long.;
(109) 39°49.64′ N. lat., 123°54.98′ W. long.;
(110) 39°41.46′ N. lat., 123°50.65′ W. long.;
(111) 39°34.57′ N. lat., 123°49.24′ W. long.;
(112) 39°22.62′ N. lat., 123°51.21′ W. long.;
(113) 39°04.58′ N. lat., 123°45.43′ W. long.;
(114) 39°00.45′ N. lat., 123°47.58′ W. long.;
(115) 38°57.50′ N. lat., 123°47.27′ W. long.;
(116) 38°55.82′ N. lat., 123°46.97′ W. long.;
(117) 38°52.26′ N. lat., 123°44.35′ W. long.;
(118) 38°45.41′ N. lat., 123°35.67′ W. long.;
(119) 38°40.60′ N. lat., 123°28.22′ W. long.;
(120) 38°21.64′ N. lat., 123°08.91′ W. long.;
(121) 38°12.01′ N. lat., 123°03.86′ W. long.;
(122) 38°06.16′ N. lat., 123°07.01′ W. long.;
(123) 38°00.00′ N. lat., 123°07.05′ W. long.;
(124) 37°51.73′ N. lat., 122°57.97′ W. long.;
(125) 37°47.96′ N. lat., 122°59.34′ W. long.;
(126) 37°47.37′ N. lat., 123°08.84′ W. long.;
(127) 37°50.00′ N. lat., 123°14.38′ W. long.;
(128) 37°39.91′ N. lat., 123°00.84′ W. long.;
(129) 37°38.75′ N. lat., 122°52.16′ W. long.;
(130) 37°35.67′ N. lat., 122°49.47′ W. long.;
(131) 37°20.24′ N. lat., 122°33.82′ W. long.;
(132) 37°11.00′ N. lat., 122°28.50′ W. long.;
(133) 37°07.00′ N. lat., 122°26.26′ W. long.;
(134) 36°52.04′ N. lat., 122°04.60′ W. long.;
(135) 36°52.00′ N. lat., 121°57.41′ W. long.;

(136) 36°47.87′ N. lat., 121°50.15′ W. long.;
(137) 36°48.07′ N. lat., 121°48.21′ W. long.;
(138) 36°45.93′ N. lat., 121°52.11′ W. long.;
(139) 36°40.55′ N. lat., 121°52.59′ W. long.;
(140) 36°38.93′ N. lat., 121°58.17′ W. long.;
(141) 36°36.54′ N. lat., 122°00.18′ W. long.;
(142) 36°32.87′ N. lat., 121°58.81′ W. long.;
(143) 36°31.90′ N. lat., 121°56.00′ W. long.;
(144) 36°31.51′ N. lat., 121°58.17′ W. long.;
(145) 36°23.28′ N. lat., 121°56.10′ W. long.;
(146) 36°17.52′ N. lat., 121°57.33′ W. long.;
(147) 36°15.90′ N. lat., 121°57.00′ W. long.;
(148) 36°11.06′ N. lat., 121°43.10′ W. long.;
(149) 36°02.85′ N. lat., 121°36.21′ W. long.;
(150) 36°01.22′ N. lat., 121°36.36′ W. long.;
(151) 36°00.00′ N. lat., 121°34.73′ W. long.;
(152) 35°58.67′ N. lat., 121°30.68′ W. long.;
(153) 35°54.16′ N. lat., 121°30.21′ W. long.;
(154) 35°46.98′ N. lat., 121°24.02′ W. long.;
(155) 35°40.75′ N. lat., 121°21.89′ W. long.;
(156) 35°34.36′ N. lat., 121°11.07′ W. long.;
(157) 35°29.30′ N. lat., 121°05.74′ W. long.;
(158) 35°22.15′ N. lat., 120°56.15′ W. long.;
(159) 35°14.93′ N. lat., 120°56.37′ W. long.;
(160) 35°04.06′ N. lat., 120°46.35′ W. long.;
(161) 34°45.85′ N. lat., 120°43.96′ W. long.;
(162) 34°37.80′ N. lat., 120°44.44′ W. long.;
(163) 34°32.82′ N. lat., 120°42.08′ W. long.;
(164) 34°27.00′ N. lat., 120°31.27′ W. long.;
(165) 34°24.25′ N. lat., 120°23.33′ W. long.;
(166) 34°26.48′ N. lat., 120°13.93′ W. long.;
(167) 34°25.12′ N. lat., 120°03.46′ W. long.;
(168) 34°17.58′ N. lat., 119°31.62′ W. long.;
(169) 34°11.49′ N. lat., 119°27.30′ W. long.;
(170) 34°05.59′ N. lat., 119°15.52′ W. long.;
(171) 34°08.60′ N. lat., 119°12.93′ W. long.;
(172) 34°04.81′ N. lat., 119°13.44′ W. long.;
(173) 34°04.26′ N. lat., 119°12.39′ W. long.;
(174) 34°03.89′ N. lat., 119°07.06′ W. long.;
(175) 34°05.14′ N. lat., 119°05.55′ W. long.;
(176) 34°01.27′ N. lat., 118°59.62′ W. long.;
(177) 33°59.56′ N. lat., 118°48.21′ W. long.;
(178) 33°59.30′ N. lat., 118°35.43′ W. long.;
(179) 33°55.14′ N. lat., 118°32.16′ W. long.;
(180) 33°52.95′ N. lat., 118°34.49′ W. long.;
(181) 33°51.07′ N. lat., 118°31.50′ W. long.;
(182) 33°52.45′ N. lat., 118°28.54′ W. long.;
(183) 33°49.86′ N. lat., 118°24.10′ W. long.;
(184) 33°47.14′ N. lat., 118°28.38′ W. long.;
(185) 33°44.14′ N. lat., 118°25.18′ W. long.;
(186) 33°41.54′ N. lat., 118°19.63′ W. long.;
(187) 33°37.86′ N. lat., 118°15.06′ W. long.;
(188) 33°36.58′ N. lat., 118°15.97′ W. long.;
(189) 33°34.78′ N. lat., 118°12.60′ W. long.;
(190) 33°34.46′ N. lat., 118°08.77′ W. long.;
(191) 33°35.92′ N. lat., 118°07.04′ W. long.;
(192) 33°36.06′ N. lat., 118°03.96′ W. long.;
(193) 33°34.98′ N. lat., 118°02.74′ W. long.;
(194) 33°34.03′ N. lat., 117°59.37′ W. long.;
(195) 33°35.46′ N. lat., 117°55.61′ W. long.;
(196) 33°34.97′ N. lat., 117°53.33′ W. long.;
(197) 33°31.20′ N. lat., 117°47.40′ W. long.;
(198) 33°27.26′ N. lat., 117°44.34′ W. long.;
(199) 33°24.84′ N. lat., 117°40.75′ W. long.;
(200) 33°11.45′ N. lat., 117°26.84′ W. long.;
(201) 33°07.59′ N. lat., 117°21.46′ W. long.;
(202) 33°01.74′ N. lat., 117°19.23′ W. long.;
(203) 32°56.44′ N. lat., 117°18.08′ W. long.;
(204) 32°54.63′ N. lat., 117°16.94′ W. long.;
(205) 32°51.67′ N. lat., 117°16.21′ W. long.;
(206) 32°52.16′ N. lat., 117°19.41′ W. long.;
(207) 32°46.91′ N. lat., 117°20.43′ W. long.;
(208) 32°43.49′ N. lat., 117°18.12′ W. long.; and
(209) 32°33.00′ N. lat., 117°16.39′ W. long.

(i) The 40 fm (73 m) depth contour around the northern Channel Islands off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 34°07.88′ N. lat., 120°27.79′ W. long.;
(2) 34°07.45′ N. lat., 120°28.26′ W. long.;
(3) 34°07.03′ N. lat., 120°27.29′ W. long.;
(4) 34°06.19′ N. lat., 120°28.81′ W. long.;
(5) 34°06.44′ N. lat., 120°31.17′ W. long.;
(6) 34°05.81′ N. lat., 120°31.97′ W. long.;
(7) 34°03.51′ N. lat., 120°29.61′ W. long.;
(8) 34°01.56′ N. lat., 120°28.83′ W. long.;
(9) 34°00.81′ N. lat., 120°27.94′ W. long.;
(10) 33°59.26′ N. lat., 120°17.95′ W. long.;
(11) 33°54.71′ N. lat., 120°12.72′ W. long.;
(12) 33°51.61′ N. lat., 120°02.49′ W. long.;
(13) 33°51.68′ N. lat., 119°59.41′ W. long.;
(14) 33°52.71′ N. lat., 119°57.25′ W. long.;
(15) 33°55.83′ N. lat., 119°55.92′ W. long.;
(16) 33°59.64′ N. lat., 119°56.03′ W. long.;
(17) 33°56.30′ N. lat., 119°48.63′ W. long.;
(18) 33°56.77′ N. lat., 119°41.87′ W. long.;
(19) 33°58.54′ N. lat., 119°34.98′ W. long.;
(20) 33°59.52′ N. lat., 119°24.69′ W. long.;
(21) 34°00.24′ N. lat., 119°21.00′ W. long.;
(22) 34°02.00′ N. lat., 119°19.57′ W. long.;
(23) 34°01.29′ N. lat., 119°23.92′ W. long.;
(24) 34°01.95′ N. lat., 119°28.94′ W. long.;
(25) 34°03.90′ N. lat., 119°33.43′ W. long.;
(26) 34°03.31′ N. lat., 119°36.51′ W. long.;
(27) 34°02.13′ N. lat., 119°37.99′ W. long.;
(28) 34°01.96′ N. lat., 119°40.35′ W. long.;

(29) 34°03.52′ N. lat., 119°43.22′ W. long.;
(30) 34°04.03′ N. lat., 119°45.66′ W. long.;
(31) 34°04.03′ N. lat., 119°48.13′ W. long.;
(32) 34°05.15′ N. lat., 119°52.97′ W. long.;
(33) 34°05.47′ N. lat., 119°57.55′ W. long.;
(34) 34°04.43′ N. lat., 120°02.29′ W. long.;
(35) 34°05.64′ N. lat., 120°04.05′ W. long.;
(36) 34°04.16′ N. lat., 120°07.60′ W. long.;
(37) 34°05.04′ N. lat., 120°12.78′ W. long.;
(38) 34°04.45′ N. lat., 120°17.78′ W. long.;
(39) 34°07.37′ N. lat., 120°24.14′ W. long.; and
(40) 34°07.88′ N. lat., 120°27.79′ W. long.

(j) The 40 fm (73 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°02.94′ N. lat., 118°38.42′ W. long.;
(2) 33°01.79′ N. lat., 118°37.67′ W. long.;
(3) 33°00.47′ N. lat., 118°37.65′ W. long.;
(4) 32°59.64′ N. lat., 118°37.04′ W. long.;
(5) 32°59.81′ N. lat., 118°36.37′ W. long.;
(6) 32°57.84′ N. lat., 118°35.67′ W. long.;
(7) 32°55.89′ N. lat., 118°33.88′ W. long.;
(8) 32°54.75′ N. lat., 118°33.57′ W. long.;
(9) 32°53.75′ N. lat., 118°32.47′ W. long.;
(10) 32°50.36′ N. lat., 118°30.50′ W. long.;
(11) 32°49.78′ N. lat., 118°29.65′ W. long.;
(12) 32°49.70′ N. lat., 118°28.96′ W. long.;
(13) 32°46.79′ N. lat., 118°25.60′ W. long.;
(14) 32°45.24′ N. lat., 118°24.55′ W. long.;
(15) 32°45.94′ N. lat., 118°24.12′ W. long.;
(16) 32°46.85′ N. lat., 118°24.79′ W. long.;
(17) 32°48.49′ N. lat., 118°23.25′ W. long.;
(18) 32°48.80′ N. lat., 118°20.52′ W. long.;
(19) 32°49.76′ N. lat., 118°20.98′ W. long.;
(20) 32°55.04′ N. lat., 118°27.97′ W. long.;
(21) 32°55.48′ N. lat., 118°29.01′ W. long.;
(22) 33°00.35′ N. lat., 118°32.61′ W. long.;
(23) 33°01.79′ N. lat., 118°33.66′ W. long.;
(24) 33°02.98′ N. lat., 118°35.40′ W. long.; and
(25) 33°02.94′ N. lat., 118°38.42′ W. long.

(k) The 40 fm (73 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°28.90′ N. lat., 118°36.43′ W. long.;
(2) 33°28.49′ N. lat., 118°36.70′ W. long.;
(3) 33°28.02′ N. lat., 118°36.70′ W. long.;
(4) 33°25.81′ N. lat., 118°33.95′ W. long.;
(5) 33°25.78′ N. lat., 118°32.94′ W. long.;
(6) 33°24.77′ N. lat., 118°29.99′ W. long.;
(7) 33°23.19′ N. lat., 118°29.61′ W. long.;
(8) 33°20.81′ N. lat., 118°30.52′ W. long.;
(9) 33°21.06′ N. lat., 118°31.52′ W. long.;
(10) 33°20.43′ N. lat., 118°31.62′ W. long.;
(11) 33°20.45′ N. lat., 118°30.46′ W. long.;
(12) 33°18.71′ N. lat., 118°27.64′ W. long.;
(13) 33°17.36′ N. lat., 118°18.75′ W. long.;
(14) 33°19.17′ N. lat., 118°17.56′ W. long.;
(15) 33°22.20′ N. lat., 118°20.11′ W. long.;
(16) 33°23.31′ N. lat., 118°20.45′ W. long.;
(17) 33°24.71′ N. lat., 118°22.13′ W. long.;
(18) 33°25.27′ N. lat., 118°23.30′ W. long.;
(19) 33°26.73′ N. lat., 118°28.00′ W. long.;
(20) 33°27.85′ N. lat., 118°29.33′ W. long.;
(21) 33°27.91′ N. lat., 118°29.93′ W. long.;
(22) 33°28.79′ N. lat., 118°32.16′ W. long.; and
(23) 33°28.90′ N. lat., 118°36.40′ W. long.

21. Section 660.392 is added to read as follows:

§ 660.392 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

Boundaries for RCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 50 fm (91 m) through 75 fm (137 m) depth contours.

(a) The 50 fm (91 m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
(1) 48°22.15′ N. lat., 124°43.15′ W. long.;
(2) 48°22.15′ N. lat., 124°49.10′ W. long.;
(3) 48°20.03′ N. lat., 124°51.18′ W. long.;
(4) 48°16.61′ N. lat., 124°53.72′ W. long.;
(5) 48°14.68′ N. lat., 124°54.50′ W. long.;
(6) 48°12.02′ N. lat., 124°55.29′ W. long.;
(7) 48°03.14′ N. lat., 124°57.02′ W. long.;
(8) 47°56.05′ N. lat., 124°55.60′ W. long.;
(9) 47°52.58′ N. lat., 124°54.00′ W. long.;
(10) 47°50.18′ N. lat., 124°52.36′ W. long.;
(11) 47°45.34′ N. lat., 124°51.07′ W. long.;
(12) 47°40.96′ N. lat., 124°48.84′ W. long.;
(13) 47°34.59′ N. lat., 124°46.24′ W. long.;
(14) 47°27.86′ N. lat., 124°42.12′ W. long.;
(15) 47°22.34′ N. lat., 124°39.43′ W. long.;
(16) 47°17.66′ N. lat., 124°38.75′ W. long.;
(17) 47°06.25′ N. lat., 124°39.74′ W. long.;
(18) 47°00.43′ N. lat., 124°38.01′ W. long.;
(19) 46°52.00′ N. lat., 124°32.44′ W. long.;
(20) 46°35.41′ N. lat., 124°25.51′ W. long.;
(21) 46°25.43′ N. lat., 124°23.46′ W. long.;
(22) 46°16.00′ N. lat., 124°17.32′ W. long.;
(23) 45°50.88′ N. lat., 124°09.68′ W. long.;
(24) 45°46.00′ N. lat., 124°09.39′ W. long.;
(25) 45°20.25′ N. lat., 124°07.34′ W. long.;
(26) 45°12.99′ N. lat., 124°06.71′ W. long.;
(27) 45°03.83′ N. lat., 124°09.17′ W. long.;
(28) 44°52.48′ N. lat., 124°11.22′ W. long.;
(29) 44°42.41′ N. lat., 124°19.70′ W. long.;
(30) 44°38.80′ N. lat., 124°26.58′ W. long.;

(31) 44°24.99′ N. lat., 124°31.22′ W. long.;
(32) 44°18.11′ N. lat., 124°43.74′ W. long.;
(33) 44°15.23′ N. lat., 124°40.47′ W. long.;
(34) 44°18.80′ N. lat., 124°35.48′ W. long.;
(35) 44°19.62′ N. lat., 124°27.18′ W. long.;
(36) 44°08.30′ N. lat., 124°22.17′ W. long.;
(37) 43°56.65′ N. lat., 124°16.86′ W. long.;
(38) 43°34.95′ N. lat., 124°17.47′ W. long.;
(39) 43°20.83′ N. lat., 124°29.11′ W. long.;
(40) 43°12.60′ N. lat., 124°35.80′ W. long.;
(41) 43°08.96′ N. lat., 124°33.77′ W. long.;
(42) 42°59.66′ N. lat., 124°34.79′ W. long.;
(43) 42°54.29′ N. lat., 124°39.46′ W. long.;
(44) 42°50.00′ N. lat., 124°39.84′ W. long.;
(45) 42°46.50′ N. lat., 124°39.99′ W. long.;
(46) 42°41.00′ N. lat., 124°34.92′ W. long.;
(47) 42°40.50′ N. lat., 124°34.98′ W. long.;
(48) 42°36.29′ N. lat., 124°34.70′ W. long.;
(49) 42°28.36′ N. lat., 124°37.90′ W. long.;
(50) 42°25.53′ N. lat., 124°37.68′ W. long.;
(51) 42°18.64′ N. lat., 124°29.47′ W. long.;
(52) 42°12.95′ N. lat., 124°27.34′ W. long.;
(53) 42°13.67′ N. lat., 124°27.67′ W. long.;
(54) 42°03.04′ N. lat., 124°25.81′ W. long.;
(55) 42°00.00′ N. lat., 124°26.21′ W. long.;
(56) 41°57.60′ N. lat., 124°27.35′ W. long.;
(57) 41°52.53′ N. lat., 124°26.51′ W. long.;
(58) 41°50.17′ N. lat., 124°25.63′ W. long.;
(59) 41°46.01′ N. lat., 124°22.16′ W. long.;
(60) 41°26.50′ N. lat., 124°21.78′ W. long.;
(61) 41°15.66′ N. lat., 124°16.42′ W. long.;
(62) 41°05.45′ N. lat., 124°16.89′ W. long.;
(63) 40°54.55′ N. lat., 124°19.53′ W. long.;
(64) 40°42.22′ N. lat., 124°28.29′ W. long.;
(65) 40°39.68′ N. lat., 124°28.37′ W. long.;
(66) 40°36.76′ N. lat., 124°27.39′ W. long.;
(67) 40°34.44′ N. lat., 124°28.89′ W. long.;
(68) 40°32.57′ N. lat., 124°32.43′ W. long.;
(69) 40°30.95′ N. lat., 124°33.87′ W. long.;
(70) 40°30.00′ N. lat., 124°34.18′ W. long.;
(71) 40°28.90′ N. lat., 124°34.59′ W. long.;
(72) 40°24.36′ N. lat., 124°31.42′ W. long.;
(73) 40°23.66′ N. lat., 124°28.35′ W. long.;
(74) 40°22.54′ N. lat., 124°24.71′ W. long.;
(75) 40°21.52′ N. lat., 124°24.86′ W. long.;
(76) 40°21.25′ N. lat., 124°25.59′ W. long.;
(77) 40°20.63′ N. lat., 124°26.47′ W. long.;
(78) 40°19.18′ N. lat., 124°25.98′ W. long.;
(79) 40°18.42′ N. lat., 124°24.77′ W. long.;
(80) 40°18.64′ N. lat., 124°22.81′ W. long.;
(81) 40°15.31′ N. lat., 124°25.28′ W. long.;
(82) 40°15.37′ N. lat., 124°26.82′ W. long.;
(83) 40°11.91′ N. lat., 124°22.68′ W. long.;
(84) 40°10.01′ N. lat., 124°19.97′ W. long.;
(85) 40°10.00′ N. lat., 124°19.97′ W. long.;
(86) 40°09.20′ N. lat., 124°15.81′ W. long.;
(87) 40°07.51′ N. lat., 124°15.29′ W. long.;
(88) 40°05.22′ N. lat., 124°10.06′ W. long.;
(89) 40°06.51′ N. lat., 124°08.01′ W. long.;
(90) 40°00.72′ N. lat., 124°08.45′ W. long.;
(91) 39°56.60′ N. lat., 124°07.12′ W. long.;
(92) 39°52.58′ N. lat., 124°03.57′ W. long.;
(93) 39°50.65′ N. lat., 123°57.98′ W. long.;
(94) 39°40.16′ N. lat., 123°52.41′ W. long.;
(95) 39°30.12′ N. lat., 123°52.92′ W. long.;
(96) 39°24.53′ N. lat., 123°55.16′ W. long.;
(97) 39°11.58′ N. lat., 123°50.93′ W. long.;
(98) 38°57.50′ N. lat., 123°51.10′ W. long.;
(99) 38°55.13′ N. lat., 123°51.14′ W. long.;
(100) 38°28.58′ N. lat., 123°22.84′ W. long.;
(101) 38°14.60′ N. lat., 123°09.92′ W. long.;
(102) 38°01.84′ N. lat., 123°09.75′ W. long.;
(103) 38°00.00′ N. lat., 123°09.25′ W. long.;
(104) 37°55.24′ N. lat., 123°08.30′ W. long.;
(105) 37°52.06′ N. lat., 123°09.19′ W. long.;
(106) 37°50.21′ N. lat., 123°14.90′ W. long.;
(107) 37°35.67′ N. lat., 122°55.43′ W. long.;
(108) 37°11.00′ N. lat., 122°31.67′ W. long.;
(109) 37°07.00′ N. lat., 122°28.00′ W. long.;
(110) 37°03.06′ N. lat., 122°24.22′ W. long.;
(111) 36°50.20′ N. lat., 122°03.58′ W. long.;
(112) 36°51.46′ N. lat., 121°57.54′ W. long.;
(113) 36°44.14′ N. lat., 121°58.10′ W. long.;
(114) 36°36.76′ N. lat., 122°01.16′ W. long.;
(115) 36°15.62′ N. lat., 121°57.13′ W. long.;
(116) 36°10.41′ N. lat., 121°42.92′ W. long.;
(117) 36°02.56′ N. lat., 121°36.37′ W. long.;
(118) 36°00.00′ N. lat., 121°35.15′ W. long.;
(119) 35°58.26′ N. lat., 121°32.88′ W. long.;
(120) 35°40.38′ N. lat., 121°22.59′ W. long.;
(121) 35°24.35′ N. lat., 121°02.53′ W. long.;
(122) 35°02.66′ N. lat., 120°51.63′ W. long.;
(123) 34°39.52′ N. lat., 120°48.72′ W. long.;
(124) 34°31.26′ N. lat., 120°44.12′ W. long.;
(125) 34°27.00′ N. lat., 120°33.31′ W. long.;
(126) 34°23.47′ N. lat., 120°24.76′ W. long.;
(127) 34°25.83′ N. lat., 120°17.26′ W. long.;
(128) 34°24.65′ N. lat., 120°04.83′ W. long.;
(129) 34°23.18′ N. lat., 119°56.18′ W. long.;
(130) 34°19.20′ N. lat., 119°41.64′ W. long.;
(131) 34°16.82′ N. lat., 119°35.32′ W. long.;
(132) 34°13.43′ N. lat., 119°32.29′ W. long.;
(133) 34°05.39′ N. lat., 119°15.13′ W. long.;
(134) 34°08.22′ N. lat., 119°13.64′ W. long.;
(135) 34°07.64′ N. lat., 119°13.10′ W. long.;

(136) 34°04.56′ N. lat., 119°13.73′ W. long.;
(137) 34°03.90′ N. lat., 119°12.66′ W. long.;
(138) 34°03.66′ N. lat., 119°06.82′ W. long.;
(139) 34°04.58′ N. lat., 119°04.91′ W. long.;
(140) 34°01.35′ N. lat., 119°00.30′ W. long.;
(141) 34°00.24′ N. lat., 119°03.18′ W. long.;
(142) 33°59.63′ N. lat., 119°03.20′ W. long.;
(143) 33°59.54′ N. lat., 119°00.88′ W. long.;
(144) 34°00.82′ N. lat., 118°59.03′ W. long.;
(145) 33°59.11′ N. lat., 118°47.52′ W. long.;
(146) 33°59.07′ N. lat., 118°36.33′ W. long.;
(147) 33°55.06′ N. lat., 118°32.86′ W. long.;
(148) 33°53.56′ N. lat., 118°37.75′ W. long.;
(149) 33°51.22′ N. lat., 118°36.14′ W. long.;
(150) 33°50.48′ N. lat., 118°32.16′ W. long.;
(151) 33°51.86′ N. lat., 118°28.71′ W. long.;
(152) 33°50.09′ N. lat., 118°27.88′ W. long.;
(153) 33°49.95′ N. lat., 118°26.38′ W. long.;
(154) 33°50.73′ N. lat., 118°26.17′ W. long.;
(155) 33°49.86′ N. lat., 118°24.25′ W. long.;
(156) 33°48.10′ N. lat., 118°26.87′ W. long.;
(157) 33°47.54′ N. lat., 118°29.66′ W. long.;
(158) 33°44.10′ N. lat., 118°25.25′ W. long.;
(159) 33°41.78′ N. lat., 118°20.28′ W. long.;
(160) 33°38.18′ N. lat., 118°15.69′ W. long.;
(161) 33°37.50′ N. lat., 118°16.71′ W. long.;
(162) 33°35.98′ N. lat., 118°16.54′ W. long.;
(163) 33°34.15′ N. lat., 118°11.22′ W. long.;
(164) 33°34.29′ N. lat., 118°08.35′ W. long.;
(165) 33°35.85′ N. lat., 118°07.00′ W. long.;
(166) 33°36.12′ N. lat., 118°04.15′ W. long.;
(167) 33°34.97′ N. lat., 118°02.91′ W. long.;
(168) 33°34.00′ N. lat., 117°59.53′ W. long.;
(169) 33°35.44′ N. lat., 117°55.67′ W. long.;
(170) 33°35.15′ N. lat., 117°53.53′ W. long.;
(171) 33°31.12′ N. lat., 117°47.40′ W. long.;
(172) 33°27.99′ N. lat., 117°45.19′ W. long.;
(173) 33°26.88′ N. lat., 117°43.87′ W. long.;
(174) 33°25.44′ N. lat., 117°41.63′ W. long.;
(175) 33°19.50′ N. lat., 117°36.08′ W. long.;
(176) 33°12.74′ N. lat., 117°28.53′ W. long.;
(177) 33°10.29′ N. lat., 117°25.68′ W. long.;
(178) 33°07.36′ N. lat., 117°21.23′ W. long.;
(179) 32°59.39′ N. lat., 117°18.56′ W. long.;
(180) 32°56.10′ N. lat., 117°18.37′ W. long.;
(181) 32°54.43′ N. lat., 117°16.93′ W. long.;
(182) 32°51.89′ N. lat., 117°16.42′ W. long.;
(183) 32°52.24′ N. lat., 117°19.36′ W. long.;
(184) 32°47.06′ N. lat., 117°21.92′ W. long.;
(185) 32°45.09′ N. lat., 117°20.68′ W. long.;
(186) 32°43.62′ N. lat., 117°18.68′ W. long.; and
(187) 32°33.43′ N. lat., 117°17.00′ W. long.

(b) The 50 fm (91 m) depth contour between the U.S. border with Canada and the Swiftsure Bank is defined by straight lines connecting all of the following points in the order stated:
(1) 48°30.15′ N. lat., 124°56.12′ W. long.;
(2) 48°28.29′ N. lat., 124°56.30′ W. long.;
(3) 48°29.23′ N. lat., 124°53.63′ W. long.; and
(4) 48°30.31′ N. lat., 124°51.73′ W. long.

(c) The 50 fm (91 m) depth contour around the northern Channel Islands off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 34°08.40′ N. lat., 120°33.78′ W. long.;
(2) 34°07.80′ N. lat., 120°30.99′ W. long.;
(3) 34°08.68′ N. lat., 120°26.61′ W. long.;
(4) 34°05.85′ N. lat., 120°17.13′ W. long.;
(5) 34°05.57′ N. lat., 119°51.35′ W. long.;
(6) 34°07.08′ N. lat., 119°52.43′ W. long.;
(7) 34°04.49′ N. lat., 119°35.55′ W. long.;
(8) 34°04.73′ N. lat., 119°32.77′ W. long.;
(9) 34°02.02′ N. lat., 119°19.18′ W. long.;
(10) 34°01.03′ N. lat., 119°19.50′ W. long.;
(11) 33°59.45′ N. lat., 119°22.38′ W. long.;
(12) 33°58.68′ N. lat., 119°32.36′ W. long.;
(13) 33°56.43′ N. lat., 119°41.13′ W. long.;
(14) 33°56.04′ N. lat., 119°48.20′ W. long.;
(15) 33°57.32′ N. lat., 119°51.96′ W. long.;
(16) 33°59.32′ N. lat., 119°55.59′ W. long.;
(17) 33°57.52′ N. lat., 119°55.19′ W. long.;
(18) 33°56.26′ N. lat., 119°54.29′ W. long.;
(19) 33°54.30′ N. lat., 119°54.83′ W. long.;
(20) 33°50.97′ N. lat., 119°57.03′ W. long.;
(21) 33°50.03′ N. lat., 120°03.00′ W. long.;
(22) 33°51.14′ N. lat., 120°03.65′ W. long.;
(23) 33°54.49′ N. lat., 120°12.85′ W. long.;
(24) 33°58.48′ N. lat., 120°18.50′ W. long.;
(25) 34°00.71′ N. lat., 120°28.21′ W. long.;
(26) 34°03.60′ N. lat., 120°30.60′ W. long.;
(27) 34°06.96′ N. lat., 120°34.22′ W. long.;
(28) 34°08.01′ N. lat., 120°35.24′ W. long.; and
(29) 34°08.40′ N. lat., 120°33.78′ W. long.

(d) The 50 fm (91 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°03.73′ N. lat., 118°36.98′ W. long.;
(2) 33°02.56′ N. lat., 118°34.12′ W. long.;
(3) 32°55.54′ N. lat., 118°28.87′ W. long.;
(4) 32°55.02′ N. lat., 118°27.69′ W. long.;
(5) 32°49.73′ N. lat., 118°20.99′ W. long.;
(6) 32°48.55′ N. lat., 118°20.24′ W. long.;
(7) 32°47.92′ N. lat., 118°22.45′ W. long.;
(8) 32°45.25′ N. lat., 118°24.59′ W. long.;
(9) 32°50.23′ N. lat., 118°30.80′ W. long.;
(10) 32°55.28′ N. lat., 118°33.83′ W. long.;
(11) 33°00.45′ N. lat., 118°37.88′ W. long.;
(12) 33°03.27′ N. lat., 118°38.56′ W. long.; and

(13) 33°03.73′ N. lat., 118°36.98′ W. long.

(e) The 50 fm (91 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°28.01′ N. lat., 118°37.42′ W. long.;
(2) 33°29.02′ N. lat., 118°36.33′ W. long.;
(3) 33°28.97′ N. lat., 118°33.16′ W. long.;
(4) 33°28.71′ N. lat., 118°31.22′ W. long.;
(5) 33°26.66′ N. lat., 118°27.48′ W. long.;
(6) 33°25.35′ N. lat., 118°22.83′ W. long.;
(7) 33°22.61′ N. lat., 118°19.18′ W. long.;
(8) 33°20.06′ N. lat., 118°17.35′ W. long.;
(9) 33°17.58′ N. lat., 118°17.42′ W. long.;
(10) 33°17.05′ N. lat., 118°18.72′ W. long.;
(11) 33°17.87′ N. lat., 118°24.47′ W. long.;
(12) 33°18.63′ N. lat., 118°28.16′ W. long.;
(13) 33°20.17′ N. lat., 118°31.69′ W. long.;
(14) 33°20.85′ N. lat., 118°31.82′ W. long.;
(15) 33°23.19′ N. lat., 118°29.78′ W. long.;
(16) 33°24.85′ N. lat., 118°31.22′ W. long.;
(17) 33°25.65′ N. lat., 118°34.11′ W. long.; and
(18) 33°28.01′ N. lat., 118°37.42′ W. long.

(f) The 60 fm (110 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°26.70′ N. lat., 125°09.43′ W. long.;
(2) 48°23.76′ N. lat., 125°06.77′ W. long.;
(3) 48°23.01′ N. lat., 125°03.48′ W. long.;
(4) 48°22.42′ N. lat., 124°57.84′ W. long.;
(5) 48°22.62′ N. lat., 124°48.97′ W. long.;
(6) 48°18.61′ N. lat., 124°52.52′ W. long.;
(7) 48°16.62′ N. lat., 124°54.03′ W. long.;
(8) 48°15.39′ N. lat., 124°54.79′ W. long.;
(9) 48°13.81′ N. lat., 124°55.45′ W. long.;
(10) 48°10.51′ N. lat., 124°56.56′ W. long.;
(11) 48°06.90′ N. lat., 124°57.72′ W. long.;
(12) 48°02.23′ N. lat., 125°00.20′ W. long.;
(13) 48°00.87′ N. lat., 125°00.37′ W. long.;
(14) 47°56.30′ N. lat., 124°59.51′ W. long.;
(15) 47°46.84′ N. lat., 124°57.34′ W. long.;
(16) 47°36.49′ N. lat., 124°50.93′ W. long.;
(17) 47°32.01′ N. lat., 124°48.45′ W. long.;
(18) 47°27.19′ N. lat., 124°46.47′ W. long.;
(19) 47°21.76′ N. lat., 124°43.29′ W. long.;
(20) 47°17.82′ N. lat., 124°42.12′ W. long.;
(21) 47°08.87′ N. lat., 124°43.10′ W. long.;
(22) 47°03.16′ N. lat., 124°42.61′ W. long.;
(23) 46°49.70′ N. lat., 124°36.80′ W. long.;
(24) 46°42.91′ N. lat., 124°33.20′ W. long.;
(25) 46°39.67′ N. lat., 124°30.59′ W. long.;
(26) 46°32.47′ N. lat., 124°26.34′ W. long.;
(27) 46°23.69′ N. lat., 124°25.41′ W. long.;
(28) 46°20.84′ N. lat., 124°24.24′ W. long.;
(29) 46°16.00′ N. lat., 124°19.10′ W. long.;
(30) 46°15.97′ N. lat., 124°18.81′ W. long.;
(31) 46°11.23′ N. lat., 124°19.96′ W. long.;
(32) 46°02.51′ N. lat., 124°19.84′ W. long.;
(33) 45°59.05′ N. lat., 124°16.52′ W. long.;
(34) 45°51.00′ N. lat., 124°12.83′ W. long.;
(35) 45°45.85′ N. lat., 124°11.54′ W. long.;
(36) 45°38.53′ N. lat., 124°11.91′ W. long.;
(37) 45°30.90′ N. lat., 124°10.94′ W. long.;
(38) 45°21.20′ N. lat., 124°09.12′ W. long.;
(39) 45°12.43′ N. lat., 124°08.74′ W. long.;
(40) 44°59.89′ N. lat., 124°11.95′ W. long.;
(41) 44°51.96′ N. lat., 124°15.15′ W. long.;
(42) 44°44.64′ N. lat., 124°20.07′ W. long.;
(43) 44°39.24′ N. lat., 124°28.09′ W. long.;
(44) 44°30.61′ N. lat., 124°31.66′ W. long.;
(45) 44°26.19′ N. lat., 124°35.88′ W. long.;
(46) 44°18.88′ N. lat., 124°45.16′ W. long.;
(47) 44°14.69′ N. lat., 124°45.51′ W. long.;
(48) 44°10.97′ N. lat., 124°38.78′ W. long.;
(49) 44°08.71′ N. lat., 124°33.54′ W. long.;
(50) 44°04.92′ N. lat., 124°24.55′ W. long.;
(51) 43°57.49′ N. lat., 124°20.05′ W. long.;
(52) 43°50.26′ N. lat., 124°21.84′ W. long.;
(53) 43°41.69′ N. lat., 124°21.94′ W. long.;
(54) 43°35.52′ N. lat., 124°21.51′ W. long.;
(55) 43°25.77′ N. lat., 124°28.47′ W. long.;
(56) 43°20.25′ N. lat., 124°31.59′ W. long.;
(57) 43°12.73′ N. lat., 124°36.69′ W. long.;
(58) 43°08.08′ N. lat., 124°36.10′ W. long.;
(59) 43°00.33′ N. lat., 124°37.57′ W. long.;
(60) 42°53.99′ N. lat., 124°41.04′ W. long.;
(61) 42°46.66′ N. lat., 124°41.13′ W. long.;
(62) 42°41.74′ N. lat., 124°37.46′ W. long.;
(63) 42°37.42′ N. lat., 124°37.22′ W. long.;
(64) 42°27.35′ N. lat., 124°39.90′ W. long.;
(65) 42°23.94′ N. lat., 124°38.28′ W. long.;
(66) 42°17.72′ N. lat., 124°31.10′ W. long.;
(67) 42°10.35′ N. lat., 124°29.11′ W. long.;
(68) 42°00.00′ N. lat., 124°28.00′ W. long.;
(69) 41°54.87′ N. lat., 124°28.50′ W. long.;
(70) 41°45.80′ N. lat., 124°23.89′ W. long.;
(71) 41°34.40′ N. lat., 124°24.03′ W. long.;
(72) 41°28.33′ N. lat., 124°25.46′ W. long.;
(73) 41°15.80′ N. lat., 124°18.90′ W. long.;
(74) 41°09.77′ N. lat., 124°17.99′ W. long.;
(75) 41°02.26′ N. lat., 124°18.71′ W. long.;
(76) 40°53.54′ N. lat., 124°21.18′ W. long.;
(77) 40°49.93′ N. lat., 124°23.02′ W. long.;
(78) 40°43.15′ N. lat., 124°28.74′ W. long.;
(79) 40°40.19′ N. lat., 124°29.07′ W. long.;
(80) 40°36.77′ N. lat., 124°27.61′ W. long.;

(81) 40°34.13′ N. lat., 124°29.39′ W. long.;
(82) 40°33.15′ N. lat., 124°33.46′ W. long.;
(83) 40°30.00′ N. lat., 124°35.84′ W. long.;
(84) 40°24.72′ N. lat., 124°33.06′ W. long.;
(85) 40°23.91′ N. lat., 124°31.28′ W. long.;
(86) 40°23.67′ N. lat., 124°28.35′ W. long.;
(87) 40°22.53′ N. lat., 124°24.72′ W. long.;
(88) 40°21.51′ N. lat., 124°24.86′ W. long.;
(89) 40°21.02′ N. lat., 124°27.70′ W. long.;
(90) 40°19.75′ N. lat., 124°27.06′ W. long.;
(91) 40°18.23′ N. lat., 124°25.30′ W. long.;
(92) 40°18.60′ N. lat., 124°22.86′ W. long.;
(93) 40°15.43′ N. lat., 124°25.37′ W. long.;
(94) 40°15.55′ N. lat., 124°28.16′ W. long.;
(95) 40°11.27′ N. lat., 124°22.56′ W. long.;
(96) 40°10.00′ N. lat., 124°19.97′ W. long.;
(97) 40°09.20′ N. lat., 124°15.81′ W. long.;
(98) 40°07.51′ N. lat., 124°15.29′ W. long.;
(99) 40°05.22′ N. lat., 124°10.06′ W. long.;
(100) 40°06.51′ N. lat., 124°08.01′ W. long.;
(101) 40°00.72′ N. lat., 124°08.45′ W. long.;
(102) 39°56.60′ N. lat., 124°07.12′ W. long.;
(103) 39°52.58′ N. lat., 124°03.57′ W. long.;
(104) 39°50.65′ N. lat., 123°57.98′ W. long.;
(105) 39°40.16′ N. lat., 123°52.41′ W. long.;
(106) 39°30.12′ N. lat., 123°52.92′ W. long.;
(107) 39°24.53′ N. lat., 123°55.16′ W. long.;
(108) 39°11.58′ N. lat., 123°50.93′ W. long.;
(109) 38°57.50′ N. lat., 123°51.14′ W. long.;
(110) 38°55.13′ N. lat., 123°51.14′ W. long.;
(111) 38°28.58′ N. lat., 123°22.84′ W. long.;
(112) 38°08.57′ N. lat., 123°14.74′ W. long.;
(113) 38°00.00′ N. lat., 123°15.61′ W. long.;
(114) 37°56.98′ N. lat., 123°21.82′ W. long.;
(115) 37°48.01′ N. lat., 123°15.90′ W. long.;
(116) 37°35.67′ N. lat., 122°58.48′ W. long.;
(117) 37°11.00′ N. lat., 122°40.22′ W. long.;
(118) 37°07.00′ N. lat., 122°37.64′ W. long.;
(119) 37°02.08′ N. lat., 122°25.49′ W. long.;
(120) 36°48.20′ N. lat., 122°03.32′ W. long.;
(121) 36°51.46′ N. lat., 121°57.54′ W. long.;
(122) 36°44.14′ N. lat., 121°58.10′ W. long.;
(123) 36°36.76′ N. lat., 122°01.16′ W. long.;
(124) 36°15.62′ N. lat., 121°57.13′ W. long.;
(125) 36°10.42′ N. lat., 121°42.90′ W. long.;
(126) 36°02.55′ N. lat., 121°36.35′ W. long.;
(127) 36°00.00′ N. lat., 121°35.15′ W. long.;
(128) 35°58.25′ N. lat., 121°32.88′ W. long.;
(129) 35°40.38′ N. lat., 121°22.59′ W. long.;
(130) 35°24.35′ N. lat., 121°02.53′ W. long.;
(131) 35°02.66′ N. lat., 120°51.63′ W. long.;
(132) 34°39.52′ N. lat., 120°48.72′ W. long.;
(133) 34°31.26′ N. lat., 120°44.12′ W. long.;
(134) 34°27.00′ N. lat., 120°36.00′ W. long.;
(135) 34°23.00′ N. lat., 120°25.32′ W. long.;
(136) 34°25.68′ N. lat., 120°17.46′ W. long.;
(137) 34°23.18′ N. lat., 119°56.17′ W. long.;
(138) 34°18.73′ N. lat., 119°41.89′ W. long.;
(139) 34°11.18′ N. lat., 119°31.21′ W. long.;
(140) 34°10.01′ N. lat., 119°25.84′ W. long.;
(141) 34°03.88′ N. lat., 119°12.46′ W. long.;
(142) 34°03.58′ N. lat., 119°06.71′ W. long.;
(143) 34°04.52′ N. lat., 119°04.89′ W. long.;
(144) 34°01.28′ N. lat., 119°00.27′ W. long.;
(145) 34°00.20′ N. lat., 119°03.18′ W. long.;
(146) 33°59.60′ N. lat., 119°03.14′ W. long.;
(147) 33°59.45′ N. lat., 119°00.87′ W. long.;
(148) 34°00.71′ N. lat., 118°59.07′ W. long.;
(149) 33°59.05′ N. lat., 118°47.34′ W. long.;
(150) 33°59.06′ N. lat., 118°36.30′ W. long.;
(151) 33°55.05′ N. lat., 118°32.85′ W. long.;
(152) 33°53.56′ N. lat., 118°37.73′ W. long.;
(153) 33°51.22′ N. lat., 118°36.13′ W. long.;
(154) 33°50.19′ N. lat., 118°32.19′ W. long.;
(155) 33°51.28′ N. lat., 118°29.12′ W. long.;
(156) 33°49.89′ N. lat., 118°28.04′ W. long.;
(157) 33°49.95′ N. lat., 118°26.38′ W. long.;
(158) 33°50.73′ N. lat., 118°26.16′ W. long.;
(159) 33°49.87′ N. lat., 118°24.37′ W. long.;
(160) 33°47.54′ N. lat., 118°29.65′ W. long.;
(161) 33°44.10′ N. lat., 118°25.25′ W. long.;
(162) 33°41.77′ N. lat., 118°20.32′ W. long.;
(163) 33°38.17′ N. lat., 118°15.69′ W. long.;
(164) 33°37.48′ N. lat., 118°16.72′ W. long.;
(165) 33°35.98′ N. lat., 118°16.54′ W. long.;
(166) 33°34.15′ N. lat., 118°11.22′ W. long.;
(167) 33°34.09′ N. lat., 118°08.15′ W. long.;
(168) 33°35.73′ N. lat., 118°05.01′ W. long.;
(169) 33°33.75′ N. lat., 117°59.82′ W. long.;
(170) 33°35.44′ N. lat., 117°55.65′ W. long.;
(171) 33°35.15′ N. lat., 117°53.54′ W. long.;
(172) 33°31.12′ N. lat., 117°47.39′ W. long.;
(173) 33°27.49′ N. lat., 117°44.85′ W. long.;
(174) 33°16.42′ N. lat., 117°32.92′ W. long.;
(175) 33°06.66′ N. lat., 117°21.59′ W. long.;
(176) 33°00.08′ N. lat., 117°19.02′ W. long.;
(177) 32°56.11′ N. lat., 117°18.41′ W. long.;
(178) 32°54.43′ N. lat., 117°16.93′ W. long.;
(179) 32°51.89′ N. lat., 117°16.42′ W. long.;
(180) 32°52.61′ N. lat., 117°19.50′ W. long.;
(181) 32°46.96′ N. lat., 117°22.69′ W. long.;
(182) 32°44.98′ N. lat., 117°21.87′ W. long.;
(183) 32°43.52′ N. lat., 117°19.32′ W. long.; and
(184) 32°33.56′ N. lat., 117°17.72′ W. long.

(g) The 60 fm (110 m) depth contour around the northern Channel Islands off

the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 120°26.31′ N. lat., 34°09.16′ W. long.;
(2) 120°16.43′ N. lat., 34°06.69′ W. long.;
(3) 120°04.00′ N. lat., 34°06.38′ W. long.;
(4) 119°52.06′ N. lat., 34°07.36′ W. long.;
(5) 119°36.94′ N. lat., 34°04.84′ W. long.;
(6) 119°35.50′ N. lat., 34°04.84′ W. long.;
(7) 119°32.80′ N. lat., 34°05.04′ W. long.;
(8) 119°26.70′ N. lat., 34°04.00′ W. long.;
(9) 119°21.40′ N. lat., 34°02.80′ W. long.;
(10) 119°18.97′ N. lat., 34°02.36′ W. long.;
(11) 119°19.42′ N. lat., 34°00.65′ W. long.;
(12) 119°22.38′ N. lat., 33°59.45′ W. long.;
(13) 119°32.36′ N. lat., 33°58.68′ W. long.;
(14) 119°41.09′ N. lat., 33°56.14′ W. long.;
(15) 119°48.00′ N. lat., 33°55.84′ W. long.;
(16) 119°52.09′ N. lat., 33°57.22′ W. long.;
(17) 119°55.59′ N. lat., 33°59.32′ W. long.;
(18) 119°55.19′ N. lat., 33°57.52′ W. long.;
(19) 119°54.25′ N. lat., 33°56.10′ W. long.;
(20) 119°56.02′ N. lat., 33°50.28′ W. long.;
(21) 119°59.67′ N. lat., 33°48.51′ W. long.;
(22) 120°03.58′ N. lat., 33°49.14′ W. long.;
(23) 120°06.50′ N. lat., 33°51.93′ W. long.;
(24) 120°13.06′ N. lat., 33°54.36′ W. long.;
(25) 120°20.46′ N. lat., 33°58.53′ W. long.;
(26) 120°28.12′ N. lat., 34°00.12′ W. long.;
(27) 120°35.85′ N. lat., 34°08.09′ W. long.;
(28) 120°34.58′ N. lat., 34°08.80′ W. long.; and
(29) 120°26.31′ N. lat., 34°09.16′ W. long.;

(h) The 60 fm (110 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°04.06′ N. lat., 118°37.32′ W. long.;
(2) 33°02.56′ N. lat., 118°34.12′ W. long.;
(3) 32°55.54′ N. lat., 118°28.87′ W. long.;
(4) 32°55.02′ N. lat., 118°27.69′ W. long.;
(5) 32°49.78′ N. lat., 118°20.88′ W. long.;
(6) 32°48.32′ N. lat., 118°19.89′ W. long.;
(7) 32°47.60′ N. lat., 118°22.00′ W. long.;
(8) 32°44.59′ N. lat., 118°24.52′ W. long.;
(9) 32°49.97′ N. lat., 118°31.52′ W. long.;
(10) 32°53.62′ N. lat., 118°32.94′ W. long.;
(11) 32°55.63′ N. lat., 118°34.82′ W. long.;
(12) 33°00.71′ N. lat., 118°38.42′ W. long.;
(13) 33°03.31′ N. lat., 118°38.74′ W. long.; and
(14) 33°04.06′ N. lat., 118°37.32′ W. long.

(i) The 60 fm (110 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°28.15′ N. lat., 118°37.85′ W. long.;
(2) 33°29.23′ N. lat., 118°36.27′ W. long.;
(3) 33°28.85′ N. lat., 118°30.85′ W. long.;
(4) 33°26.69′ N. lat., 118°27.37′ W. long.;
(5) 33°25.35′ N. lat., 118°22.83′ W. long.;
(6) 33°22.60′ N. lat., 118°18.82′ W. long.;
(7) 33°19.49′ N. lat., 118°16.91′ W. long.;
(8) 33°17.13′ N. lat., 118°16.58′ W. long.;
(9) 33°16.72′ N. lat., 118°18.07′ W. long.;
(10) 33°18.35′ N. lat., 118°27.86′ W. long.;
(11) 33°20.03′ N. lat., 118°32.04′ W. long.;
(12) 33°21.86′ N. lat., 118°31.72′ W. long.;
(13) 33°23.15′ N. lat., 118°29.89′ W. long.;
(14) 33°25.13′ N. lat., 118°32.16′ W. long.;
(15) 33°25.73′ N. lat., 118°34.88′ W. long.; and
(16) 33°28.15′ N. lat., 118°37.85′ W. long.

(j) The 75 fm (137 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°16.80′ N. lat., 125°34.90′ W. long.;
(2) 48°14.50′ N. lat., 125°29.50′ W. long.;
(3) 48°12.08′ N. lat., 125°28.00′ W. long.;
(4) 48°09.00′ N. lat., 125°28.00′ W. long.;
(5) 48°07.80′ N. lat., 125°31.70′ W. long.;
(6) 48°04.28′ N. lat., 125°29.00′ W. long.;
(7) 48°02.50′ N. lat., 125°25.70′ W. long.;
(8) 48°10.00′ N. lat., 125°20.19′ W. long.;
(9) 48°21.70′ N. lat., 125°17.56′ W. long.;
(10) 48°23.12′ N. lat., 125°10.25′ W. long.;
(11) 48°21.99′ N. lat., 125°02.59′ W. long.;
(12) 48°23.05′ N. lat., 124°48.80′ W. long.;
(13) 48°17.10′ N. lat., 124°54.82′ W. long.;
(14) 48°05.10′ N. lat., 124°59.40′ W. long.;
(15) 48°04.50′ N. lat., 125°02.00′ W. long.;
(16) 48°04.70′ N. lat., 125°04.08′ W. long.;
(17) 48°05.20′ N. lat., 125°04.90′ W. long.;
(18) 48°06.80′ N. lat., 125°06.15′ W. long.;
(19) 48°05.91′ N. lat., 125°08.30′ W. long.;
(20) 48°07.00′ N. lat., 125°09.80′ W. long.;
(21) 48°06.93′ N. lat., 125°11.48′ W. long.;
(22) 48°04.98′ N. lat., 125°10.02′ W. long.;
(23) 47°54.00′ N. lat., 125°04.98′ W. long.;
(24) 47°44.52′ N. lat., 125°00.00′ W. long.;
(25) 47°42.00′ N. lat., 124°58.98′ W. long.;
(26) 47°35.52′ N. lat., 124°55.50′ W. long.;
(27) 47°22.02′ N. lat., 124°44.40′ W. long.;
(28) 47°16.98′ N. lat., 124°45.48′ W. long.;
(29) 47°10.98′ N. lat., 124°48.48′ W. long.;
(30) 47°04.98′ N. lat., 124°49.02′ W. long.;
(31) 46°57.98′ N. lat., 124°46.50′ W. long.;
(32) 46°54.00′ N. lat., 124°45.00′ W. long.;
(33) 46°48.48′ N. lat., 124°44.52′ W. long.;
(34) 46°40.02′ N. lat., 124°36.00′ W. long.;
(35) 46°34.09′ N. lat., 124°27.03′ W. long.;
(36) 46°24.64′ N. lat., 124°30.33′ W. long.;

(37) 46°19.98′ N. lat., 124°36.00′ W. long.;
(38) 46°18.14′ N. lat., 124°34.26′ W. long.;
(39) 46°18.72′ N. lat., 124°22.68′ W. long.;
(40) 46°16.00′ N. lat., 124°19.49′ W. long.;
(41) 46°14.64′ N. lat., 124°22.54′ W. long.;
(42) 46°11.08′ N. lat., 124°30.74′ W. long.;
(43) 46°04.28′ N. lat., 124°31.49′ W. long.;
(44) 45°55.97′ N. lat., 124°19.95′ W. long.;
(45) 45°46.00′ N. lat., 124°16.41′ W. long.;
(46) 45°44.97′ N. lat., 124°15.96′ W. long.;
(47) 45°43.14′ N. lat., 124°21.86′ W. long.;
(48) 45°34.44′ N. lat., 124°14.44′ W. long.;
(49) 45°20.25′ N. lat., 124°12.23′ W. long.;
(50) 45°15.49′ N. lat., 124°11.49′ W. long.;
(51) 45°03.83′ N. lat., 124°13.75′ W. long.;
(52) 44°57.31′ N. lat., 124°15.03′ W. long.;
(53) 44°43.90′ N. lat., 124°28.88′ W. long.;
(54) 44°28.64′ N. lat., 124°35.67′ W. long.;
(55) 44°25.31′ N. lat., 124°43.08′ W. long.;
(56) 44°17.15′ N. lat., 124°47.98′ W. long.;
(57) 44°13.67′ N. lat., 124°54.41′ W. long.;
(58) 44°08.30′ N. lat., 124°54.75′ W. long.;
(59) 43°56.85′ N. lat., 124°55.32′ W. long.;
(60) 43°57.50′ N. lat., 124°41.23′ W. long.;
(61) 44°01.79′ N. lat., 124°38.00′ W. long.;
(62) 44°02.16′ N. lat., 124°32.62′ W. long.;
(63) 43°58.15′ N. lat., 124°30.39′ W. long.;
(64) 43°53.25′ N. lat., 124°31.39′ W. long.;
(65) 43°35.56′ N. lat., 124°28.17′ W. long.;
(66) 43°21.84′ N. lat., 124°36.07′ W. long.;
(67) 43°20.83′ N. lat., 124°35.49′ W. long.;
(68) 43°19.73′ N. lat., 124°34.86′ W. long.;
(69) 43°09.38′ N. lat., 124°39.30′ W. long.;
(70) 43°07.11′ N. lat., 124°37.66′ W. long.;
(71) 42°56.27′ N. lat., 124°43.29′ W. long.;
(72) 42°50.00′ N. lat., 124°42.30′ W. long.;
(73) 42°45.00′ N. lat., 124°41.50′ W. long.;
(74) 42°40.50′ N. lat., 124°39.46′ W. long.;
(75) 42°39.72′ N. lat., 124°39.11′ W. long.;
(76) 42°32.88′ N. lat., 124°40.13′ W. long.;
(77) 42°32.30′ N. lat., 124°39.04′ W. long.;
(78) 42°26.96′ N. lat., 124°44.31′ W. long.;
(79) 42°24.11′ N. lat., 124°42.16′ W. long.;
(80) 42°21.10′ N. lat., 124°35.46′ W. long.;
(81) 42°14.72′ N. lat., 124°32.30′ W. long.;
(82) 42°13.67′ N. lat., 124°32.29′ W. long.;
(83) 42°09.24′ N. lat., 124°32.04′ W. long.;
(84) 42°01.89′ N. lat., 124°32.70′ W. long.;
(85) 42°00.00′ N. lat., 124°32.02′ W. long.;
(86) 41°46.18′ N. lat., 124°26.60′ W. long.;
(87) 41°29.22′ N. lat., 124°28.04′ W. long.;
(88) 41°09.62′ N. lat., 124°19.75′ W. long.;
(89) 40°50.71′ N. lat., 124°23.80′ W. long.;
(90) 40°43.35′ N. lat., 124°29.30′ W. long.;
(91) 40°40.24′ N. lat., 124°29.86′ W. long.;
(92) 40°37.50′ N. lat., 124°28.68′ W. long.;
(93) 40°34.42′ N. lat., 124°29.65′ W. long.;
(94) 40°34.74′ N. lat., 124°34.61′ W. long.;
(95) 40°31.70′ N. lat., 124°37.13′ W. long.;
(96) 40°30.00′ N. lat., 124°36.50′ W. long.;
(97) 40°25.03′ N. lat., 124°34.77′ W. long.;
(98) 40°23.58′ N. lat., 124°31.49′ W. long.;
(99) 40°23.64′ N. lat., 124°28.35′ W. long.;
(100) 40°22.53′ N. lat., 124°24.76′ W. long.;
(101) 40°21.46′ N. lat., 124°24.86′ W. long.;
(102) 40°21.74′ N. lat., 124°27.63′ W. long.;
(103) 40°19.76′ N. lat., 124°28.15′ W. long.;
(104) 40°18.00′ N. lat., 124°25.38′ W. long.;
(105) 40°18.54′ N. lat., 124°22.94′ W. long.;
(106) 40°15.55′ N. lat., 124°25.75′ W. long.;
(107) 40°16.06′ N. lat., 124°30.48′ W. long.;
(108) 40°15.75′ N. lat., 124°31.69′ W. long.;
(109) 40°10.00′ N. lat., 124°21.28′ W. long.;
(110) 40°08.37′ N. lat., 124°17.99′ W. long.;
(111) 40°09.00′ N. lat., 124°15.77′ W. long.;
(112) 40°06.93′ N. lat., 124°16.49′ W. long.;
(113) 40°03.60′ N. lat., 124°11.60′ W. long.;
(114) 40°06.20′ N. lat., 124°08.23′ W. long.;
(115) 40°00.94′ N. lat., 124°08.57′ W. long.;
(116) 40°00.01′ N. lat., 124°09.84′ W. long.;
(117) 39°57.75′ N. lat., 124°09.53′ W. long.;
(118) 39°55.56′ N. lat., 124°07.67′ W. long.;
(119) 39°52.21′ N. lat., 124°05.54′ W. long.;
(120) 39°48.07′ N. lat., 123°57.48′ W. long.;
(121) 39°41.60′ N. lat., 123°55.12′ W. long.;
(122) 39°30.39′ N. lat., 123°55.03′ W. long.;
(123) 39°29.48′ N. lat., 123°56.12′ W. long.;
(124) 39°13.76′ N. lat., 123°54.65′ W. long.;
(125) 39°05.21′ N. lat., 123°55.38′ W. long.;
(126) 38°57.50′ N. lat., 123°54.50′ W. long.;
(127) 38°55.90′ N. lat., 123°54.35′ W. long.;
(128) 38°48.59′ N. lat., 123°49.61′ W. long.;
(129) 38°28.82′ N. lat., 123°27.44′ W. long.;
(130) 38°09.70′ N. lat., 123°18.66′ W. long.;
(131) 38°01.81′ N. lat., 123°19.22′ W. long.;
(132) 38°00.00′ N. lat., 123°22.19′ W. long.;
(133) 37°57.70′ N. lat., 123°25.98′ W. long.;
(134) 37°56.73′ N. lat., 123°25.22′ W. long.;
(135) 37°55.59′ N. lat., 123°25.62′ W. long.;
(136) 37°52.79′ N. lat., 123°23.85′ W. long.;
(137) 37°49.13′ N. lat., 123°18.83′ W. long.;
(138) 37°46.01′ N. lat., 123°12.28′ W. long.;
(139) 37°35.67′ N. lat., 123°00.33′ W. long.;
(140) 37°11.00′ N. lat., 122°45.48′ W. long.;
(141) 37°07.00′ N. lat., 122°41.60′ W. long.;

(142) 37°24.16′ N. lat., 122°51.96′ W. long.;
(143) 37°23.32′ N. lat., 122°52.38′ W. long.;
(144) 37°04.12′ N. lat., 122°38.94′ W. long.;
(145) 37°00.64′ N. lat., 122°33.26′ W. long.;
(146) 36°59.15′ N. lat., 122°27.84′ W. long.;
(147) 37°01.41′ N. lat., 122°24.41′ W. long.;
(148) 36°58.75′ N. lat., 122°23.81′ W. long.;
(149) 36°59.17′ N. lat., 122°21.44′ W. long.;
(150) 36°57.51′ N. lat., 122°20.69′ W. long.;
(151) 36°51.46′ N. lat., 122°10.01′ W. long.;
(152) 36°48.43′ N. lat., 122°06.47′ W. long.;
(153) 36°48.66′ N. lat., 122°04.99′ W. long.;
(154) 36°47.75′ N. lat., 122°03.33′ W. long.;
(155) 36°51.23′ N. lat., 121°57.79′ W. long.;
(156) 36°49.72′ N. lat., 121°57.87′ W. long.;
(157) 36°48.84′ N. lat., 121°58.68′ W. long.;
(158) 36°47.89′ N. lat., 121°58.53′ W. long.;
(159) 36°48.66′ N. lat., 121°50.49′ W. long.;
(160) 36°45.56′ N. lat., 121°54.11′ W. long.;
(161) 36°45.30′ N. lat., 121°57.62′ W. long.;
(162) 36°38.54′ N. lat., 122°01.13′ W. long.;
(163) 36°35.76′ N. lat., 122°00.87′ W. long.;
(164) 36°32.58′ N. lat., 121°59.12′ W. long.;
(165) 36°32.95′ N. lat., 121°57.62′ W. long.;
(166) 36°31.96′ N. lat., 121°56.27′ W. long.;
(167) 36°31.74′ N. lat., 121°58.24′ W. long.;
(168) 36°30.57′ N. lat., 121°59.66′ W. long.;
(169) 36°27.80′ N. lat., 121°59.30′ W. long.;
(170) 36°26.52′ N. lat., 121°58.09′ W. long.;
(171) 36°23.65′ N. lat., 121°58.94′ W. long.;
(172) 36°20.93′ N. lat., 122°00.28′ W. long.;
(173) 36°18.23′ N. lat., 122°03.10′ W. long.;
(174) 36°14.21′ N. lat., 121°57.73′ W. long.;
(175) 36°14.68′ N. lat., 121°55.43′ W. long.;
(176) 36°10.42′ N. lat., 121°42.90′ W. long.;
(177) 36°02.55′ N. lat., 121°36.35′ W. long.;
(178) 36°01.04′ N. lat., 121°36.47′ W. long.;
(179) 36°00.00′ N. lat., 121°35.15′ W. long.;
(180) 35°58.25′ N. lat., 121°32.88′ W. long.;
(181) 35°39.35′ N. lat., 121°22.63′ W. long.;
(182) 35°24.44′ N. lat., 121°02.23′ W. long.;
(183) 35°10.84′ N. lat., 120°55.90′ W. long.;
(184) 35°04.35′ N. lat., 120°51.62′ W. long.;
(185) 34°55.25′ N. lat., 120°49.36′ W. long.;
(186) 34°47.95′ N. lat., 120°50.76′ W. long.;
(187) 34°39.27′ N. lat., 120°49.16′ W. long.;
(188) 34°31.05′ N. lat., 120°44.71′ W. long.;
(189) 34°27.00′ N. lat., 120°36.54′ W. long.;
(190) 34°22.60′ N. lat., 120°25.41′ W. long.;
(191) 34°25.45′ N. lat., 120°17.41′ W. long.;
(192) 34°22.94′ N. lat., 119°56.40′ W. long.;
(193) 34°18.37′ N. lat., 119°42.01′ W. long.;
(194) 34°11.22′ N. lat., 119°32.47′ W. long.;
(195) 34°09.58′ N. lat., 119°25.94′ W. long.;
(296) 34°03.89′ N. lat., 119°12.47′ W. long.;
(296) 34°03.57′ N. lat., 119°06.72′ W. long.;
(297) 34°04.53′ N. lat., 119°04.90′ W. long.;
(298) 34°02.84′ N. lat., 119°02.37′ W. long.;
(299) 34°01.30′ N. lat., 119°00.26′ W. long.;
(201) 34°00.22′ N. lat., 119°03.20′ W. long.;
(202) 33°59.60′ N. lat., 119°03.16′ W. long.;
(203) 33°59.46′ N. lat., 119°00.88′ W. long.;
(204) 34°00.49′ N. lat., 118°59.08′ W. long.;
(205) 33°59.07′ N. lat., 118°47.34′ W. long.;
(206) 33°58.73′ N. lat., 118°36.45′ W. long.;
(207) 33°55.24′ N. lat., 118°33.42′ W. long.;
(208) 33°53.71′ N. lat., 118°38.01′ W. long.;
(209) 33°51.22′ N. lat., 118°36.17′ W. long.;
(210) 33°49.85′ N. lat., 118°32.31′ W. long.;
(211) 33°49.61′ N. lat., 118°28.07′ W. long.;
(212) 33°49.95′ N. lat., 118°26.38′ W. long.;
(213) 33°50.36′ N. lat., 118°25.84′ W. long.;
(214) 33°49.84′ N. lat., 118°24.78′ W. long.;
(215) 33°47.53′ N. lat., 118°30.12′ W. long.;
(216) 33°44.11′ N. lat., 118°25.25′ W. long.;
(217) 33°41.77′ N. lat., 118°20.32′ W. long.;
(218) 33°38.17′ N. lat., 118°15.70′ W. long.;
(219) 33°37.48′ N. lat., 118°16.73′ W. long.;
(220) 33°36.01′ N. lat., 118°16.55′ W. long.;
(221) 33°33.76′ N. lat., 118°11.37′ W. long.;
(222) 33°33.76′ N. lat., 118°07.94′ W. long.;
(223) 33°35.59′ N. lat., 118°05.05′ W. long.;
(224) 33°33.75′ N. lat., 117°59.82′ W. long.;
(225) 33°35.10′ N. lat., 117°55.68′ W. long.;
(226) 33°34.91′ N. lat., 117°53.76′ W. long.;
(227) 33°30.77′ N. lat., 117°47.56′ W. long.;
(228) 33°27.50′ N. lat., 117°44.87′ W. long.;
(229) 33°16.89′ N. lat., 117°34.37′ W. long.;
(230) 33°06.66′ N. lat., 117°21.59′ W. long.;
(231) 33°03.35′ N. lat., 117°20.92′ W. long.;
(232) 33°00.07′ N. lat., 117°19.02′ W. long.;
(233) 32°55.99′ N. lat., 117°18.60′ W. long.;
(234) 32°54.43′ N. lat., 117°16.93′ W. long.;
(235) 32°52.13′ N. lat., 117°16.55′ W. long.;
(236) 32°52.61′ N. lat., 117°19.50′ W. long.;
(237) 32°46.95′ N. lat., 117°22.81′ W. long.;
(238) 32°45.01′ N. lat., 117°22.07′ W. long.;
(239) 32°43.40′ N. lat., 117°19.80′ W. long.; and
(240) 32°33.74′ N. lat., 117°18.67′ W. long.

(k) The 75 fm (137 m) depth contour around the northern Channel Islands off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 34°09.12′ N. lat., 120°35.03′ W. long.;
(2) 34°09.99′ N. lat., 120°27.85′ W. long.;
(3) 34°07.19′ N. lat., 120°16.28′ W. long.;

(4) 34°06.56′ N. lat., 120°04.00′ W. long.;
(5) 34°07.27′ N. lat., 119°57.76′ W. long.;
(6) 34°07.48′ N. lat., 119°52.08′ W. long.;
(7) 34°05.18′ N. lat., 119°37.94′ W. long.;
(8) 34°05.22′ N. lat., 119°35.52′ W. long.;
(9) 34°05.12′ N. lat., 119°32.74′ W. long.;
(10) 34°04.32′ N. lat., 119°27.32′ W. long.;
(11) 34°03.00′ N. lat., 119°21.36′ W. long.;
(12) 34°02.32′ N. lat., 119°18.46′ W. long.;
(13) 34°00.65′ N. lat., 119°19.42′ W. long.;
(14) 33°59.45′ N. lat., 119°22.38′ W. long.;
(15) 33°58.68′ N. lat., 119°32.36′ W. long.;
(16) 33°56.12′ N. lat., 119°41.10′ W. long.;
(17) 33°55.74′ N. lat., 119°48.00′ W. long.;
(18) 33°57.78′ N. lat., 119°53.04′ W. long.;
(19) 33°59.06′ N. lat., 119°55.38′ W. long.;
(20) 33°57.57′ N. lat., 119°54.93′ W. long.;
(21) 33°56.35′ N. lat., 119°53.91′ W. long.;
(22) 33°54.43′ N. lat., 119°54.07′ W. long.;
(23) 33°52.67′ N. lat., 119°54.78′ W. long.;
(24) 33°48.33′ N. lat., 119°55.09′ W. long.;
(25) 33°47.28′ N. lat., 119°57.30′ W. long.;
(26) 33°47.36′ N. lat., 120°00.39′ W. long.;
(27) 33°49.16′ N. lat., 120°05.06′ W. long.;
(28) 33°51.41′ N. lat., 120°06.49′ W. long.;
(29) 33°52.99′ N. lat., 120°10.01′ W. long.;
(30) 33°56.64′ N. lat., 120°18.88′ W. long.;
(31) 33°58.02′ N. lat., 120°21.41′ W. long.;
(32) 33°58.73′ N. lat., 120°25.22′ W. long.;
(33) 33°59.08′ N. lat., 120°26.58′ W. long.;
(34) 33°59.95′ N. lat., 120°28.21′ W. long.;
(35) 34°03.54′ N. lat., 120°32.23′ W. long.;
(36) 34°05.57′ N. lat., 120°34.23′ W. long.;
(37) 34°08.13′ N. lat., 120°36.05′ W. long.; and
(38) 34°09.12′ N. lat., 120°35.03′ W. long.

(l) The 75 fm (137 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°04.54′ N. lat., 118°37.54′ W. long.;
(2) 33°02.56′ N. lat., 118°34.12′ W. long.;
(3) 32°55.54′ N. lat., 118°28.87′ W. long.;
(4) 32°55.02′ N. lat., 118°27.69′ W. long.;
(5) 32°49.78′ N. lat., 118°20.88′ W. long.;
(6) 32°48.32′ N. lat., 118°19.89′ W. long.;
(7) 32°47.41′ N. lat., 118°21.98′ W. long.;
(8) 32°44.39′ N. lat., 118°24.49′ W. long.;
(9) 32°47.93′ N. lat., 118°29.90′ W. long.;
(10) 32°49.69′ N. lat., 118°31.52′ W. long.;
(11) 32°53.57′ N. lat., 118°33.09′ W. long.;
(12) 32°55.42′ N. lat., 118°35.17′ W. long.;
(13) 33°00.49′ N. lat., 118°38.56′ W. long.;
(14) 33°03.23′ N. lat., 118°39.16′ W. long.; and
(15) 33°04.54′ N. lat., 118°37.54′ W. long.

(m) The 75 fm (137 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°28.17′ N. lat., 118°38.16′ W. long.;
(2) 33°29.35′ N. lat., 118°36.23′ W. long.;
(3) 33°28.85′ N. lat., 118°30.85′ W. long.;
(4) 33°26.69′ N. lat., 118°27.37′ W. long.;
(5) 33°26.31′ N. lat., 118°25.14′ W. long.;
(6) 33°25.35′ N. lat., 118°22.83′ W. long.;
(7) 33°22.47′ N. lat., 118°18.53′ W. long.;
(8) 33°19.51′ N. lat., 118°16.82′ W. long.;
(9) 33°17.07′ N. lat., 118°16.38′ W. long.;
(10) 33°16.58′ N. lat., 118°17.61′ W. long.;
(11) 33°18.35′ N. lat., 118°27.86′ W. long.;
(12) 33°20.07′ N. lat., 118°32.12′ W. long.;
(13) 33°21.77′ N. lat., 118°31.85′ W. long.;
(14) 33°23.15′ N. lat., 118°29.99′ W. long.;
(15) 33°24.96′ N. lat., 118°32.21′ W. long.;
(16) 33°25.67′ N. lat., 118°34.88′ W. long.;
(17) 33°27.80′ N. lat., 118°37.90′ W. long.; and
(18) 33°28.17′ N. lat., 118°38.16′ W. long.

22. Section 660.393 is added to read as follows:

§ 660.393 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

Boundaries for RCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 100 fm (183 m) through 150 fm (274 m) depth contours.

(a) The 100 fm (183 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.80′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.67′ N. lat., 125°13.70′ W. long.;
(22) 48°19.70′ N. lat., 125°11.13′ W. long.;
(23) 48°22.95′ N. lat., 125°10.79′ W. long.;

(24) 48°21.61′ N. lat., 125°02.54′ W. long.;
(25) 48°23.00′ N. lat., 124°49.34′ W. long.;
(26) 48°17.00′ N. lat., 124°56.50′ W. long.;
(27) 48°06.00′ N. lat., 125°00.00′ W. long.;
(28) 48°04.62′ N. lat., 125°01.73′ W. long.;
(29) 48°04.84′ N. lat., 125°04.03′ W. long.;
(30) 48°06.41′ N. lat., 125°06.51′ W. long.;
(31) 48°06.00′ N. lat., 125°08.00′ W. long.;
(32) 48°07.08′ N. lat., 125°09.34′ W. long.;
(33) 48°07.28′ N. lat., 125°11.14′ W. long.;
(34) 48°03.45′ N. lat., 125°16.66′ W. long.;
(35) 47°59.50′ N. lat., 125°18.88′ W. long.;
(36) 47°58.68′ N. lat., 125°16.19′ W. long.;
(37) 47°56.62′ N. lat., 125°13.50′ W. long.;
(38) 47°53.71′ N. lat., 125°11.96′ W. long.;
(39) 47°51.70′ N. lat., 125°09.38′ W. long.;
(40) 47°49.95′ N. lat., 125°06.07′ W. long.;
(41) 47°49.00′ N. lat., 125°03.00′ W. long.;
(42) 47°46.95′ N. lat., 125°04.00′ W. long.;
(43) 47°46.58′ N. lat., 125°03.15′ W. long.;
(44) 47°44.07′ N. lat., 125°04.28′ W. long.;
(45) 47°43.32′ N. lat., 125°04.41′ W. long.;
(46) 47°40.95′ N. lat., 125°04.14′ W. long.;
(47) 47°39.58′ N. lat., 125°04.97′ W. long.;
(48) 47°36.23′ N. lat., 125°02.77′ W. long.;
(49) 47°34.28′ N. lat., 124°58.66′ W. long.;
(50) 47°32.17′ N. lat., 124°57.77′ W. long.;
(51) 47°30.27′ N. lat., 124°56.16′ W. long.;
(52) 47°30.60′ N. lat., 124°54.80′ W. long.;
(53) 47°29.26′ N. lat., 124°52.21′ W. long.;
(54) 47°28.21′ N. lat., 124°50.65′ W. long.;
(55) 47°27.38′ N. lat., 124°49.34′ W. long.;
(56) 47°25.61′ N. lat., 124°48.26′ W. long.;
(57) 47°23.54′ N. lat., 124°46.42′ W. long.;
(58) 47°20.64′ N. lat., 124°45.91′ W. long.;
(59) 47°17.99′ N. lat., 124°45.59′ W. long.;
(60) 47°18.20′ N. lat., 124°49.12′ W. long.;
(61) 47°15.01′ N. lat., 124°51.09′ W. long.;
(62) 47°12.61′ N. lat., 124°54.89′ W. long.;
(63) 47°08.22′ N. lat., 124°56.53′ W. long.;
(64) 47°08.50′ N. lat., 124°57.74′ W. long.;
(65) 47°01.92′ N. lat., 124°54.95′ W. long.;
(66) 47°01.14′ N. lat., 124°59.35′ W. long.;
(67) 46°58.48′ N. lat., 124°57.81′ W. long.;
(68) 46°56.79′ N. lat., 124°56.03′ W. long.;
(69) 46°58.01′ N. lat., 124°55.09′ W. long.;
(70) 46°55.07′ N. lat., 124°54.14′ W. long.;
(71) 46°59.60′ N. lat., 124°49.79′ W. long.;
(72) 46°58.72′ N. lat., 124°48.78′ W. long.;
(73) 46°54.45′ N. lat., 124°48.36′ W. long.;
(74) 46°53.99′ N. lat., 124°49.95′ W. long.;
(75) 46°54.38′ N. lat., 124°52.73′ W. long.;
(76) 46°52.38′ N. lat., 124°52.02′ W. long.;
(77) 46°48.93′ N. lat., 124°49.17′ W. long.;
(78) 46°41.50′ N. lat., 124°43.00′ W. long.;
(79) 46°34.50′ N. lat., 124°28.50′ W. long.;
(80) 46°29.00′ N. lat., 124°30.00′ W. long.;
(81) 46°20.00′ N. lat., 124°36.50′ W. long.;
(82) 46°18.00′ N. lat., 124°38.00′ W. long.;
(83) 46°17.52′ N. lat., 124°35.35′ W. long.;
(84) 46°17.00′ N. lat., 124°22.50′ W. long.;
(85) 46°16.00′ N. lat., 124°20.62′ W. long.;
(86) 46°13.52′ N. lat., 124°25.49′ W. long.;
(87) 46°12.17′ N. lat., 124°30.75′ 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.;
(166) 40°10.00′ N. lat., 124°21.12′ W. long.;
(167) 40°07.70′ N. lat., 124°18.44′ W. long.;
(168) 40°08.84′ N. lat., 124°15.86′ W. long.;
(169) 40°06.53′ N. lat., 124°17.39′ W. long.;
(170) 40°03.15′ N. lat., 124°14.43′ W. long.;
(171) 40°02.19′ N. lat., 124°12.85′ W. long.;
(172) 40°02.89′ N. lat., 124°11.78′ W. long.;
(173) 40°02.78′ N. lat., 124°10.70′ W. long.;
(174) 40°04.57′ N. lat., 124°10.08′ W. long.;
(175) 40°06.06′ N. lat., 124°08.30′ W. long.;
(176) 40°04.05′ N. lat., 124°08.93′ W. long.;
(177) 40°01.17′ N. lat., 124°08.80′ W. long.;
(179) 40°01.03′ N. lat., 124°10.06′ W. long.;
(179) 39°58.07′ N. lat., 124°11.89′ W. long.;
(180) 39°56.39′ N. lat., 124°08.71′ W. long.;
(181) 39°54.64′ N. lat., 124°07.30′ W. long.;
(182) 39°53.86′ N. lat., 124°07.95′ W. long.;
(183) 39°51.95′ N. lat., 124°07.63′ W. long.;
(184) 39°48.78′ N. lat., 124°03.29′ W. long.;
(185) 39°47.36′ N. lat., 124°03.31′ W. long.;
(186) 39°40.08′ N. lat., 123°58.37′ W. long.;
(187) 39°36.16′ N. lat., 123°56.90′ W. long.;
(188) 39°30.75′ N. lat., 123°55.86′ W. long.;
(189) 39°31.62′ N. lat., 123°57.33′ W. long.;
(190) 39°30.91′ N. lat., 123°57.88′ W. long.;
(191) 39°01.79′ N. lat., 123°56.59′ W. long.;
(192) 38°59.42′ N. lat., 123°55.67′ W. long.;
(193) 38°58.89′ N. lat., 123°56.28′ W. long.;
(194) 38°57.50′ N. lat., 123°56.28′ W. long.;
(195) 38°54.72′ N. lat., 123°55.68′ W. long.;
(196) 38°48.95′ N. lat., 123°51.85′ W. long.;
(197) 38°36.67′ N. lat., 123°40.20′ W. long.;
(198) 38°33.82′ N. lat., 123°39.23′ W. long.;
(199) 38°29.02′ N. lat., 123°33.52′ W. long.;
(200) 38°18.88′ N. lat., 123°25.93′ W. long.;
(201) 38°14.12′ N. lat., 123°23.26′ W. long.;
(202) 38°11.07′ N. lat., 123°22.07′ W. long.;
(203) 38°03.19′ N. lat., 123°20.70′ W. long.;
(204) 38°00.00′ N. lat., 123°23.08′ W. long.;
(205) 37°55.07′ N. lat., 123°26.81′ W. long.;
(206) 37°50.66′ N. lat., 123°23.06′ W. long.;
(207) 37°45.18′ N. lat., 123°11.88′ W. long.;
(208) 37°35.67′ N. lat., 123°01.20′ W. long.;
(209) 37°15.58′ N. lat., 122°48.36′ W. long.;
(210) 37°11.00′ N. lat., 122°44.50′ W. long.;
(211) 37°07.00′ N. lat., 122°41.25′ W. long.;
(212) 37°03.18′ N. lat., 122°38.15′ W. long.;
(213) 37°00.48′ N. lat., 122°33.93′ W. long.;
(214) 36°58.70′ N. lat., 122°27.22′ W. long.;
(215) 37°00.85′ N. lat., 122°24.70′ W. long.;
(216) 36°58.00′ N. lat., 122°24.14′ W. long.;
(217) 36°58.74′ N. lat., 122°21.51′ W. long.;
(218) 36°56.97′ N. lat., 122°21.32′ W. long.;
(219) 36°51.52′ N. lat., 122°10.68′ W. long.;
(220) 36°48.39′ N. lat., 122°07.60′ W. long.;
(221) 36°47.43′ N. lat., 122°03.22′ W. long.;
(222) 36°50.95′ N. lat., 121°58.03′ W. long.;
(223) 36°49.92′ N. lat., 121°58.01′ W. long.;
(224) 36°48.88′ N. lat., 121°58.90′ W. long.;
(225) 36°47.70′ N. lat., 121°58.75′ W. long.;
(226) 36°48.37′ N. lat., 121°51.14′ W. long.;
(227) 36°45.74′ N. lat., 121°54.17′ W. long.;
(228) 36°45.51′ N. lat., 121°57.72′ W. long.;
(229) 36°38.84′ N. lat., 122°01.32′ W. long.;
(230) 36°35.62′ N. lat., 122°00.98′ W. long.;
(231) 36°32.46′ N. lat., 121°59.15′ W. long.;
(232) 36°32.79′ N. lat., 121°57.67′ W. long.;
(233) 36°31.98′ N. lat., 121°56.55′ W. long.;

(234) 36°31.79′ N. lat., 121°58.40′ W. long.;
(235) 36°30.73′ N. lat., 121°59.70′ W. long.;
(236) 36°30.31′ N. lat., 122°00.22′ W. long.;
(237) 36°29.35′ N. lat., 122°00.36′ W. long.;
(238) 36°27.66′ N. lat., 121°59.80′ W. long.;
(239) 36°26.22′ N. lat., 121°58.35′ W. long.;
(240) 36°21.20′ N. lat., 122°00.72′ W. long.;
(241) 36°20.47′ N. lat., 122°02.92′ W. long.;
(242) 36°18.46′ N. lat., 122°04.51′ W. long.;
(243) 36°15.92′ N. lat., 122°01.33′ W. long.;
(244) 36°13.76′ N. lat., 121°57.27′ W. long.;
(245) 36°14.43′ N. lat., 121°55.43′ W. long.;
(246) 36°10.24′ N. lat., 121°43.08′ W. long.;
(247) 36°07.66′ N. lat., 121°40.91′ W. long.;
(248) 36°02.49′ N. lat., 121°36.51′ W. long.;
(249) 36°01.07′ N. lat., 121°36.82′ W. long.;
(250) 36°00.00′ N. lat., 121°35.15′ W. long.;
(251) 35°57.84′ N. lat., 121°33.10′ W. long.;
(252) 35°50.36′ N. lat., 121°29.32′ W. long.;
(253) 35°39.03′ N. lat., 121°22.86′ W. long.;
(254) 35°24.30′ N. lat., 121°02.56′ W. long.;
(255) 35°16.53′ N. lat., 121°00.39′ W. long.;
(256) 35°04.82′ N. lat., 120°53.96′ W. long.;
(257) 34°52.51′ N. lat., 120°51.62′ W. long.;
(258) 34°43.36′ N. lat., 120°52.12′ W. long.;
(259) 34°37.64′ N. lat., 120°49.99′ W. long.;
(260) 34°30.80′ N. lat., 120°45.02′ W. long.;
(261) 34°27.00′ N. lat., 120°39.00′ W. long.;
(262) 34°21.90′ N. lat., 120°25.25′ W. long.;
(263) 34°24.86′ N. lat., 120°16.81′ W. long.;
(264) 34°22.80′ N. lat., 119°57.06′ W. long.;
(265) 34°18.59′ N. lat., 119°44.84′ W. long.;
(266) 34°15.04′ N. lat., 119°40.34′ W. long.;
(267) 34°14.40′ N. lat., 119°45.39′ W. long.;
(268) 34°12.32′ N. lat., 119°42.41′ W. long.;
(269) 34°09.71′ N. lat., 119°28.85′ W. long.;
(270) 34°04.70′ N. lat., 119°15.38′ W. long.;
(271) 34°03.33′ N. lat., 119°12.93′ W. long.;
(272) 34°02.72′ N. lat., 119°07.01′ W. long.;
(273) 34°03.90′ N. lat., 119°04.64′ W. long.;
(274) 34°01.80′ N. lat., 119°03.23′ W. long.;
(275) 33°59.32′ N. lat., 119°03.50′ W. long.;
(276) 33°59.00′ N. lat., 118°59.55′ W. long.;
(277) 33°59.51′ N. lat., 118°57.25′ W. long.;
(278) 33°58.82′ N. lat., 118°52.47′ W. long.;
(279) 33°58.54′ N. lat., 118°41.86′ W. long.;
(280) 33°55.07′ N. lat., 118°34.25′ W. long.;
(281) 33°54.28′ N. lat., 118°38.68′ W. long.;
(282) 33°51.00′ N. lat., 118°36.66′ W. long.;
(283) 33°39.77′ N. lat., 118°18.41′ W. long.;
(284) 33°35.50′ N. lat., 118°16.85′ W. long.;
(285) 33°32.68′ N. lat., 118°09.82′ W. long.;
(286) 33°34.09′ N. lat., 117°54.06′ W. long.;
(287) 33°31.60′ N. lat., 117°49.28′ W. long.;
(288) 33°16.07′ N. lat., 117°34.74′ W. long.;
(289) 33°07.06′ N. lat., 117°22.71′ W. long.;
(290) 32°59.28′ N. lat., 117°19.69′ W. long.;
(291) 32°55.36′ N. lat., 117°19.54′ W. long.;
(292) 32°53.35′ N. lat., 117°17.05′ W. long.;
(293) 32°53.34′ N. lat., 117°19.13′ W. long.;
(294) 32°46.39′ N. lat., 117°23.45′ W. long.;
(295) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(296) 32°34.22′ N. lat., 117°21.20′ W. long.

(b) The 100 fm (183 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°04.73′ N. lat., 118°37.98′ W. long.;
(2) 33°02.67′ N. lat., 118°34.06′ W. long.;
(3) 32°55.80′ N. lat., 118°28.92′ W. long.;
(4) 32°49.78′ N. lat., 118°20.88′ W. long.;
(5) 32°48.01′ N. lat., 118°19.49′ W. long.;
(6) 32°47.53′ N. lat., 118°21.76′ W. long.;
(7) 32°44.03′ N. lat., 118°24.70′ W. long.;
(8) 32°49.75′ N. lat., 118°32.10′ W. long.;
(9) 32°53.36′ N. lat., 118°33.23′ W. long.;
(10) 32°55.17′ N. lat., 118°34.64′ W. long.;
(11) 32°55.13′ N. lat., 118°35.31′ W. long.;
(12) 33°00.22′ N. lat., 118°38.68′ W. long.;
(13) 33°03.13′ N. lat., 118°39.59′ W. long.; and
(14) 33°04.73′ N. lat., 118°37.98′ W. long.

(c) The 100 fm (183 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°28.23′ N. lat., 118°39.38′ W. long.;
(2) 33°29.60′ N. lat., 118°36.11′ W. long.;
(3) 33°29.14′ N. lat., 118°30.81′ W. long.;
(4) 33°26.97′ N. lat., 118°27.57′ W. long.;
(5) 33°25.68′ N. lat., 118°23.00′ W. long.;
(6) 33°22.67′ N. lat., 118°18.41′ W. long.;
(7) 33°19.72′ N. lat., 118°16.25′ W. long.;
(8) 33°17.14′ N. lat., 118°14.96′ W. long.;
(9) 33°16.09′ N. lat., 118°15.46′ W. long.;
(10) 33°18.10′ N. lat., 118°27.95′ W. long.;
(11) 33°19.84′ N. lat., 118°32.16′ W. long.;
(12) 33°20.83′ N. lat., 118°32.83′ W. long.;
(13) 33°21.91′ N. lat., 118°31.98′ W. long.;
(14) 33°23.05′ N. lat., 118°30.11′ W. long.;
(15) 33°24.87′ N. lat., 118°32.45′ W. long.;
(16) 33°25.30′ N. lat., 118°34.32′ W. long.; and
(17) 33°28.23′ N. lat., 118°39.38′ W. long.

(d) The 125 fm (229 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
(1) 48°15.00′ N. lat., 125°41.13′ W. long.;
(2) 48°13.05′ N. lat., 125°37.43′ W. long.;

(3) 48°08.62′ N. lat., 125°41.68′ W. long.;
(4) 48°07.42′ N. lat., 125°42.38′ W. long.;
(5) 48°04.20′ N. lat., 125°36.57′ W. long.;
(6) 48°02.79′ N. lat., 125°35.55′ W. long.;
(7) 48°00.48′ N. lat., 125°37.84′ W. long.;
(8) 47°54.90′ N. lat., 125°34.79′ W. long.;
(9) 47°58.37′ N. lat., 125°26.58′ W. long.;
(10) 47°59.84′ N. lat., 125°25.20′ W. long.;
(11) 48°01.85′ N. lat., 125°24.12′ W. long.;
(12) 48°02.13′ N. lat., 125°22.80′ W. long.;
(13) 48°03.31′ N. lat., 125°22.46′ W. long.;
(14) 48°06.83′ N. lat., 125°17.73′ W. long.;
(15) 48°10.08′ N. lat., 125°15.56′ W. long.;
(16) 48°11.24′ N. lat., 125°13.72′ W. long.;
(17) 48°12.41′ N. lat., 125°14.48′ W. long.;
(18) 48°13.01′ N. lat., 125°13.77′ W. long.;
(19) 48°13.59′ N. lat., 125°12.83′ W. long.;
(20) 48°12.22′ N. lat., 125°12.28′ W. long.;
(21) 48°11.15′ N. lat., 125°12.26′ W. long.;
(22) 48°10.18′ N. lat., 125°10.44′ W. long.;
(23) 48°10.18′ N. lat., 125°06.32′ W. long.;
(24) 48°15.39′ N. lat., 125°02.83′ W. long.;
(25) 48°18.32′ N. lat., 125°01.00′ W. long.;
(26) 48°21.67′ N. lat., 125°01.86′ W. long.;
(27) 48°25.70′ N. lat., 125°00.10′ W. long.;
(28) 48°26.43′ N. lat., 124°56.65′ W. long.;
(29) 48°24.28′ N. lat., 124°56.48′ W. long.;
(30) 48°23.27′ N. lat., 124°59.12′ W. long.;
(31) 48°21.79′ N. lat., 124°59.30′ W. long.;
(32) 48°20.71′ N. lat., 124°58.74′ W. long.;
(33) 48°19.84′ N. lat., 124°57.09′ W. long.;
(34) 48°22.06′ N. lat., 124°54.78′ W. long.;
(35) 48°22.45′ N. lat., 124°53.35′ W. long.;
(36) 48°22.74′ N. lat., 124°50.96′ W. long.;
(37) 48°21.04′ N. lat., 124°52.60′ W. long.;
(38) 48°18.07′ N. lat., 124°55.85′ W. long.;
(39) 48°15.03′ N. lat., 124°58.16′ W. long.;
(40) 48°11.31′ N. lat., 124°58.53′ W. long.;
(41) 48°06.25′ N. lat., 125°00.06′ W. long.;
(42) 48°04.70′ N. lat., 125°01.80′ W. long.;
(43) 48°04.93′ N. lat., 125°03.92′ W. long.;
(44) 48°06.44′ N. lat., 125°06.50′ W. long.;
(45) 48°07.34′ N. lat., 125°09.35′ W. long.;
(46) 48°07.62′ N. lat., 125°11.37′ W. long.;
(47) 48°03.71′ N. lat., 125°17.63′ W. long.;
(48) 48°01.35′ N. lat., 125°18.66′ W. long.;
(49) 48°00.05′ N. lat., 125°19.66′ W. long.;
(50) 47°59.51′ N. lat., 125°18.90′ W. long.;
(51) 47°58.29′ N. lat., 125°16.64′ W. long.;
(52) 47°54.67′ N. lat., 125°13.20′ W. long.;
(53) 47°53.15′ N. lat., 125°12.53′ W. long.;
(54) 47°48.46′ N. lat., 125°04.72′ W. long.;
(55) 47°46.10′ N. lat., 125°04.00′ W. long.;
(56) 47°44.60′ N. lat., 125°04.49′ W. long.;
(57) 47°42.90′ N. lat., 125°04.72′ W. long.;
(58) 47°40.71′ N. lat., 125°04.68′ W. long.;
(59) 47°39.02′ N. lat., 125°05.63′ W. long.;
(60) 47°34.86′ N. lat., 125°02.11′ W. long.;
(61) 47°31.64′ N. lat., 124°58.11′ W. long.;
(62) 47°29.69′ N. lat., 124°55.71′ W. long.;
(63) 47°29.35′ N. lat., 124°53.23′ W. long.;
(64) 47°28.56′ N. lat., 124°51.34′ W. long.;
(65) 47°25.31′ N. lat., 124°48.20′ W. long.;
(66) 47°23.92′ N. lat., 124°47.15′ W. long.;
(67) 47°18.09′ N. lat., 124°45.74′ W. long.;
(68) 47°18.65′ N. lat., 124°51.51′ W. long.;
(69) 47°18.12′ N. lat., 124°52.58′ W. long.;
(70) 47°17.64′ N. lat., 124°50.45′ W. long.;
(71) 47°16.31′ N. lat., 124°50.92′ W. long.;
(72) 47°15.60′ N. lat., 124°52.62′ W. long.;
(73) 47°14.25′ N. lat., 124°52.49′ W. long.;
(74) 47°11.32′ N. lat., 124°57.19′ W. long.;
(75) 47°09.14′ N. lat., 124°57.46′ W. long.;
(76) 47°08.83′ N. lat., 124°58.47′ W. long.;
(77) 47°05.88′ N. lat., 124°58.26′ W. long.;
(78) 47°03.60′ N. lat., 124°55.84′ W. long.;
(79) 47°02.91′ N. lat., 124°56.15′ W. long.;
(80) 47°01.08′ N. lat., 124°59.46′ W. long.;
(81) 46°58.13′ N. lat., 124°58.83′ W. long.;
(82) 46°57.44′ N. lat., 124°57.78′ W. long.;
(83) 46°55.98′ N. lat., 124°54.60′ W. long.;
(84) 46°54.90′ N. lat., 124°54.14′ W. long.;
(85) 46°58.47′ N. lat., 124°49.65′ W. long.;
(86) 46°54.44′ N. lat., 124°48.79′ W. long.;
(87) 46°54.41′ N. lat., 124°52.87′ W. long.;
(88) 46°49.36′ N. lat., 124°52.77′ W. long.;
(89) 46°40.06′ N. lat., 124°45.34′ W. long.;
(90) 46°39.64′ N. lat., 124°42.21′ W. long.;
(91) 46°34.27′ N. lat., 124°34.63′ W. long.;
(92) 46°33.58′ N. lat., 124°29.10′ W. long.;
(93) 46°25.64′ N. lat., 124°32.57′ W. long.;
(94) 46°21.33′ N. lat., 124°36.36′ W. long.;
(95) 46°20.59′ N. lat., 124°36.15′ W. long.;
(96) 46°19.38′ N. lat., 124°38.21′ W. long.;
(97) 46°17.94′ N. lat., 124°38.10′ W. long.;
(98) 46°16.00′ N. lat., 124°22.17′ W. long.;
(99) 46°13.37′ N. lat., 124°30.70′ W. long.;
(100) 46°12.20′ N. lat., 124°36.04′ W. long.;
(101) 46°11.01′ N. lat., 124°38.68′ W. long.;
(102) 46°09.73′ N. lat., 124°39.91′ W. long.;
(103) 46°03.23′ N. lat., 124°42.03′ W. long.;
(104) 46°01.17′ N. lat., 124°42.06′ W. long.;
(105) 46°00.35′ N. lat., 124°42.26′ W. long.;
(106) 45°52.81′ N. lat., 124°41.62′ W. long.;
(107) 45°49.70′ N. lat., 124°41.14′ W. long.;

(108) 45°46.00′ N. lat., 124°38.92′ W. long.;
(109) 45°45.18′ N. lat., 124°38.39′ W. long.;
(110) 45°43.24′ N. lat., 124°37.77′ W. long.;
(111) 45°34.75′ N. lat., 124°28.59′ W. long.;
(112) 45°20.25′ N. lat., 124°21.52′ W. long.;
(113) 45°19.90′ N. lat., 124°21.34′ W. long.;
(114) 45°12.44′ N. lat., 124°19.35′ W. long.;
(115) 45°07.48′ N. lat., 124°19.73′ W. long.;
(116) 45°03.83′ N. lat., 124°21.20′ W. long.;
(117) 44°59.96′ N. lat., 124°22.91′ W. long.;
(118) 44°54.72′ N. lat., 124°26.84′ W. long.;
(119) 44°51.15′ N. lat., 124°31.41′ W. long.;
(120) 44°49.97′ N. lat., 124°32.37′ W. long.;
(121) 44°47.06′ N. lat., 124°34.43′ W. long.;
(122) 44°41.37′ N. lat., 124°36.51′ W. long.;
(123) 44°32.78′ N. lat., 124°37.86′ W. long.;
(124) 44°29.44′ N. lat., 124°44.25′ W. long.;
(125) 44°27.95′ N. lat., 124°45.13′ W. long.;
(126) 44°24.73′ N. lat., 124°47.42′ W. long.;
(127) 44°19.67′ N. lat., 124°51.17′ W. long.;
(128) 44°17.96′ N. lat., 124°52.53′ W. long.;
(129) 44°13.70′ N. lat., 124°56.45′ W. long.;
(130) 44°12.26′ N. lat., 124°57.53′ W. long.;
(131) 44°08.30′ N. lat., 124°57.17′ W. long.;
(132) 44°07.57′ N. lat., 124°57.19′ W. long.;
(133) 44°04.78′ N. lat., 124°56.31′ W. long.;
(134) 44°01.14′ N. lat., 124°56.07′ W. long.;
(135) 43°57.39′ N. lat., 124°57.01′ W. long.;
(136) 43°54.58′ N. lat., 124°52.18′ W. long.;
(137) 43°53.18′ N. lat., 124°47.41′ W. long.;
(138) 43°53.60′ N. lat., 124°37.45′ W. long.;
(139) 43°53.04′ N. lat., 124°36.00′ W. long.;
(140) 43°47.93′ N. lat., 124°35.18′ W. long.;
(141) 43°39.32′ N. lat., 124°35.14′ W. long.;
(142) 43°32.38′ N. lat., 124°35.26′ W. long.;
(143) 43°30.32′ N. lat., 124°36.79′ W. long.;
(144) 43°27.81′ N. lat., 124°36.42′ W. long.;
(145) 43°23.73′ N. lat., 124°39.66′ W. long.;
(146) 43°20.83′ N. lat., 124°41.18′ W. long.;
(147) 43°10.48′ N. lat., 124°43.54′ W. long.;
(148) 43°04.77′ N. lat., 124°45.51′ W. long.;
(149) 43°05.94′ N. lat., 124°49.77′ W. long.;
(150) 43°03.38′ N. lat., 124°51.86′ W. long.;
(151) 42°59.32′ N. lat., 124°51.93′ W. long.;
(152) 42°56.80′ N. lat., 124°53.38′ W. long.;
(153) 42°54.54′ N. lat., 124°52.72′ W. long.;
(154) 42°52.89′ N. lat., 124°47.45′ W. long.;
(155) 42°50.00′ N. lat., 124°47.03′ W. long.;
(156) 42°48.10′ N. lat., 124°46.75′ W. long.;
(157) 42°46.34′ N. lat., 124°43.53′ W. long.;
(158) 42°41.66′ N. lat., 124°42.70′ W. long.;
(159) 42°40.50′ N. lat., 124°42.69′ W. long.;
(160) 42°32.53′ N. lat., 124°42.77′ W. long.;
(161) 42°29.74′ N. lat., 124°43.81′ W. long.;
(162) 42°28.07′ N. lat., 124°47.65′ W. long.;
(163) 42°21.58′ N. lat., 124°41.41′ W. long.;
(164) 42°15.17′ N. lat., 124°36.25′ W. long.;
(165) 42°13.67′ N. lat., 124°36.20′ W. long.;
(166) 42°08.28′ N. lat., 124°36.08′ W. long.;
(167) 42°00.00′ N. lat., 124°35.46′ W. long.;
(168) 41°47.67′ N. lat., 124°28.67′ W. long.;
(169) 41°32.91′ N. lat., 124°29.01′ W. long.;
(170) 41°22.57′ N. lat., 124°28.66′ W. long.;
(171) 41°13.38′ N. lat., 124°22.88′ W. long.;
(172) 41°06.42′ N. lat., 124°22.02′ W. long.;
(173) 40°50.19′ N. lat., 124°25.58′ W. long.;
(174) 40°44.08′ N. lat., 124°30.43′ W. long.;
(175) 40°40.54′ N. lat., 124°31.75′ W. long.;
(176) 40°37.36′ N. lat., 124°29.17′ W. long.;
(177) 40°35.30′ N. lat., 124°30.03′ W. long.;
(178) 40°37.02′ N. lat., 124°37.10′ W. long.;
(179) 40°35.82′ N. lat., 124°39.58′ W. long.;
(180) 40°31.70′ N. lat., 124°39.97′ W. long.;
(181) 40°30.00′ N. lat., 124°38.50′ W. long.;
(182) 40°24.77′ N. lat., 124°35.39′ W. long.;
(183) 40°23.22′ N. lat., 124°31.87′ W. long.;
(184) 40°23.40′ N. lat., 124°28.65′ W. long.;
(185) 40°22.30′ N. lat., 124°25.27′ W. long.;
(186) 40°21.91′ N. lat., 124°25.18′ W. long.;
(187) 40°21.91′ N. lat., 124°27.97′ W. long.;
(188) 40°21.37′ N. lat., 124°29.03′ W. long.;
(189) 40°19.74′ N. lat., 124°28.71′ W. long.;
(190) 40°18.52′ N. lat., 124°27.26′ W. long.;
(191) 40°17.57′ N. lat., 124°25.49′ W. long.;
(192) 40°18.20′ N. lat., 124°23.63′ W. long.;
(193) 40°15.89′ N. lat., 124°26.00′ W. long.;
(194) 40°17.00′ N. lat., 124°35.01′ W. long.;
(195) 40°15.97′ N. lat., 124°35.91′ W. long.;
(196) 40°10.00′ N. lat., 124°22.00′ W. long.;
(197) 40°07.35′ N. lat., 124°18.64′ W. long.;
(198) 40°08.46′ N. lat., 124°16.24′ W. long.;
(199) 40°06.26′ N. lat., 124°17.54′ W. long.;
(200) 40°03.26′ N. lat., 124°15.30′ W. long.;
(201) 40°02.00′ N. lat., 124°12.97′ W. long.;
(202) 40°02.60′ N. lat., 124°10.61′ W. long.;
(203) 40°03.63′ N. lat., 124°09.12′ W. long.;
(204) 40°02.18′ N. lat., 124°09.07′ W. long.;
(205) 40°01.26′ N. lat., 124°09.86′ W. long.;
(206) 39°58.05′ N. lat., 124°11.87′ W. long.;
(207) 39°56.39′ N. lat., 124°08.70′ W. long.;
(208) 39°54.64′ N. lat., 124°07.31′ W. long.;
(209) 39°53.87′ N. lat., 124°07.95′ W. long.;
(210) 39°52.42′ N. lat., 124°08.18′ W. long.;
(211) 39°42.50′ N. lat., 124°00.60′ W. long.;
(212) 39°34.23′ N. lat., 123°56.82′ W. long.;

(213) 39°33.00′ N. lat., 123°56.44′ W. long.;
(214) 39°30.96′ N. lat., 123°56.00′ W. long.;
(215) 39°32.03′ N. lat., 123°57.44′ W. long.;
(216) 39°31.43′ N. lat., 123°58.16′ W. long.;
(217) 39°05.56′ N. lat., 123°57.24′ W. long.;
(218) 39°01.75′ N. lat., 123°56.83′ W. long.;
(219) 38°59.52′ N. lat., 123°55.95′ W. long.;
(220) 38°58.98′ N. lat., 123°56.57′ W. long.;
(221) 38°57.50′ N. lat., 123°56.57′ W. long.;
(222) 38°53.91′ N. lat., 123°56.00′ W. long.;
(223) 38°42.57′ N. lat., 123°46.60′ W. long.;
(224) 38°28.72′ N. lat., 123°35.61′ W. long.;
(225) 38°28.01′ N. lat., 123°36.47′ W. long.;
(226) 38°20.94′ N. lat., 123°31.26′ W. long.;
(227) 38°15.94′ N. lat., 123°25.33′ W. long.;
(228) 38°10.95′ N. lat., 123°23.19′ W. long.;
(229) 38°05.52′ N. lat., 123°22.90′ W. long.;
(230) 38°08.46′ N. lat., 123°26.23′ W. long.;
(231) 38°06.95′ N. lat., 123°28.03′ W. long.;
(232) 38°06.34′ N. lat., 123°29.80′ W. long.;
(233) 38°04.57′ N. lat., 123°31.24′ W. long.;
(234) 38°02.33′ N. lat., 123°31.02′ W. long.;
(235) 38°00.00′ N. lat., 123°28.23′ W. long.;
(236) 37°58.10′ N. lat., 123°26.69′ W. long.;
(237) 37°55.46′ N. lat., 123°27.05′ W. long.;
(238) 37°51.51′ N. lat., 123°24.86′ W. long.;
(239) 37°45.01′ N. lat., 123°12.09′ W. long.;
(240) 37°35.67′ N. lat., 123°01.56′ W. long.;
(241) 37°26.62′ N. lat., 122°56.21′ W. long.;
(242) 37°14.41′ N. lat., 122°49.07′ W. long.;
(243) 37°11.00′ N. lat., 122°45.87′ W. long.;
(244) 37°07.00′ N. lat., 122°41.97′ W. long.;
(245) 37°03.19′ N. lat., 122°38.31′ W. long.;
(246) 37°00.99′ N. lat., 122°35.51′ W. long.;
(247) 36°58.23′ N. lat., 122°27.36′ W. long.;
(248) 37°00.54′ N. lat., 122°24.74′ W. long.;
(249) 36°57.81′ N. lat., 122°24.65′ W. long.;
(250) 36°58.54′ N. lat., 122°21.67′ W. long.;
(251) 36°56.52′ N. lat., 122°21.70′ W. long.;
(252) 36°55.37′ N. lat., 122°18.45′ W. long.;
(253) 36°52.16′ N. lat., 122°12.17′ W. long.;
(244) 36°51.53′ N. lat., 122°10.67′ W. long.;
(255) 36°48.05′ N. lat., 122°07.59′ W. long.;
(256) 36°47.35′ N. lat., 122°03.27′ W. long.;
(257) 36°50.71′ N. lat., 121°58.17′ W. long.;
(258) 36°48.89′ N. lat., 121°58.90′ W. long.;
(259) 36°47.70′ N. lat., 121°58.76′ W. long.;
(260) 36°48.37′ N. lat., 121°51.15′ W. long.;
(261) 36°45.74′ N. lat., 121°54.18′ W. long.;
(262) 36°45.50′ N. lat., 121°57.73′ W. long.;
(263) 36°44.02′ N. lat., 121°58.55′ W. long.;
(264) 36°38.84′ N. lat., 122°01.32′ W. long.;
(265) 36°35.63′ N. lat., 122°00.98′ W. long.;
(266) 36°32.47′ N. lat., 121°59.17′ W. long.;
(267) 36°32.52′ N. lat., 121°57.62′ W. long.;
(268) 36°30.16′ N. lat., 122°00.55′ W. long.;
(269) 36°24.56′ N. lat., 121°59.19′ W. long.;
(270) 36°22.19′ N. lat., 122°00.30′ W. long.;
(271) 36°20.62′ N. lat., 122°02.93′ W. long.;
(272) 36°18.89′ N. lat., 122°05.18′ W. long.;
(273) 36°14.45′ N. lat., 121°59.44′ W. long.;
(274) 36°13.73′ N. lat., 121°57.38′ W. long.;
(275) 36°14.41′ N. lat., 121°55.45′ W. long.;
(276) 36°10.25′ N. lat., 121°43.08′ W. long.;
(277) 36°07.67′ N. lat., 121°40.92′ W. long.;
(278) 36°02.51′ N. lat., 121°36.76′ W. long.;
(279) 36°00.00′ N. lat., 121°35.15′ W. long.;
(280) 35°57.84′ N. lat., 121°33.10′ W. long.;
(281) 35°45.57′ N. lat., 121°27.26′ W. long.;
(282) 35°39.02′ N. lat., 121°22.86′ W. long.;
(283) 35°25.92′ N. lat., 121°05.52′ W. long.;
(284) 35°16.26′ N. lat., 121°01.50′ W. long.;
(285) 35°07.60′ N. lat., 120°56.49′ W. long.;
(286) 34°57.77′ N. lat., 120°53.87′ W. long.;
(287) 34°42.30′ N. lat., 120°53.42′ W. long.;
(288) 34°37.69′ N. lat., 120°50.04′ W. long.;
(289) 34°30.13′ N. lat., 120°44.45′ W. long.;
(290) 34°27.00′ N. lat., 120°39.24′ W. long.;
(291) 34°24.71′ N. lat., 120°35.37′ W. long.;
(292) 34°21.63′ N. lat., 120°24.86′ W. long.;
(293) 34°24.39′ N. lat., 120°16.65′ W. long.;
(294) 34°22.48′ N. lat., 119°56.42′ W. long.;
(295) 34°18.54′ N. lat., 119°46.26′ W. long.;
(296) 34°16.37′ N. lat., 119°45.12′ W. long.;
(297) 34°15.91′ N. lat., 119°47.29′ W. long.;
(298) 34°13.80′ N. lat., 119°45.40′ W. long.;
(299) 34°11.69′ N. lat., 119°41.80′ W. long.;
(300) 34°09.98′ N. lat., 119°31.87′ W. long.;
(301) 34°08.12′ N. lat., 119°27.71′ W. long.;
(302) 34°06.35′ N. lat., 119°32.65′ W. long.;
(303) 34°06.80′ N. lat., 119°40.08′ W. long.;
(304) 34°07.48′ N. lat., 119°47.54′ W. long.;
(305) 34°08.21′ N. lat., 119°54.90′ W. long.;
(306) 34°06.85′ N. lat., 120°05.60′ W. long.;
(307) 34°06.99′ N. lat., 120°10.37′ W. long.;
(308) 34°08.55′ N. lat., 120°17.89′ W. long.;
(309) 34°10.00′ N. lat., 120°23.05′ W. long.;
(310) 34°12.53′ N. lat., 120°29.82′ W. long.;
(311) 34°09.02′ N. lat., 120°37.47′ W. long.;
(312) 34°01.01′ N. lat., 120°31.17′ W. long.;
(313) 33°58.07′ N. lat., 120°28.33′ W. long.;
(314) 33°53.37′ N. lat., 120°14.43′ W. long.;
(315) 33°50.53′ N. lat., 120°07.20′ W. long.;
(316) 33°45.88′ N. lat., 120°04.26′ W. long.;
(317) 33°38.19′ N. lat., 119°57.85′ W. long.;

(318) 33°38.19′ N. lat., 119°50.42′ W. long.;
(319) 33°42.36′ N. lat., 119°49.60′ W. long.;
(320) 33°53.95′ N. lat., 119°53.81′ W. long.;
(321) 33°55.85′ N. lat., 119°43.34′ W. long.;
(322) 33°58.48′ N. lat., 119°27.90′ W. long.;
(323) 34°00.34′ N. lat., 119°19.22′ W. long.;
(324) 34°04.48′ N. lat., 119°15.32′ W. long.;
(325) 34°02.80′ N. lat., 119°12.95′ W. long.;
(326) 34°02.39′ N. lat., 119°07.17′ W. long.;
(327) 34°03.75′ N. lat., 119°04.72′ W. long.;
(328) 34°01.82′ N. lat., 119°03.24′ W. long.;
(329) 33°59.33′ N. lat., 119°03.49′ W. long.;
(330) 33°59.01′ N. lat., 118°59.56′ W. long.;
(331) 33°59.51′ N. lat., 118°57.25′ W. long.;
(332) 33°58.83′ N. lat., 118°52.50′ W. long.;
(333) 33°58.55′ N. lat., 118°41.86′ W. long.;
(334) 33°55.10′ N. lat., 118°34.25′ W. long.;
(335) 33°54.30′ N. lat., 118°38.71′ W. long.;
(336) 33°50.88′ N. lat., 118°37.02′ W. long.;
(337) 33°39.78′ N. lat., 118°18.40′ W. long.;
(338) 33°35.50′ N. lat., 118°16.85′ W. long.;
(339) 33°32.46′ N. lat., 118°10.90′ W. long.;
(340) 33°34.11′ N. lat., 117°54.07′ W. long.;
(341) 33°31.61′ N. lat., 117°49.30′ W. long.;
(342) 33°16.36′ N. lat., 117°35.48′ W. long.;
(343) 33°06.81′ N. lat., 117°22.93′ W. long.;
(344) 32°59.28′ N. lat., 117°19.69′ W. long.;
(345) 32°55.37′ N. lat., 117°19.55′ W. long.;
(346) 32°53.35′ N. lat., 117°17.05′ W. long.;
(347) 32°53.36′ N. lat., 117°19.12′ W. long.;
(348) 32°46.42′ N. lat., 117°23.45′ W. long.;
(349) 32°42.71′ N. lat., 117°21.45′ W. long.; and
(350) 32°34.54′ N. lat., 117°23.04′ W. long.

(e) The 125 fm (229 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°04.73′ N. lat., 118°37.99′ W. long.;
(2) 33°02.67′ N. lat., 118°34.07′ W. long.;
(3) 32°55.97′ N. lat., 118°28.95′ W. long.;
(4) 32°49.79′ N. lat., 118°20.89′ W. long.;
(5) 32°48.02′ N. lat., 118°19.49′ W. long.;
(6) 32°47.37′ N. lat., 118°21.72′ W. long.;
(7) 32°43.58′ N. lat., 118°24.54′ W. long.;
(8) 32°49.74′ N. lat., 118°32.11′ W. long.;
(9) 32°53.36′ N. lat., 118°33.44′ W. long.;
(10) 32°55.03′ N. lat., 118°34.64′ W. long.;
(11) 32°54.89′ N. lat., 118°35.37′ W. long.;
(12) 33°00.20′ N. lat., 118°38.72′ W. long.;
(13) 33°03.15′ N. lat., 118°39.80′ W. long.; and
(14) 33°04.73′ N. lat., 118°37.99′ W. long.

(f) The 125 fm (229 m) depth contour around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°28.42′ N. lat., 118°39.85′ W. long.;
(2) 33°29.99′ N. lat., 118°36.14′ W. long.;
(3) 33°29.47′ N. lat., 118°33.66′ W. long.;
(4) 33°29.31′ N. lat., 118°30.53′ W. long.;
(5) 33°27.24′ N. lat., 118°27.71′ W. long.;
(6) 33°25.77′ N. lat., 118°22.57′ W. long.;
(7) 33°23.76′ N. lat., 118°19.27′ W. long.;
(8) 33°17.61′ N. lat., 118°13.61′ W. long.;
(9) 33°16.16′ N. lat., 118°13.98′ W. long.;
(10) 33°15.86′ N. lat., 118°15.27′ W. long.;
(11) 33°18.11′ N. lat., 118°27.96′ W. long.;
(12) 33°19.83′ N. lat., 118°32.16′ W. long.;
(13) 33°20.81′ N. lat., 118°32.94′ W. long.;
(14) 33°21.99′ N. lat., 118°32.04′ W. long.;
(15) 33°23.09′ N. lat., 118°30.37′ W. long.;
(16) 33°24.78′ N. lat., 118°32.46′ W. long.;
(17) 33°25.43′ N. lat., 118°34.93′ W. long.; and
(18) 33°28.42′ N. lat., 118°39.85′ W. long.

(g) The 125 fm (229 m) depth contour around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°24.57′ N. lat., 118°00.15′ W. long.;
(2) 33°23.42′ N. lat., 117°59.43′ W. long.;
(3) 33°23.69′ N. lat., 117°58.72′ W. long.;
(4) 33°24.72′ N. lat., 117°59.51′ W. long.; and
(5) 33°24.57′ N. lat., 118°00.15′ W. long.

(h) The 150 fm (274 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.96′ N. lat., 125°41.24′ W. long.;
(2) 48°12.89′ N. lat., 125°37.83′ W. long.;
(3) 48°11.49′ N. lat., 125°39.27′ W. long.;
(4) 48°08.72′ N. lat., 125°41.84′ W. long.;
(5) 48°07.00′ N. lat., 125°45.00′ W. long.;
(6) 48°06.13′ N. lat., 125°41.57′ W. long.;
(7) 48°05.00′ N. lat., 125°39.00′ W. long.;
(8) 48°04.15′ N. lat., 125°36.71′ W. long.;
(9) 48°03.00′ N. lat., 125°36.00′ W. long.;
(10) 48°01.65′ N. lat., 125°36.96′ W. long.;
(11) 48°01.00′ N. lat., 125°38.50′ W. long.;
(12) 47°57.50′ N. lat., 125°36.50′ W. long.;
(13) 47°56.53′ N. lat., 125°30.33′ W. long.;
(14) 47°57.28′ N. lat., 125°27.89′ W. long.;
(15) 47°59.00′ N. lat., 125°25.50′ W. long.;
(16) 48°01.77′ N. lat., 125°24.05′ W. long.;
(17) 48°02.13′ N. lat., 125°22.80′ W. long.;
(18) 48°03.00′ N. lat., 125°22.50′ W. long.;
(19) 48°03.46′ N. lat., 125°22.10′ W. long.;
(20) 48°04.29′ N. lat., 125°20.37′ W. long.;
(21) 48°02.00′ N. lat., 125°18.50′ W. long.;
(22) 48°00.01′ N. lat., 125°19.90′ W. long.;
(23) 47°58.75′ N. lat., 125°17.54′ W. long.;

(24) 47°53.50′ N. lat., 125°13.50′ W. long.;
(25) 47°48.88′ N. lat., 125°05.91′ W. long.;
(26) 47°48.50′ N. lat., 125°05.00′ W. long.;
(27) 47°45.98′ N. lat., 125°04.26′ W. long.;
(28) 47°45.00′ N. lat., 125°05.50′ W. long.;
(29) 47°42.11′ N. lat., 125°04.74′ W. long.;
(30) 47°39.00′ N. lat., 125°06.00′ W. long.;
(31) 47°35.53′ N. lat., 125°04.55′ W. long.;
(32) 47°30.90′ N. lat., 124°57.31′ W. long.;
(33) 47°29.54′ N. lat., 124°56.50′ W. long.;
(34) 47°29.50′ N. lat., 124°54.50′ W. long.;
(35) 47°28.57′ N. lat., 124°51.50′ W. long.;
(36) 47°25.00′ N. lat., 124°48.00′ W. long.;
(37) 47°23.95′ N. lat., 124°47.24′ W. long.;
(38) 47°23.00′ N. lat., 124°47.00′ W. long.;
(39) 47°21.00′ N. lat., 124°46.50′ W. long.;
(40) 47°18.20′ N. lat., 124°45.84′ W. long.;
(41) 47°18.50′ N. lat., 124°49.00′ W. long.;
(42) 47°19.17′ N. lat., 124°50.86′ W. long.;
(43) 47°18.07′ N. lat., 124°53.29′ W. long.;
(44) 47°17.78′ N. lat., 124°51.39′ W. long.;
(45) 47°16.81′ N. lat., 124°50.85′ W. long.;
(46) 47°15.96′ N. lat., 124°53.15′ W. long.;
(47) 47°14.31′ N. lat., 124°52.62′ W. long.;
(48) 47°11.87′ N. lat., 124°56.90′ W. long.;
(49) 47°12.39′ N. lat., 124°58.09′ W. long.;
(50) 47°09.50′ N. lat., 124°57.50′ W. long.;
(51) 47°09.00′ N. lat., 124°59.00′ W. long.;
(52) 47°06.06′ N. lat., 124°58.80′ W. long.;
(53) 47°03.62′ N. lat., 124°55.96′ W. long.;
(54) 47°02.89′ N. lat., 124°56.89′ W. long.;
(55) 47°01.04′ N. lat., 124°59.54′ W. long.;
(56) 46°58.47′ N. lat., 124°59.08′ W. long.;
(57) 46°58.29′ N. lat., 125°00.28′ W. long.;
(58) 46°56.30′ N. lat., 125°00.75′ W. long.;
(59) 46°57.09′ N. lat., 124°58.86′ W. long.;
(60) 46°55.95′ N. lat., 124°54.88′ W. long.;
(61) 46°54.79′ N. lat., 124°54.14′ W. long.;
(62) 46°58.00′ N. lat., 124°50.00′ W. long.;
(63) 46°54.50′ N. lat., 124°49.00′ W. long.;
(64) 46°54.53′ N. lat., 124°52.94′ W. long.;
(65) 46°49.52′ N. lat., 124°53.41′ W. long.;
(66) 46°42.24′ N. lat., 124°47.86′ W. long.;
(67) 46°39.50′ N. lat., 124°42.50′ W. long.;
(68) 46°37.50′ N. lat., 124°41.00′ W. long.;
(69) 46°36.50′ N. lat., 124°38.00′ W. long.;
(70) 46°33.85′ N. lat., 124°36.99′ W. long.;
(71) 46°33.50′ N. lat., 124°29.50′ W. long.;
(72) 46°32.00′ N. lat., 124°31.00′ W. long.;
(73) 46°30.53′ N. lat., 124°30.55′ W. long.;
(74) 46°25.50′ N. lat., 124°33.00′ W. long.;
(75) 46°23.00′ N. lat., 124°35.00′ W. long.;
(76) 46°21.05′ N. lat., 124°37.00′ W. long.;
(77) 46°20.64′ N. lat., 124°36.21′ W. long.;
(78) 46°20.36′ N. lat., 124°37.85′ W. long.;
(79) 46°19.48′ N. lat., 124°38.35′ W. long.;
(80) 46°18.09′ N. lat., 124°38.30′ W. long.;
(81) 46°16.15′ N. lat., 124°25.20′ W. long.;
(82) 46°16.00′ N. lat., 124°23.00′ W. long.;
(83) 46°14.87′ N. lat., 124°26.15′ W. long.;
(84) 46°13.38′ N. lat., 124°31.36′ W. long.;
(85) 46°12.09′ N. lat., 124°38.39′ W. long.;
(86) 46°09.46′ N. lat., 124°40.64′ W. long.;
(87) 46°07.30′ N. lat., 124°40.68′ W. long.;
(88) 46°02.76′ N. lat., 124°44.01′ W. long.;
(89) 46°01.22′ N. lat., 124°43.47′ W. long.;
(90) 45°51.82′ N. lat., 124°42.89′ W. long.;
(91) 45°46.00′ N. lat., 124°40.88′ W. long.;
(92) 45°45.95′ N. lat., 124°40.72′ W. long.;
(93) 45°44.11′ N. lat., 124°43.09′ W. long.;
(94) 45°34.50′ N. lat., 124°30.27′ W. long.;
(95) 45°21.10′ N. lat., 124°23.11′ W. long.;
(96) 45°20.25′ N. lat., 124°22.92′ W. long.;
(97) 45°09.69′ N. lat., 124°20.45′ W. long.;
(98) 45°03.83′ N. lat., 124°23.30′ W. long.;
(99) 44°56.25′ N. lat., 124°27.03′ W. long.;
(100) 44°44.47′ N. lat., 124°37.85′ W. long.;
(101) 44°31.81′ N. lat., 124°39.60′ W. long.;
(102) 44°31.48′ N. lat., 124°43.30′ W. long.;
(103) 44°12.04′ N. lat., 124°58.16′ W. long.;
(104) 44°08.30′ N. lat., 124°57.84′ W. long.;
(105) 44°07.38′ N. lat., 124°57.87′ W. long.;
(106) 43°57.06′ N. lat., 124°57.20′ W. long.;
(107) 43°52.52′ N. lat., 124°49.00′ W. long.;
(108) 43°51.55′ N. lat., 124°37.49′ W. long.;
(109) 43°47.83′ N. lat., 124°36.43′ W. long.;
(110) 43°31.79′ N. lat., 124°36.80′ W. long.;
(111) 43°29.34′ N. lat., 124°36.77′ W. long.;
(112) 43°26.46′ N. lat., 124°40.02′ W. long.;
(113) 43°20.83′ N. lat., 124°42.39′ W. long.;
(114) 43°16.15′ N. lat., 124°44.37′ W. long.;
(115) 43°09.33′ N. lat., 124°45.35′ W. long.;
(116) 43°08.85′ N. lat., 124°48.92′ W. long.;
(117) 43°03.23′ N. lat., 124°52.41′ W. long.;
(118) 43°00.25′ N. lat., 124°51.93′ W. long.;
(119) 42°56.62′ N. lat., 124°53.93′ W. long.;
(120) 42°54.84′ N. lat., 124°54.01′ W. long.;
(121) 42°52.31′ N. lat., 124°50.76′ W. long.;
(122) 42°50.00′ N. lat., 124°48.97′ W. long.;
(123) 42°47.78′ N. lat., 124°47.27′ W. long.;
(124) 42°46.32′ N. lat., 124°43.59′ W. long.;
(125) 42°41.63′ N. lat., 124°44.07′ W. long.;
(126) 42°40.50′ N. lat., 124°43.52′ W. long.;
(127) 42°38.83′ N. lat., 124°42.77′ W. long.;
(128) 42°35.37′ N. lat., 124°43.22′ W. long.;

(129) 42°32.78′ N. lat., 124°44.68′ W. long.;
(130) 42°32.19′ N. lat., 124°42.40′ W. long.;
(131) 42°30.28′ N. lat., 124°44.30′ W. long.;
(132) 42°28.16′ N. lat., 124°48.38′ W. long.;
(133) 42°18.34′ N. lat., 124°38.77′ W. long.;
(134) 42°13.67′ N. lat., 124°36.80′ W. long.;
(135) 42°13.65′ N. lat., 124°36.82′ W. long.;
(136) 42°00.00′ N. lat., 124°35.99′ W. long.;
(137) 41°47.80′ N. lat., 124°29.41′ W. long.;
(138) 41°23.51′ N. lat., 124°29.50′ W. long.;
(139) 41°13.29′ N. lat., 124°23.31′ W. long.;
(140) 41°06.23′ N. lat., 124°22.62′ W. long.;
(141) 40°55.60′ N. lat., 124°26.04′ W. long.;
(142) 40°49.62′ N. lat., 124°26.57′ W. long.;
(143) 40°45.72′ N. lat., 124°30.00′ W. long.;
(144) 40°40.56′ N. lat., 124°32.11′ W. long.;
(145) 40°37.33′ N. lat., 124°29.27′ W. long.;
(146) 40°35.60′ N. lat., 124°30.49′ W. long.;
(147) 40°37.38′ N. lat., 124°37.14′ W. long.;
(148) 40°36.03′ N. lat., 124°39.97′ W. long.;
(149) 40°30.00′ N. lat., 124°38.50′ W. long.;
(150) 40°29.76′ N. lat., 124°38.13′ W. long.;
(151) 40°28.22′ N. lat., 124°37.23′ W. long.;
(152) 40°24.86′ N. lat., 124°35.71′ W. long.;
(153) 40°23.01′ N. lat., 124°31.94′ W. long.;
(154) 40°23.39′ N. lat., 124°28.64′ W. long.;
(155) 40°22.29′ N. lat., 124°25.25′ W. long.;
(156) 40°21.90′ N. lat., 124°25.18′ W. long.;
(157) 40°22.02′ N. lat., 124°28.00′ W. long.;
(158) 40°21.34′ N. lat., 124°29.53′ W. long.;
(159) 40°19.74′ N. lat., 124°28.95′ W. long.;
(160) 40°18.13′ N. lat., 124°27.08′ W. long.;
(161) 40°17.45′ N. lat., 124°25.53′ W. long.;
(162) 40°17.97′ N. lat., 124°24.12′ W. long.;
(163) 40°15.96′ N. lat., 124°26.05′ W. long.;
(164) 40°17.00′ N. lat., 124°35.01′ W. long.;
(165) 40°15.97′ N. lat., 124°35.90′ W. long.;
(166) 40°10.00′ N. lat., 124°22.96′ W. long.;
(167) 40°07.00′ N. lat., 124°19.00′ W. long.;
(168) 40°08.10′ N. lat., 124°16.70′ W. long.;
(169) 40°05.90′ N. lat., 124°17.77′ W. long.;
(170) 40°02.99′ N. lat., 124°15.55′ W. long.;
(171) 40°02.00′ N. lat., 124°12.97′ W. long.;
(172) 40°02.60′ N. lat., 124°10.61′ W. long.;
(173) 40°03.63′ N. lat., 124°09.12′ W. long.;
(174) 40°02.18′ N. lat., 124°09.07′ W. long.;
(175) 39°58.25′ N. lat., 124°12.56′ W. long.;
(176) 39°57.03′ N. lat., 124°11.34′ W. long.;
(177) 39°56.30′ N. lat., 124°08.96′ W. long.;
(178) 39°54.82′ N. lat., 124°07.66′ W. long.;
(179) 39°52.57′ N. lat., 124°08.55′ W. long.;
(180) 39°45.34′ N. lat., 124°03.30′ W. long.;
(181) 39°34.75′ N. lat., 123°58.50′ W. long.;
(182) 39°34.22′ N. lat., 123°56.82′ W. long.;
(183) 39°32.98′ N. lat., 123°56.43′ W. long.;
(184) 39°31.47′ N. lat., 123°58.73′ W. long.;
(185) 39°05.68′ N. lat., 123°57.81′ W. long.;
(186) 39°00.24′ N. lat., 123°56.74′ W. long.;
(187) 38°57.50′ N. lat., 123°56.74′ W. long.;
(188) 38°54.31′ N. lat., 123°56.73′ W. long.;
(189) 38°41.42′ N. lat., 123°46.75′ W. long.;
(190) 38°39.61′ N. lat., 123°46.48′ W. long.;
(191) 38°37.52′ N. lat., 123°43.78′ W. long.;
(192) 38°35.25′ N. lat., 123°42.00′ W. long.;
(193) 38°28.79′ N. lat., 123°37.07′ W. long.;
(194) 38°19.88′ N. lat., 123°32.54′ W. long.;
(195) 38°14.43′ N. lat., 123°25.56′ W. long.;
(196) 38°08.75′ N. lat., 123°24.48′ W. long.;
(197) 38°10.10′ N. lat., 123°27.20′ W. long.;
(198) 38°07.16′ N. lat., 123°28.18′ W. long.;
(199) 38°06.42′ N. lat., 123°30.18′ W. long.;
(200) 38°04.28′ N. lat., 123°31.70′ W. long.;
(201) 38°01.88′ N. lat., 123°30.98′ W. long.;
(202) 38°00.75′ N. lat., 123°29.72′ W. long.;
(203) 38°00.00′ N. lat., 123°28.60′ W. long.;
(204) 37°58.23′ N. lat., 123°26.90′ W. long.;
(205) 37°55.32′ N. lat., 123°27.19′ W. long.;
(206) 37°51.47′ N. lat., 123°24.92′ W. long.;
(207) 37°44.47′ N. lat., 123°11.57′ W. long.;
(208) 37°35.67′ N. lat., 123°01.76′ W. long.;
(209) 37°15.16′ N. lat., 122°51.64′ W. long.;
(210) 37°11.00′ N. lat., 122°47.20′ W. long.;
(211) 37°07.00′ N. lat., 122°42.90′ W. long.;
(212) 37°01.68′ N. lat., 122°37.28′ W. long.;
(213) 36°59.70′ N. lat., 122°33.71′ W. long.;
(214) 36°58.00′ N. lat., 122°27.80′ W. long.;
(215) 37°00.25′ N. lat., 122°24.85′ W. long.;
(216) 36°57.50′ N. lat., 122°24.98′ W. long.;
(217) 36°58.38′ N. lat., 122°21.85′ W. long.;
(218) 36°55.85′ N. lat., 122°21.95′ W. long.;
(219) 36°52.02′ N. lat., 122°12.10′ W. long.;
(220) 36°47.63′ N. lat., 122°07.37′ W. long.;
(221) 36°47.26′ N. lat., 122°03.22′ W. long.;
(222) 36°50.34′ N. lat., 121°58.40′ W. long.;
(223) 36°48.83′ N. lat., 121°59.14′ W. long.;
(224) 36°44.81′ N. lat., 121°58.28′ W. long.;
(225) 36°39.00′ N. lat., 122°01.71′ W. long.;
(226) 36°29.60′ N. lat., 122°00.49′ W. long.;
(227) 36°23.43′ N. lat., 121°59.76′ W. long.;
(228) 36°18.90′ N. lat., 122°05.32′ W. long.;
(229) 36°15.38′ N. lat., 122°01.40′ W. long.;
(230) 36°13.79′ N. lat., 121°58.12′ W. long.;
(231) 36°10.12′ N. lat., 121°43.33′ W. long.;
(232) 36°02.57′ N. lat., 121°37.02′ W. long.;
(233) 36°00.00′ N. lat., 121°35.15′ W. long.;

(234) 35°57.74′ N. lat., 121°33.45′ W. long.;
(235) 35°51.32′ N. lat., 121°30.08′ W. long.;
(236) 35°45.84′ N. lat., 121°28.84′ W. long.;
(237) 35°38.94′ N. lat., 121°23.16′ W. long.;
(238) 35°26.00′ N. lat., 121°08.00′ W. long.;
(239) 35°07.42′ N. lat., 120°57.08′ W. long.;
(240) 34°42.76′ N. lat., 120°55.09′ W. long.;
(241) 34°37.75′ N. lat., 120°51.96′ W. long.;
(242) 34°29.29′ N. lat., 120°44.19′ W. long.;
(243) 34°27.00′ N. lat., 120°40.42′ W. long.;
(244) 34°21.89′ N. lat., 120°31.36′ W. long.;
(245) 34°20.79′ N. lat., 120°21.58′ W. long.;
(246) 34°23.97′ N. lat., 120°15.25′ W. long.;
(247) 34°22.11′ N. lat., 119°56.63′ W. long.;
(248) 34°19.00′ N. lat., 119°48.00′ W. long.;
(249) 34°15.00′ N. lat., 119°48.00′ W. long.;
(250) 34°08.00′ N. lat., 119°37.00′ W. long.;
(251) 34°08.39′ N. lat., 119°54.78′ W. long.;
(252) 34°07.10′ N. lat., 120°10.37′ W. long.;
(253) 34°10.08′ N. lat., 120°22.98′ W. long.;
(254) 34°13.16′ N. lat., 120°29.40′ W. long.;
(255) 34°09.41′ N. lat., 120°37.75′ W. long.;
(256) 34°03.15′ N. lat., 120°34.71′ W. long.;
(257) 33°57.09′ N. lat., 120°27.76′ W. long.;
(258) 33°51.00′ N. lat., 120°09.00′ W. long.;
(259) 33°38.16′ N. lat., 119°59.23′ W. long.;
(260) 33°37.04′ N. lat., 119°50.17′ W. long.;
(261) 33°42.28′ N. lat., 119°48.85′ W. long.;
(262) 33°53.96′ N. lat., 119°53.77′ W. long.;
(263) 33°59.94′ N. lat., 119°19.57′ W. long.;
(264) 34°03.12′ N. lat., 119°15.51′ W. long.;
(265) 34°01.97′ N. lat., 119°07.28′ W. long.;
(266) 34°03.60′ N. lat., 119°04.71′ W. long.;
(267) 33°59.30′ N. lat., 119°03.73′ W. long.;
(268) 33°58.87′ N. lat., 118°59.37′ W. long.;
(269) 33°58.08′ N. lat., 118°41.14′ W. long.;
(270) 33°50.93′ N. lat., 118°37.65′ W. long.;
(271) 33°39.54′ N. lat., 118°18.70′ W. long.;
(272) 33°35.42′ N. lat., 118°17.14′ W. long.;
(273) 33°32.15′ N. lat., 118°10.84′ W. long.;
(274) 33°33.71′ N. lat., 117°53.72′ W. long.;
(275) 33°31.17′ N. lat., 117°49.11′ W. long.;
(276) 33°16.53′ N. lat., 117°36.13′ W. long.;
(277) 33°06.77′ N. lat., 117°22.92′ W. long.;
(278) 32°58.94′ N. lat., 117°20.05′ W. long.;
(279) 32°55.83′ N. lat., 117°20.15′ W. long.;
(280) 32°46.29′ N. lat., 117°23.89′ W. long.;
(281) 32°42.00′ N. lat., 117°22.16′ W. long.;
(282) 32°39.47′ N. lat., 117°27.78′ W. long.; and
(283) 32°34.83′ N. lat., 117°24.69′ W. long.

(i) The 150 fm (274 m) depth contour used around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 32°47.95′ N. lat., 118°19.31′ W. long.;
(2) 32°49.79′ N. lat., 118°20.82′ W. long.;
(3) 32°55.99′ N. lat., 118°28.80′ W. long.;
(4) 33°03.00′ N. lat., 118°34.00′ W. long.;
(5) 33°05.00′ N. lat., 118°38.00′ W. long.;
(6) 33°03.21′ N. lat., 118°39.85′ W. long.;
(7) 33°01.93′ N. lat., 118°39.85′ W. long.;
(8) 32°54.69′ N. lat., 118°35.45′ W. long.;
(9) 32°53.28′ N. lat., 118°33.58′ W. long.;
(10) 32°48.26′ N. lat., 118°31.62′ W. long.;
(11) 32°43.03′ N. lat., 118°24.21′ W. long.;
(12) 32°47.15′ N. lat., 118°21.53′ W. long.; and
(13) 32°47.95′ N. lat., 118°19.31′ W. long.

(j) The 150 fm (274 m) depth contour used around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°17.24′ N. lat., 118°12.94′ W. long.;
(2) 33°23.60′ N. lat., 118°18.79′ W. long.;
(3) 33°26.00′ N. lat., 118°22.00′ W. long.;
(4) 33°27.57′ N. lat., 118°27.69′ W. long.;
(5) 33°29.78′ N. lat., 118°31.01′ W. long.;
(6) 33°30.46′ N. lat., 118°36.52′ W. long.;
(7) 33°28.65′ N. lat., 118°41.07′ W. long.;
(8) 33°23.23′ N. lat., 118°30.69′ W. long.;
(9) 33°20.97′ N. lat., 118°33.29′ W. long.;
(10) 33°19.81′ N. lat., 118°32.24′ W. long.;
(11) 33°18.00′ N. lat., 118°28.00′ W. long.;
(12) 33°15.62′ N. lat., 118°14.74′ W. long.;
(13) 33°16.00′ N. lat., 118°13.00′ W. long.; and
(14) 33°17.24′ N. lat., 118°12.94′ W. long.

(k) The 150 fm (274 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°24.99′ N. lat., 117°59.32′ W. long.;
(2) 33°23.66′ N. lat., 117°58.28′ W. long.;
(3) 33°23.21′ N. lat., 117°59.55′ W. long.;
(4) 33°24.74′ N. lat., 118°00.61′ W. long.; and
(5) 33°24.99′ N. lat., 117°59.32′ W. long.

23. Section 660.394 is added to read as follows:

§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

Boundaries for RCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 180 fm (329 m) through 250 fm (457 m) depth contours.

(a) The 180 fm (329 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.82′ N. lat., 125°41.61′ W. long.;
(2) 48°12.86′ N. lat., 125°37.95′ W. long.;
(3) 48°11.28′ N. lat., 125°39.67′ W. long.;
(4) 48°10.13′ N. lat., 125°42.62′ W. long.;
(5) 48°08.86′ N. lat., 125°41.92′ W. long.;
(6) 48°08.15′ N. lat., 125°44.95′ W. long.;

(7) 48°07.18′ N. lat., 125°45.67′ W. long.;
(8) 48°05.79′ N. lat., 125°44.64′ W. long.;
(9) 48°06.04′ N. lat., 125°41.84′ W. long.;
(10) 48°04.26′ N. lat., 125°40.09′ W. long.;
(11) 48°04.18′ N. lat., 125°36.94′ W. long.;
(12) 48°03.02′ N. lat., 125°36.24′ W. long.;
(13) 48°01.75′ N. lat., 125°37.42′ W. long.;
(14) 48°01.39′ N. lat., 125°39.42′ W. long.;
(15) 47°57.08′ N. lat., 125°36.51′ W. long.;
(16) 47°55.20′ N. lat., 125°36.62′ W. long.;
(17) 47°54.33′ N. lat., 125°34.98′ W. long.;
(18) 47°54.73′ N. lat., 125°31.95′ W. long.;
(19) 47°56.39′ N. lat., 125°30.22′ W. long.;
(20) 47°55.86′ N. lat., 125°28.54′ W. long.;
(21) 47°58.07′ N. lat., 125°25.72′ W. long.;
(22) 48°00.81′ N. lat., 125°24.39′ W. long.;
(23) 48°01.81′ N. lat., 125°23.76′ W. long.;
(24) 48°02.16′ N. lat., 125°22.71′ W. long.;
(25) 48°03.46′ N. lat., 125°22.01′ W. long.;
(26) 48°04.21′ N. lat., 125°20.40′ W. long.;
(27) 48°03.15′ N. lat., 125°19.50′ W. long.;
(28) 48°01.92′ N. lat., 125°18.69′ W. long.;
(29) 48°00.85′ N. lat., 125°20.02′ W. long.;
(30) 48°00.12′ N. lat., 125°20.04′ W. long.;
(31) 47°58.18′ N. lat., 125°18.78′ W. long.;
(32) 47°58.24′ N. lat., 125°17.26′ W. long.;
(33) 47°52.47′ N. lat., 125°15.30′ W. long.;
(34) 47°52.13′ N. lat., 125°12.95′ W. long.;
(35) 47°50.60′ N. lat., 125°10.65′ W. long.;
(36) 47°49.39′ N. lat., 125°10.59′ W. long.;
(37) 47°48.74′ N. lat., 125°06.07′ W. long.;
(38) 47°47.03′ N. lat., 125°06.95′ W. long.;
(39) 47°47.46′ N. lat., 125°05.20′ W. long.;
(40) 47°45.88′ N. lat., 125°04.50′ W. long.;
(41) 47°44.51′ N. lat., 125°06.64′ W. long.;
(42) 47°42.22′ N. lat., 125°04.86′ W. long.;
(43) 47°38.49′ N. lat., 125°06.32′ W. long.;
(44) 47°34.93′ N. lat., 125°04.34′ W. long.;
(45) 47°30.85′ N. lat., 124°57.42′ W. long.;
(46) 47°28.80′ N. lat., 124°56.51′ W. long.;
(47) 47°29.25′ N. lat., 124°53.92′ W. long.;
(48) 47°28.29′ N. lat., 124°51.32′ W. long.;
(49) 47°24.04′ N. lat., 124°47.38′ W. long.;
(50) 47°18.24′ N. lat., 124°45.97′ W. long.;
(51) 47°19.36′ N. lat., 124°50.96′ W. long.;
(52) 47°18.07′ N. lat., 124°53.38′ W. long.;
(53) 47°17.73′ N. lat., 124°52.83′ W. long.;
(54) 47°17.77′ N. lat., 124°51.56′ W. long.;
(55) 47°16.84′ N. lat., 124°50.94′ W. long.;
(56) 47°16.01′ N. lat., 124°53.36′ W. long.;
(57) 47°14.32′ N. lat., 124°52.73′ W. long.;
(58) 47°11.97′ N. lat., 124°56.81′ W. long.;
(59) 47°12.93′ N. lat., 124°58.47′ W. long.;
(60) 47°09.43′ N. lat., 124°57.99′ W. long.;
(61) 47°09.36′ N. lat., 124°59.29′ W. long.;
(62) 47°05.88′ N. lat., 124°59.06′ W. long.;
(63) 47°03.64′ N. lat., 124°56.07′ W. long.;
(64) 47°01.00′ N. lat., 124°59.69′ W. long.;
(65) 46°58.72′ N. lat., 124°59.17′ W. long.;
(66) 46°58.30′ N. lat., 125°00.60′ W. long.;
(67) 46°55.61′ N. lat., 125°01.19′ W. long.;
(68) 46°56.96′ N. lat., 124°58.85′ W. long.;
(69) 46°55.91′ N. lat., 124°54.98′ W. long.;
(70) 46°54.55′ N. lat., 124°54.21′ W. long.;
(71) 46°56.80′ N. lat., 124°50.55′ W. long.;
(72) 46°54.87′ N. lat., 124°49.59′ W. long.;
(73) 46°54.63′ N. lat., 124°53.48′ W. long.;
(74) 46°52.33′ N. lat., 124°54.75′ W. long.;
(75) 46°45.12′ N. lat., 124°51.82′ W. long.;
(76) 46°39.20′ N. lat., 124°47.02′ W. long.;
(77) 46°33.45′ N. lat., 124°36.61′ W. long.;
(78) 46°33.37′ N. lat., 124°30.21′ W. long.;
(79) 46°31.67′ N. lat., 124°31.41′ W. long.;
(80) 46°27.87′ N. lat., 124°32.04′ W. long.;
(81) 46°21.01′ N. lat., 124°37.63′ W. long.;
(82) 46°18.58′ N. lat., 124°38.92′ W. long.;
(83) 46°16.00′ N. lat., 124°23.57′ W. long.;
(84) 46°12.85′ N. lat., 124°35.52′ W. long.;
(85) 46°12.27′ N. lat., 124°38.69′ W. long.;
(86) 46°08.71′ N. lat., 124°41.27′ W. long.;
(87) 46°05.79′ N. lat., 124°42.12′ W. long.;
(88) 46°02.84′ N. lat., 124°48.05′ W. long.;
(89) 46°02.41′ N. lat., 124°48.15′ W. long.;
(90) 45°58.96′ N. lat., 124°43.98′ W. long.;
(91) 45°47.05′ N. lat., 124°43.25′ W. long.;
(92) 45°46.00′ N. lat., 124°43.31′ W. long.;
(93) 45°44.00′ N. lat., 124°45.37′ W. long.;
(94) 45°34.97′ N. lat., 124°31.95′ W. long.;
(95) 45°20.25′ N. lat., 124°25.18′ W. long.;
(96) 45°13.01′ N. lat., 124°21.71′ W. long.;
(97) 45°09.59′ N. lat., 124°22.78′ W. long.;
(98) 45°03.83′ N. lat., 124°26.21′ W. long.;
(99) 45°00.22′ N. lat., 124°28.31′ W. long.;
(100) 44°53.53′ N. lat., 124°32.98′ W. long.;
(101) 44°40.25′ N. lat., 124°46.34′ W. long.;
(102) 44°28.83′ N. lat., 124°47.09′ W. long.;
(103) 44°22.97′ N. lat., 124°49.38′ W. long.;
(104) 44°13.07′ N. lat., 124°58.34′ W. long.;
(105) 44°08.30′ N. lat., 124°58.23′ W. long.;
(106) 43°57.99′ N. lat., 124°57.84′ W. long.;
(107) 43°51.43′ N. lat., 124°52.02′ W. long.;
(108) 43°50.72′ N. lat., 124°39.23′ W. long.;
(109) 43°39.04′ N. lat., 124°37.82′ W. long.;
(110) 43°27.76′ N. lat., 124°39.76′ W. long.;
(111) 43°20.83′ N. lat., 124°42.70′ W. long.;

(112) 43°20.22′ N. lat., 124°42.92′ W. long.;
(113) 43°13.07′ N. lat., 124°46.03′ W. long.;
(114) 43°10.43′ N. lat., 124°50.27′ W. long.;
(115) 43°03.47′ N. lat., 124°52.80′ W. long.;
(116) 42°56.93′ N. lat., 124°53.95′ W. long.;
(117) 42°54.74′ N. lat., 124°54.19′ W. long.;
(118) 42°50.00′ N. lat., 124°52.36′ W. long.;
(119) 42°49.43′ N. lat., 124°52.03′ W. long.;
(120) 42°47.68′ N. lat., 124°47.72′ W. long.;
(121) 42°46.17′ N. lat., 124°44.05′ W. long.;
(122) 42°41.67′ N. lat., 124°44.36′ W. long.;
(123) 42°40.50′ N. lat., 124°43.86′ W. long.;
(124) 42°38.79′ N. lat., 124°42.87′ W. long.;
(125) 42°32.39′ N. lat., 124°45.38′ W. long.;
(126) 42°32.07′ N. lat., 124°43.44′ W. long.;
(127) 42°30.98′ N. lat., 124°43.84′ W. long.;
(128) 42°28.37′ N. lat., 124°48.91′ W. long.;
(129) 42°20.07′ N. lat., 124°41.59′ W. long.;
(130) 42°15.05′ N. lat., 124°38.07′ W. long.;
(131) 42°13.67′ N. lat., 124°37.77′ W. long.;
(132) 42°07.37′ N. lat., 124°37.25′ W. long.;
(133) 42°04.93′ N. lat., 124°36.79′ W. long.;
(134) 42°00.00′ N. lat., 124°36.26′ W. long.;
(135) 41°47.60′ N. lat., 124°29.75′ W. long.;
(136) 41°22.07′ N. lat., 124°29.55′ W. long.;
(137) 41°13.58′ N. lat., 124°24.17′ W. long.;
(138) 41°06.51′ N. lat., 124°23.07′ W. long.;
(139) 40°55.20′ N. lat., 124°27.46′ W. long.;
(140) 40°49.76′ N. lat., 124°27.17′ W. long.;
(141) 40°45.79′ N. lat., 124°30.37′ W. long.;
(142) 40°40.31′ N. lat., 124°32.47′ W. long.;
(143) 40°37.42′ N. lat., 124°37.20′ W. long.;
(144) 40°36.03′ N. lat., 124°39.97′ W. long.;
(145) 40°31.48′ N. lat., 124°40.95′ W. long.;
(146) 40°30.00′ N. lat., 124°38.50′ W. long.;
(147) 40°24.81′ N. lat., 124°35.82′ W. long.;
(148) 40°22.00′ N. lat., 124°30.01′ W. long.;
(149) 40°16.84′ N. lat., 124°29.87′ W. long.;
(150) 40°17.06′ N. lat., 124°35.51′ W. long.;
(151) 40°16.41′ N. lat., 124°39.10′ W. long.;
(152) 40°10.00′ N. lat., 124°23.56′ W. long.;
(153) 40°06.67′ N. lat., 124°19.08′ W. long.;
(154) 40°08.10′ N. lat., 124°16.71′ W. long.;
(155) 40°05.90′ N. lat., 124°17.77′ W. long.;
(156) 40°02.80′ N. lat., 124°16.28′ W. long.;
(157) 40°01.98′ N. lat., 124°12.99′ W. long.;
(158) 40°01.53′ N. lat., 124°09.82′ W. long.;
(159) 39°58.28′ N. lat., 124°12.93′ W. long.;
(160) 39°57.06′ N. lat., 124°12.03′ W. long.;
(161) 39°56.31′ N. lat., 124°08.98′ W. long.;
(162) 39°55.20′ N. lat., 124°07.98′ W. long.;
(163) 39°52.57′ N. lat., 124°09.04′ W. long.;
(164) 39°42.78′ N. lat., 124°02.11′ W. long.;
(165) 39°34.76′ N. lat., 123°58.51′ W. long.;
(166) 39°34.22′ N. lat., 123°56.82′ W. long.;
(167) 39°32.98′ N. lat., 123°56.43′ W. long.;
(168) 39°32.14′ N. lat., 123°58.83′ W. long.;
(169) 39°07.79′ N. lat., 123°58.72′ W. long.;
(170) 39°00.99′ N. lat., 123°57.56′ W. long.;
(171) 39°00.05′ N. lat., 123°56.83′ W. long.;
(172) 38°57.50′ N. lat., 123°57.22′ W. long.;
(173) 38°56.28′ N. lat., 123°57.53′ W. long.;
(174) 38°56.01′ N. lat., 123°58.72′ W. long.;
(175) 38°52.41′ N. lat., 123°56.38′ W. long.;
(176) 38°46.81′ N. lat., 123°51.46′ W. long.;
(177) 38°45.56′ N. lat., 123°51.32′ W. long.;
(178) 38°43.24′ N. lat., 123°49.91′ W. long.;
(179) 38°41.42′ N. lat., 123°47.22′ W. long.;
(180) 38°40.97′ N. lat., 123°47.80′ W. long.;
(181) 38°38.58′ N. lat., 123°46.07′ W. long.;
(182) 38°37.38′ N. lat., 123°43.80′ W. long.;
(183) 38°33.86′ N. lat., 123°41.51′ W. long.;
(184) 38°29.45′ N. lat., 123°38.42′ W. long.;
(185) 38°28.20′ N. lat., 123°38.17′ W. long.;
(186) 38°24.09′ N. lat., 123°35.26′ W. long.;
(187) 38°16.72′ N. lat., 123°31.42′ W. long.;
(188) 38°15.32′ N. lat., 123°29.33′ W. long.;
(189) 38°14.45′ N. lat., 123°26.15′ W. long.;
(190) 38°10.26′ N. lat., 123°25.43′ W. long.;
(191) 38°12.61′ N. lat., 123°28.08′ W. long.;
(192) 38°11.98′ N. lat., 123°29.35′ W. long.;
(193) 38°08.23′ N. lat., 123°28.04′ W. long.;
(194) 38°06.39′ N. lat., 123°30.59′ W. long.;
(195) 38°04.25′ N. lat., 123°31.81′ W. long.;
(196) 38°02.08′ N. lat., 123°31.27′ W. long.;
(197) 38°00.17′ N. lat., 123°29.43′ W. long.;
(198) 38°00.00′ N. lat., 123°28.55′ W. long.;
(199) 37°58.24′ N. lat., 123°26.91′ W. long.;
(200) 37°55.32′ N. lat., 123°27.19′ W. long.;
(201) 37°51.52′ N. lat., 123°25.01′ W. long.;
(202) 37°44.21′ N. lat., 123°11.38′ W. long.;
(203) 37°35.67′ N. lat., 123°01.86′ W. long.;
(204) 37°14.29′ N. lat., 122°52.99′ W. long.;
(205) 37°11.00′ N. lat., 122°49.28′ W. long.;
(206) 37°07.00′ N. lat., 122°44.65′ W. long.;
(207) 37°00.86′ N. lat., 122°37.55′ W. long.;
(208) 36°59.71′ N. lat., 122°33.73′ W. long.;
(209) 36°57.98′ N. lat., 122°27.80′ W. long.;
(210) 36°59.83′ N. lat., 122°25.17′ W. long.;
(211) 36°57.21′ N. lat., 122°25.17′ W. long.;
(212) 36°57.79′ N. lat., 122°22.28′ W. long.;
(213) 36°55.86′ N. lat., 122°21.99′ W. long.;
(214) 36°52.06′ N. lat., 122°12.12′ W. long.;
(215) 36°47.63′ N. lat., 122°07.40′ W. long.;
(216) 36°47.26′ N. lat., 122°03.23′ W. long.;

(217) 36°49.53′ N. lat., 121°59.35′ W. long.;
(218) 36°44.81′ N. lat., 121°58.29′ W. long.;
(219) 36°38.95′ N. lat., 122°02.02′ W. long.;
(220) 36°23.43′ N. lat., 121°59.76′ W. long.;
(221) 36°19.66′ N. lat., 122°06.25′ W. long.;
(222) 36°14.78′ N. lat., 122°01.52′ W. long.;
(223) 36°13.64′ N. lat., 121°57.83′ W. long.;
(224) 36°09.99′ N. lat., 121°43.48′ W. long.;
(225) 36°00.00′ N. lat., 121°36.95′ W. long.;
(226) 35°57.09′ N. lat., 121°34.16′ W. long.;
(227) 35°52.71′ N. lat., 121°32.32′ W. long.;
(228) 35°51.23′ N. lat., 121°30.54′ W. long.;
(229) 35°46.07′ N. lat., 121°29.75′ W. long.;
(230) 35°34.08′ N. lat., 121°19.83′ W. long.;
(231) 35°31.41′ N. lat., 121°14.80′ W. long.;
(232) 35°15.42′ N. lat., 121°03.47′ W. long.;
(233) 35°07.70′ N. lat., 120°59.31′ W. long.;
(234) 34°57.27′ N. lat., 120°56.93′ W. long.;
(235) 34°44.27′ N. lat., 120°57.65′ W. long.;
(236) 34°32.75′ N. lat., 120°50.08′ W. long.;
(237) 34°27.00′ N. lat., 120°41.50′ W. long.;
(238) 34°20.00′ N. lat., 120°30.99′ W. long.;
(239) 34°19.15′ N. lat., 120°19.78′ W. long.;
(240) 34°23.24′ N. lat., 120°14.17′ W. long.;
(241) 34°21.35′ N. lat., 119°54.89′ W. long.;
(242) 34°09.79′ N. lat., 119°44.51′ W. long.;
(243) 34°07.34′ N. lat., 120°06.71′ W. long.;
(244) 34°09.74′ N. lat., 120°19.78′ W. long.;
(245) 34°13.95′ N. lat., 120°29.78′ W. long.;
(246) 34°09.41′ N. lat., 120°37.75′ W. long.;
(247) 34°03.39′ N. lat., 120°35.26′ W. long.;
(248) 33°56.82′ N. lat., 120°28.30′ W. long.;
(249) 33°50.71′ N. lat., 120°09.24′ W. long.;
(250) 33°38.21′ N. lat., 119°59.90′ W. long.;
(251) 33°35.35′ N. lat., 119°51.95′ W. long.;
(252) 33°35.99′ N. lat., 119°49.13′ W. long.;
(253) 33°42.74′ N. lat., 119°47.80′ W. long.;
(254) 33°53.65′ N. lat., 119°53.29′ W. long.;
(255) 33°57.85′ N. lat., 119°31.05′ W. long.;
(256) 33°56.78′ N. lat., 119°27.44′ W. long.;
(257) 33°58.03′ N. lat., 119°27.82′ W. long.;
(258) 33°59.31′ N. lat., 119°20.02′ W. long.;
(259) 34°02.91′ N. lat., 119°15.38′ W. long.;
(260) 33°59.04′ N. lat., 119°03.02′ W. long.;
(261) 33°57.88′ N. lat., 118°41.69′ W. long.;
(262) 33°50.89′ N. lat., 118°37.78′ W. long.;
(263) 33°39.54′ N. lat., 118°18.70′ W. long.;
(264) 33°35.42′ N. lat., 118°17.15′ W. long.;
(265) 33°31.26′ N. lat., 118°10.84′ W. long.;
(266) 33°32.71′ N. lat., 117°52.05′ W. long.;
(267) 32°58.94′ N. lat., 117°20.05′ W. long.;
(268) 32°46.45′ N. lat., 117°24.37′ W. long.;
(269) 32°42.25′ N. lat., 117°22.87′ W. long.;
(270) 32°39.50′ N. lat., 117°27.80′ W. long.; and
(271) 32°34.83′ N. lat., 117°24.67′ W. long.

(b) The 180 fm (329 m) depth contour used around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°01.90′ N. lat., 118°40.17′ W. long.;
(2) 33°03.23′ N. lat., 118°40.05′ W. long.;
(3) 33°05.07′ N. lat., 118°39.01′ W. long.;
(4) 33°05.00′ N. lat., 118°38.01′ W. long.;
(5) 33°03.00′ N. lat., 118°34.00′ W. long.;
(6) 32°55.92′ N. lat., 118°28.39′ W. long.;
(7) 32°49.78′ N. lat., 118°20.82′ W. long.;
(8) 32°47.32′ N. lat., 118°18.30′ W. long.;
(9) 32°47.46′ N. lat., 118°20.29′ W. long.;
(10) 32°46.21′ N. lat., 118°21.96′ W. long.;
(11) 32°42.25′ N. lat., 118°24.07′ W. long.;
(12) 32°47.73′ N. lat., 118°31.74′ W. long.;
(13) 32°53.16′ N. lat., 118°33.85′ W. long.;
(14) 32°54.51′ N. lat., 118°35.56′ W. long.; and
(15) 33°01.90′ N. lat., 118°40.17′ W. long.

(c) The 180 fm (329 m) depth contour used around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°30.00′ N. lat., 118°44.18′ W. long.;
(2) 33°30.65′ N. lat., 118°35.07′ W. long.;
(3) 33°29.88′ N. lat., 118°30.89′ W. long.;
(4) 33°27.54′ N. lat., 118°26.91′ W. long.;
(5) 33°26.11′ N. lat., 118°21.97′ W. long.;
(6) 33°24.20′ N. lat., 118°19.05′ W. long.;
(7) 33°14.58′ N. lat., 118°10.35′ W. long.;
(8) 33°17.91′ N. lat., 118°28.20′ W. long.;
(9) 33°19.14′ N. lat., 118°31.34′ W. long.;
(10) 33°20.79′ N. lat., 118°33.75′ W. long.;
(11) 33°23.14′ N. lat., 118°30.80′ W. long.;and
(12) 33°30.00′ N. lat., 118°44.18′ W. long.

(d) The 180 fm (329 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.12′ N. lat., 118°01.09′ W. long.;
(2) 33°25.41′ N. lat., 117°59.36′ W. long.;
(3) 33°23.49′ N. lat., 117°57.47′ W. long.;
(4) 33°23.02′ N. lat., 117°59.58′ W. long.; and
(5) 33°25.12′ N. lat., 118°01.09′ W. long.

(e) The 180 fm (329 m) depth contour used around San Diego Rise off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 32°49.98′ N. lat., 117°50.19′ W. long.;
(2) 32°44.10′ N. lat., 117°45.34′ W. long.;
(3) 32°42.01′ N. lat., 117°46.01′ W. long.;
(4) 32°44.42′ N. lat., 117°48.69′ W. long.;
(5) 32°49.86′ N. lat., 117°50.50′ W. long.; and
(6) 32°49.98′ N. lat., 117°50.19′ W. long.

(f) The 200 fm (366 m) depth contour between the U.S. border with Canada

and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.75′ N. lat., 125°41.73′ W. long.;
(2) 48°12.85′ N. lat., 125°38.06′ W. long.;
(3) 48°11.52′ N. lat., 125°39.45′ W. long.;
(4) 48°10.14′ N. lat., 125°42.81′ W. long.;
(5) 48°08.96′ N. lat., 125°42.08′ W. long.;
(6) 48°08.33′ N. lat., 125°44.91′ W. long.;
(7) 48°07.19′ N. lat., 125°45.87′ W. long.;
(8) 48°05.66′ N. lat., 125°44.79′ W. long.;
(9) 48°05.91′ N. lat., 125°42.16′ W. long.;
(10) 48°04.11′ N. lat., 125°40.17′ W. long.;
(11) 48°04.07′ N. lat., 125°36.96′ W. long.;
(12) 48°03.05′ N. lat., 125°36.38′ W. long.;
(13) 48°01.98′ N. lat., 125°37.41′ W. long.;
(14) 48°01.46′ N. lat., 125°39.61′ W. long.;
(15) 47°57.28′ N. lat., 125°36.87′ W. long.;
(16) 47°55.11′ N. lat., 125°36.92′ W. long.;
(17) 47°54.09′ N. lat., 125°34.98′ W. long.;
(18) 47°54.50′ N. lat., 125°32.01′ W. long.;
(19) 47°56.07′ N. lat., 125°30.17′ W. long.;
(20) 47°55.65′ N. lat., 125°28.46′ W. long.;
(21) 47°57.88′ N. lat., 125°25.61′ W. long.;
(22) 48°01.63′ N. lat., 125°23.75′ W. long.;
(23) 48°02.21′ N. lat., 125°22.43′ W. long.;
(24) 48°03.60′ N. lat., 125°21.84′ W. long.;
(25) 48°03.98′ N. lat., 125°20.65′ W. long.;
(26) 48°03.26′ N. lat., 125°19.76′ W. long.;
(27) 48°01.49′ N. lat., 125°18.80′ W. long.;
(28) 48°01.03′ N. lat., 125°20.12′ W. long.;
(29) 48°00.04′ N. lat., 125°20.26′ W. long.;
(30) 47°58.10′ N. lat., 125°18.91′ W. long.;
(31) 47°58.17′ N. lat., 125°17.50′ W. long.;
(32) 47°52.28′ N. lat., 125°16.06′ W. long.;
(33) 47°51.92′ N. lat., 125°13.89′ W. long.;
(34) 47°49.20′ N. lat., 125°10.67′ W. long.;
(35) 47°48.69′ N. lat., 125°06.50′ W. long.;
(36) 47°46.54′ N. lat., 125°07.68′ W. long.;
(37) 47°47.24′ N. lat., 125°05.38′ W. long.;
(38) 47°45.95′ N. lat., 125°04.61′ W. long.;
(39) 47°44.58′ N. lat., 125°07.12′ W. long.;
(40) 47°42.24′ N. lat., 125°05.15′ W. long.;
(41) 47°38.54′ N. lat., 125°06.76′ W. long.;
(42) 47°34.86′ N. lat., 125°04.67′ W. long.;
(43) 47°30.75′ N. lat., 124°57.52′ W. long.;
(44) 47°28.51′ N. lat., 124°56.69′ W. long.;
(45) 47°29.15′ N. lat., 124°54.10′ W. long.;
(46) 47°28.43′ N. lat., 124°51.58′ W. long.;
(47) 47°24.13′ N. lat., 124°47.51′ W. long.;
(48) 47°18.31′ N. lat., 124°46.17′ W. long.;
(49) 47°19.57′ N. lat., 124°51.01′ W. long.;
(50) 47°18.12′ N. lat., 124°53.66′ W. long.;
(51) 47°17.59′ N. lat., 124°52.94′ W. long.;
(52) 47°17.71′ N. lat., 124°51.63′ W. long.;
(53) 47°16.90′ N. lat., 124°51.23′ W. long.;
(54) 47°16.10′ N. lat., 124°53.67′ W. long.;
(55) 47°14.24′ N. lat., 124°53.02′ W. long.;
(56) 47°12.16′ N. lat., 124°56.77′ W. long.;
(57) 47°13.35′ N. lat., 124°58.70′ W. long.;
(58) 47°09.53′ N. lat., 124°58.32′ W. long.;
(59) 47°09.54′ N. lat., 124°59.50′ W. long.;
(60) 47°05.87′ N. lat., 124°59.29′ W. long.;
(61) 47°03.65′ N. lat., 124°56.26′ W. long.;
(62) 47°00.91′ N. lat., 124°59.73′ W. long.;
(63) 46°58.74′ N. lat., 124°59.40′ W. long.;
(64) 46°58.55′ N. lat., 125°00.70′ W. long.;
(65) 46°55.57′ N. lat., 125°01.61′ W. long.;
(66) 46°55.77′ N. lat., 124°55.04′ W. long.;
(67) 46°53.16′ N. lat., 124°53.69′ W. long.;
(68) 46°52.39′ N. lat., 124°55.24′ W. long.;
(69) 46°44.88′ N. lat., 124°51.97′ W. long.;
(70) 46°33.28′ N. lat., 124°36.96′ W. long.;
(71) 46°33.20′ N. lat., 124°30.64′ W. long.;
(72) 46°27.85′ N. lat., 124°31.95′ W. long.;
(73) 46°18.16′ N. lat., 124°39.39′ W. long.;
(74) 46°16.48′ N. lat., 124°27.41′ W. long.;
(75) 46°16.73′ N. lat., 124°23.20′ W. long.;
(76) 46°16.00′ N. lat., 124°24.88′ W. long.;
(77) 46°14.22′ N. lat., 124°26.28′ W. long.;
(78) 46°11.53′ N. lat., 124°39.58′ W. long.;
(79) 46°08.77′ N. lat., 124°41.71′ W. long.;
(80) 46°05.86′ N. lat., 124°42.27′ W. long.;
(81) 46°03.85′ N. lat., 124°48.20′ W. long.;
(82) 46°02.34′ N. lat., 124°48.51′ W. long.;
(83) 45°58.99′ N. lat., 124°44.42′ W. long.;
(84) 45°46.90′ N. lat., 124°43.50′ W. long.;
(85) 45°46.00′ N. lat., 124°44.27′ W. long.;
(86) 45°44.98′ N. lat., 124°44.93′ W. long.;
(87) 45°43.47′ N. lat., 124°44.93′ W. long.;
(88) 45°34.88′ N. lat., 124°32.58′ W. long.;
(89) 45°20.25′ N. lat., 124°25.47′ W. long.;
(90) 45°13.04′ N. lat., 124°21.92′ W. long.;
(91) 45°03.83′ N. lat., 124°27.13′ W. long.;
(92) 45°00.17′ N. lat., 124°29.28′ W. long.;
(93) 44°55.41′ N. lat., 124°31.84′ W. long.;
(94) 44°48.25′ N. lat., 124°40.62′ W. long.;
(95) 44°41.34′ N. lat., 124°49.20′ W. long.;
(96) 44°23.30′ N. lat., 124°50.17′ W. long.;
(97) 44°13.19′ N. lat., 124°58.66′ W. long.;
(98) 46°08.30′ N. lat., 124°58.50′ W. long.;
(99) 43°57.89′ N. lat., 124°58.13′ W. long.;
(100) 43°50.59′ N. lat., 124°52.80′ W. long.;
(101) 43°50.10′ N. lat., 124°40.27′ W. long.;
(102) 43°39.06′ N. lat., 124°38.55′ W. long.;
(103) 43°28.85′ N. lat., 124°39.99′ W. long.;

(104) 43°20.83′ N. lat., 124°42.84′ W. long.;
(105) 43°20.22′ N. lat., 124°43.05′ W. long.;
(106) 43°13.29′ N. lat., 124°47.00′ W. long.;
(107) 43°13.14′ N. lat., 124°52.61′ W. long.;
(108) 43°04.26′ N. lat., 124°53.05′ W. long.;
(109) 42°53.93′ N. lat., 124°54.60′ W. long.;
(110) 42°50.00′ N. lat., 124°53.31′ W. long.;
(111) 42°49.52′ N. lat., 124°53.16′ W. long.;
(112) 42°47.46′ N. lat., 124°50.24′ W. long.;
(113) 42°47.57′ N. lat., 124°48.12′ W. long.;
(114) 42°46.19′ N. lat., 124°44.52′ W. long.;
(115) 42°41.75′ N. lat., 124°44.69′ W. long.;
(116) 42°40.50′ N. lat., 124°44.02′ W. long.;
(117) 42°38.81′ N. lat., 124°43.09′ W. long.;
(118) 42°31.83′ N. lat., 124°46.23′ W. long.;
(119) 42°32.08′ N. lat., 124°43.58′ W. long.;
(120) 42°30.96′ N. lat., 124°43.84′ W. long.;
(121) 42°28.41′ N. lat., 124°49.17′ W. long.;
(122) 42°24.80′ N. lat., 124°45.93′ W. long.;
(123) 42°19.71′ N. lat., 124°41.60′ W. long.;
(124) 42°15.12′ N. lat., 124°38.34′ W. long.;
(125) 42°13.67′ N. lat., 124°38.22′ W. long.;
(126) 42°12.35′ N. lat., 124°38.09′ W. long.;
(127) 42°04.38′ N. lat., 124°36.83′ W. long.;
(128) 42°00.00′ N. lat., 124°36.80′ W. long.;
(129) 41°47.85′ N. lat., 124°30.41′ W. long.;
(130) 41°43.34′ N. lat., 124°29.89′ W. long.;
(131) 41°23.47′ N. lat., 124°30.29′ W. long.;
(132) 41°21.30′ N. lat., 124°29.36′ W. long.;
(133) 41°13.53′ N. lat., 124°24.41′ W. long.;
(134) 41°06.72′ N. lat., 124°23.30′ W. long.;
(135) 40°54.67′ N. lat., 124°28.13′ W. long.;
(136) 40°49.02′ N. lat., 124°28.52′ W. long.;
(137) 40°40.45′ N. lat., 124°32.74′ W. long.;
(138) 40°37.11′ N. lat., 124°38.03′ W. long.;
(139) 40°34.22′ N. lat., 124°41.13′ W. long.;
(140) 40°32.90′ N. lat., 124°41.83′ W. long.;
(141) 40°31.30′ N. lat., 124°40.97′ W. long.;
(142) 40°30.00′ N. lat., 124°38.04′ W. long.;
(143) 40°24.99′ N. lat., 124°36.37′ W. long.;
(144) 40°22.23′ N. lat., 124°31.78′ W. long.;
(145) 40°16.95′ N. lat., 124°31.93′ W. long.;
(146) 40°17.59′ N. lat., 124°45.23′ W. long.;
(147) 40°13.25′ N. lat., 124°32.36′ W. long.;
(148) 40°10.16′ N. lat., 124°24.57′ W. long.;
(149) 40°06.43′ N. lat., 124°19.19′ W. long.;
(150) 40°07.07′ N. lat., 124°17.75′ W. long.;
(151) 40°05.53′ N. lat., 124°18.02′ W. long.;
(152) 40°04.71′ N. lat., 124°18.10′ W. long.;
(153) 40°02.35′ N. lat., 124°16.57′ W. long.;
(154) 40°01.53′ N. lat., 124°09.82′ W. long.;
(155) 39°58.28′ N. lat., 124°13.51′ W. long.;
(156) 39°56.60′ N. lat., 124°12.02′ W. long.;
(157) 39°55.20′ N. lat., 124°07.96′ W. long.;
(158) 39°52.55′ N. lat., 124°09.40′ W. long.;
(159) 39°42.68′ N. lat., 124°02.52′ W. long.;
(160) 39°35.96′ N. lat., 123°59.49′ W. long.;
(161) 39°34.62′ N. lat., 123°59.59′ W. long.;
(162) 39°33.78′ N. lat., 123°56.82′ W. long.;
(163) 39°33.02′ N. lat., 123°57.07′ W. long.;
(164) 39°32.21′ N. lat., 123°59.13′ W. long.;
(165) 39°07.85′ N. lat., 123°59.07′ W. long.;
(166) 39°00.90′ N. lat., 123°57.88′ W. long.;
(167) 38°59.95′ N. lat., 123°56.99′ W. long.;
(168) 38°57.50′ N. lat., 123°57.50′ W. long.;
(169) 38°56.82′ N. lat., 123°57.74′ W. long.;
(170) 38°56.40′ N. lat., 123°59.41′ W. long.;
(171) 38°50.23′ N. lat., 123°55.48′ W. long.;
(172) 38°46.77′ N. lat., 123°51.49′ W. long.;
(173) 38°45.28′ N. lat., 123°51.56′ W. long.;
(174) 38°42.76′ N. lat., 123°49.76′ W. long.;
(175) 38°41.54′ N. lat., 123°47.76′ W. long.;
(176) 38°40.98′ N. lat., 123°48.07′ W. long.;
(177) 38°38.03′ N. lat., 123°45.78′ W. long.;
(178) 38°37.20′ N. lat., 123°44.01′ W. long.;
(179) 38°33.44′ N. lat., 123°41.75′ W. long.;
(180) 38°29.45′ N. lat., 123°38.42′ W. long.;
(181) 38°27.89′ N. lat., 123°38.38′ W. long.;
(182) 38°23.68′ N. lat., 123°35.40′ W. long.;
(183) 38°19.63′ N. lat., 123°33.98′ W. long.;
(184) 38°16.23′ N. lat., 123°31.83′ W. long.;
(185) 38°14.79′ N. lat., 123°29.91′ W. long.;
(186) 38°14.12′ N. lat., 123°26.29′ W. long.;
(187) 38°10.85′ N. lat., 123°25.77′ W. long.;
(188) 38°13.15′ N. lat., 123°28.18′ W. long.;
(189) 38°12.28′ N. lat., 123°29.81′ W. long.;
(190) 38°10.19′ N. lat., 123°29.04′ W. long.;
(191) 38°07.94′ N. lat., 123°28.45′ W. long.;
(192) 38°06.51′ N. lat., 123°30.89′ W. long.;
(193) 38°04.21′ N. lat., 123°31.96′ W. long.;
(194) 38°02.07′ N. lat., 123°31.30′ W. long.;
(195) 38°00.00′ N. lat., 123°29.55′ W. long.;
(196) 37°58.13′ N. lat., 123°27.21′ W. long.;
(197) 37°55.01′ N. lat., 123°27.46′ W. long.;
(198) 37°51.40′ N. lat., 123°25.18′ W. long.;
(199) 37°43.97′ N. lat., 123°11.49′ W. long.;
(200) 37°35.67′ N. lat., 123°02.25′ W. long.;
(201) 37°13.65′ N. lat., 122°54.18′ W. long.;
(202) 37°11.00′ N. lat., 122°50.90′ W. long.;
(203) 37°07.00′ N. lat., 122°45.83′ W. long.;
(204) 37°00.66′ N. lat., 122°37.84′ W. long.;
(205) 36°57.40′ N. lat., 122°28.25′ W. long.;
(206) 36°59.25′ N. lat., 122°25.54′ W. long.;
(207) 36°56.88′ N. lat., 122°25.42′ W. long.;
(208) 36°57.40′ N. lat., 122°22.62′ W. long.;

(209) 36°55.43′ N. lat., 122°22.43′ W. long.;
(210) 36°52.29′ N. lat., 122°13.18′ W. long.;
(211) 36°47.12′ N. lat., 122°07.56′ W. long.;
(212) 36°47.10′ N. lat., 122°02.11′ W. long.;
(213) 36°43.76′ N. lat., 121°59.11′ W. long.;
(214) 36°38.85′ N. lat., 122°02.20′ W. long.;
(215) 36°23.41′ N. lat., 122°00.11′ W. long.;
(216) 36°19.68′ N. lat., 122°06.93′ W. long.;
(217) 36°14.75′ N. lat., 122°01.51′ W. long.;
(218) 36°09.74′ N. lat., 121°45.00′ W. long.;
(219) 36°06.67′ N. lat., 121°41.06′ W. long.;
(220) 36°00.00′ N. lat., 121°36.95′ W. long.;
(221) 35°52.31′ N. lat., 121°32.45′ W. long.;
(222) 35°51.21′ N. lat., 121°30.91′ W. long.;
(223) 35°46.32′ N. lat., 121°30.30′ W. long.;
(224) 35°33.74′ N. lat., 121°20.10′ W. long.;
(225) 35°31.37′ N. lat., 121°15.23′ W. long.;
(226) 35°23.32′ N. lat., 121°11.44′ W. long.;
(227) 35°15.28′ N. lat., 121°04.45′ W. long.;
(228) 35°07.08′ N. lat., 121°00.30′ W. long.;
(229) 34°57.46′ N. lat., 120°58.23′ W. long.;
(230) 34°44.25′ N. lat., 120°58.29′ W. long.;
(231) 34°32.30′ N. lat., 120°50.22′ W. long.;
(232) 34°27.00′ N. lat., 120°42.55′ W. long.;
(233) 34°19.08′ N. lat., 120°31.21′ W. long.;
(234) 34°17.72′ N. lat., 120°19.26′ W. long.;
(235) 34°22.45′ N. lat., 120°12.81′ W. long.;
(236) 34°21.36′ N. lat., 119°54.88′ W. long.;
(237) 34°09.95′ N. lat., 119°46.18′ W. long.;
(238) 34°09.08′ N. lat., 119°57.53′ W. long.;
(239) 34°07.53′ N. lat., 120°06.35′ W. long.;
(240) 34°10.54′ N. lat., 120°19.07′ W. long.;
(241) 34°14.68′ N. lat., 120°29.48′ W. long.;
(242) 34°09.51′ N. lat., 120°38.32′ W. long.;
(243) 34°03.06′ N. lat., 120°35.54′ W. long.;
(244) 33°56.39′ N. lat., 120°28.47′ W. long.;
(245) 33°50.25′ N. lat., 120°09.43′ W. long.;
(246) 33°37.96′ N. lat., 120°00.08′ W. long.;
(247) 33°34.52′ N. lat., 119°51.84′ W. long.;
(248) 33°35.51′ N. lat., 119°48.49′ W. long.;
(249) 33°42.76′ N. lat., 119°47.77′ W. long.;
(250) 33°53.62′ N. lat., 119°53.28′ W. long.;
(251) 33°57.61′ N. lat., 119°31.26′ W. long.;
(252) 33°56.34′ N. lat., 119°26.40′ W. long.;
(253) 33°57.79′ N. lat., 119°26.85′ W. long.;
(254) 33°58.88′ N. lat., 119°20.06′ W. long.;
(255) 34°02.65′ N. lat., 119°15.11′ W. long.;
(256) 33°59.02′ N. lat., 119°02.99′ W. long.;
(257) 33°57.61′ N. lat., 118°42.07′ W. long.;
(258) 33°50.76′ N. lat., 118°37.98′ W. long.;
(259) 33°38.41′ N. lat., 118°17.03′ W. long.;
(260) 33°37.14′ N. lat., 118°18.39′ W. long.;
(261) 33°35.51′ N. lat., 118°18.03′ W. long.;
(262) 33°30.68′ N. lat., 118°10.35′ W. long.;
(263) 33°32.49′ N. lat., 117°51.85′ W. long.;
(264) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(265) 32°35.53′ N. lat., 117°29.67′ W. long.

(g) The 200 fm (366 m) depth contour used around San Clemente Island is defined by straight lines connecting all of the following points in the order stated:
(1) 33°05.89′ N. lat., 118°39.45′ W. long.;
(2) 33°02.68′ N. lat., 118°33.14′ W. long.;
(3) 32°57.32′ N. lat., 118°29.12′ W. long.;
(4) 32°47.51′ N. lat., 118°17.88′ W. long.;
(5) 32°41.22′ N. lat., 118°23.78′ W. long.;
(6) 32°46.83′ N. lat., 118°32.10′ W. long.;
(7) 33°01.61′ N. lat., 118°40.64′ W. long.; and
(8) 33°5.89′ N. lat., 118°39.45′ W. long.

(h) The 200 fm (366 m) depth contour used around Santa Catalina Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°32.06′ N. lat., 118°44.52′ W. long.;
(2) 33°31.36′ N. lat., 118°35.28′ W. long.;
(3) 33°30.10′ N. lat., 118°30.82′ W. long.;
(4) 33°27.91′ N. lat., 118°26.83′ W. long.;
(5) 33°26.27′ N. lat., 118°21.35′ W. long.;
(6) 33°21.34′ N. lat., 118°15.24′ W. long.;
(7) 33°13.66′ N. lat., 118°08.98′ W. long.;
(8) 33°17.15′ N. lat., 118°28.35′ W. long.;
(9) 33°20.94′ N. lat., 118°34.34′ W. long.;
(10) 33°23.32′ N. lat., 118°32.60′ W. long.;
(11) 33°28.68′ N. lat., 118°44.93′ W. long.; and
(12) 33°32.06′ N. lat., 118°44.52′ W. long.

(i) The 200 fm (366 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.91′ N. lat., 117°59.44′ W. long.;
(2) 33°23.37′ N. lat., 117°56.97′ W. long.;
(3) 33°22.82′ N. lat., 117°59.50′ W. long.;
(4) 33°25.24′ N. lat., 118°01.68′ W. long.; and
(5) 33°25.91′ N. lat., 117°59.44′ W. long.

(j) The 200 fm (366 m) depth contour used around San Diego Rise off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 32°50.30′ N. lat., 117°50.18′ W. long.;
(2) 32°44.01′ N. lat., 117°44.46′ W. long.;
(3) 32°41.34′ N. lat., 117°45.86′ W. long.;
(4) 32°45.45′ N. lat., 117°50.09′ W. long.;
(5) 32°50.10′ N. lat., 117°50.76′ W. long.; and
(6) 32°50.30′ N. lat., 117°50.18′ W. long.

(k) The 200 fm (366 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico, modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.75′ N. lat., 125°41.73′ W. long.;
(2) 48°12.85′ N. lat., 125°38.06′ W. long.;
(3) 48°11.52′ N. lat., 125°39.45′ W. long.;

(4) 48°10.14′ N. lat., 125°42.81′ W. long.;
(5) 48°08.96′ N. lat., 125°42.08′ W. long.;
(6) 48°08.33′ N. lat., 125°44.91′ W. long.;
(7) 48°07.19′ N. lat., 125°45.87′ W. long.;
(8) 48°05.66′ N. lat., 125°44.79′ W. long.;
(9) 48°05.91′ N. lat., 125°42.16′ W. long.;
(10) 48°04.11′ N. lat., 125°40.17′ W. long.;
(11) 48°04.07′ N. lat., 125°36.96′ W. long.;
(12) 48°03.05′ N. lat., 125°36.38′ W. long.;
(13) 48°01.98′ N. lat., 125°37.41′ W. long.;
(14) 48°01.46′ N. lat., 125°39.61′ W. long.;
(15) 47°57.00′ N. lat., 125°37.00′ W. long.;
(16) 47°55.50′ N. lat., 125°28.50′ W. long.;
(17) 47°57.88′ N. lat., 125°25.61′ W. long.;
(18) 48°01.63′ N. lat., 125°23.75′ W. long.;
(19) 48°02.21′ N. lat., 125°22.43′ W. long.;
(20) 48°03.60′ N. lat., 125°21.84′ W. long.;
(21) 48°03.98′ N. lat., 125°20.65′ W. long.;
(22) 48°03.26′ N. lat., 125°19.76′ W. long.;
(23) 48°01.49′ N. lat., 125°18.80′ W. long.;
(24) 48°01.03′ N. lat., 125°20.12′ W. long.;
(25) 48°00.04′ N. lat., 125°20.26′ W. long.;
(26) 47°58.10′ N. lat., 125°18.91′ W. long.;
(27) 47°58.17′ N. lat., 125°17.50′ W. long.;
(28) 47°52.28′ N. lat., 125°16.06′ W. long.;
(29) 47°51.92′ N. lat., 125°13.89′ W. long.;
(30) 47°49.20′ N. lat., 125°10.67′ W. long.;
(31) 47°48.69′ N. lat., 125°06.50′ W. long.;
(32) 47°46.54′ N. lat., 125°07.68′ W. long.;
(33) 47°47.24′ N. lat., 125°05.38′ W. long.;
(34) 47°45.95′ N. lat., 125°04.61′ W. long.;
(35) 47°44.58′ N. lat., 125°07.12′ W. long.;
(36) 47°42.24′ N. lat., 125°05.15′ W. long.;
(37) 47°38.54′ N. lat., 125°06.76′ W. long.;
(38) 47°34.86′ N. lat., 125°04.67′ W. long.;
(39) 47°30.75′ N. lat., 124°57.52′ W. long.;
(40) 47°28.51′ N. lat., 124°56.69′ W. long.;
(41) 47°29.15′ N. lat., 124°54.10′ W. long.;
(42) 47°28.43′ N. lat., 124°51.58′ W. long.;
(43) 47°24.13′ N. lat., 124°47.51′ W. long.;
(44) 47°18.31′ N. lat., 124°46.17′ W. long.;
(45) 47°19.57′ N. lat., 124°51.01′ W. long.;
(46) 47°18.12′ N. lat., 124°53.66′ W. long.;
(47) 47°17.59′ N. lat., 124°52.94′ W. long.;
(48) 47°17.71′ N. lat., 124°51.63′ W. long.;
(49) 47°16.90′ N. lat., 124°51.23′ W. long.;
(50) 47°16.10′ N. lat., 124°53.67′ W. long.;
(51) 47°14.24′ N. lat., 124°53.02′ W. long.;
(52) 47°12.16′ N. lat., 124°56.77′ W. long.;
(53) 47°13.35′ N. lat., 124°58.70′ W. long.;
(54) 47°09.53′ N. lat., 124°58.32′ W. long.;
(55) 47°09.54′ N. lat., 124°59.50′ W. long.;
(56) 47°05.87′ N. lat., 124°59.29′ W. long.;
(57) 47°03.65′ N. lat., 124°56.26′ W. long.;
(58) 47°00.91′ N. lat., 124°59.73′ W. long.;
(59) 46°58.74′ N. lat., 124°59.40′ W. long.;
(60) 46°58.55′ N. lat., 125°00.70′ W. long.;
(61) 46°55.57′ N. lat., 125°01.61′ W. long.;
(62) 46°55.77′ N. lat., 124°55.04′ W. long.;
(63) 46°53.16′ N. lat., 124°53.69′ W. long.;
(64) 46°52.39′ N. lat., 124°55.24′ W. long.;
(65) 46°44.88′ N. lat., 124°51.97′ W. long.;
(66) 46°33.28′ N. lat., 124°36.96′ W. long.;
(67) 46°33.20′ N. lat., 124°30.64′ W. long.;
(68) 46°27.85′ N. lat., 124°31.95′ W. long.;
(69) 46°18.16′ N. lat., 124°39.39′ W. long.;
(70) 46°16.48′ N. lat., 124°27.41′ W. long.;
(71) 46°16.73′ N. lat., 124°23.20′ W. long.;
(72) 46°16.00′ N. lat., 124°24.88′ W. long.;
(73) 46°14.22′ N. lat., 124°26.28′ W. long.;
(74) 46°11.53′ N. lat., 124°39.58′ W. long.;
(75) 46°08.77′ N. lat., 124°41.71′ W. long.;
(76) 46°05.86′ N. lat., 124°42.27′ W. long.;
(77) 46°03.85′ N. lat., 124°48.20′ W. long.;
(78) 46°02.34′ N. lat., 124°48.51′ W. long.;
(79) 45°58.99′ N. lat., 124°44.42′ W. long.;
(80) 45°46.00′ N. lat., 124°41.82′ W. long.;
(81) 45°49.74′ N. lat., 124°43.69′ W. long.;
(82) 45°49.68′ N. lat., 124°42.37′ W. long.;
(83) 45°40.83′ N. lat., 124°40.90′ W. long.;
(84) 45°34.88′ N. lat., 124°32.58′ W. long.;
(85) 45°20.25′ N. lat., 124°25.47′ W. long.;
(86) 45°13.04′ N. lat., 124°21.92′ W. long.;
(87) 45°03.83′ N. lat., 124°27.13′ W. long.;
(88) 45°00.17′ N. lat., 124°29.28′ W. long.;
(89) 44°50.99′ N. lat., 124°35.40′ W. long.;
(90) 44°46.87′ N. lat., 124°38.20′ W. long.;
(91) 44°48.25′ N. lat., 124°40.62′ W. long.;
(92) 44°41.34′ N. lat., 124°49.20′ W. long.;
(93) 44°23.30′ N. lat., 124°50.17′ W. long.;
(94) 44°13.19′ N. lat., 124°58.66′ W. long.;
(95) 44°08.30′ N. lat., 124°58.72′ W. long.;
(96) 43°57.37′ N. lat., 124°58.71′ W. long.;
(97) 43°52.32′ N. lat., 124°49.43′ W. long.;
(98) 43°51.35′ N. lat., 124°37.94′ W. long.;
(99) 43°49.73′ N. lat., 124°40.26′ W. long.;
(100) 43°39.06′ N. lat., 124°38.55′ W. long.;
(101) 43°28.85′ N. lat., 124°39.99′ W. long.;
(102) 43°20.83′ N. lat., 124°42.89′ W. long.;
(103) 43°20.22′ N. lat., 124°43.05′ W. long.;
(104) 43°13.29′ N. lat., 124°47.00′ W. long.;
(105) 43°10.64′ N. lat., 124°49.95′ W. long.;
(106) 43°04.26′ N. lat., 124°53.05′ W. long.;
(107) 42°53.93′ N. lat., 124°54.60′ W. long.;
(108) 42°50.00′ N. lat., 124°50.60′ W. long.;

(109) 42°47.57′ N. lat., 124°48.12′ W. long.;
(110) 42°46.19′ N. lat., 124°44.52′ W. long.;
(111) 42°41.75′ N. lat., 124°44.69′ W. long.;
(112) 42°40.50′ N. lat., 124°44.02′ W. long.;
(113) 42°38.81′ N. lat., 124°43.09′ W. long.;
(114) 42°31.83′ N. lat., 124°46.23′ W. long.;
(115) 42°32.08′ N. lat., 124°43.58′ W. long.;
(116) 42°30.96′ N. lat., 124°43.84′ W. long.;
(117) 42°28.41′ N. lat., 124°49.17′ W. long.;
(118) 42°24.80′ N. lat., 124°45.93′ W. long.;
(119) 42°19.71′ N. lat., 124°41.60′ W. long.;
(120) 42°15.12′ N. lat., 124°38.34′ W. long.;
(121) 42°13.67′ N. lat., 124°38.28′ W. long.;
(122) 42°12.35′ N. lat., 124°38.09′ W. long.;
(123) 42°00.00′ N. lat., 124°36.83′ W. long.;
(124) 41°47.79′ N. lat., 124°29.48′ W. long.;
(125) 41°21.01′ N. lat., 124°29.01′ W. long.;
(126) 41°13.50′ N. lat., 124°24.40′ W. long.;
(127) 41°11.00′ N. lat., 124°22.99′ W. long.;
(128) 41°06.69′ N. lat., 124°23.30′ W. long.;
(129) 40°54.73′ N. lat., 124°28.15′ W. long.;
(130) 40°53.95′ N. lat., 124°26.04′ W. long.;
(131) 40°49.96′ N. lat., 124°26.04′ W. long.;
(132) 40°44.49′ N. lat., 124°30.81′ W. long.;
(133) 40°40.58′ N. lat., 124°32.06′ W. long.;
(134) 40°36.09′ N. lat., 124°40.11′ W. long.;
(135) 40°34.19′ N. lat., 124°41.20′ W. long.;
(136) 40°32.93′ N. lat., 124°41.86′ W. long.;
(137) 40°31.28′ N. lat., 124°40.98′ W. long.;
(138) 40°30.00′ N. lat., 124°38.50′ W. long.;
(139) 40°25.01′ N. lat., 124°36.36′ W. long.;
(140) 40°22.28′ N. lat., 124°31.83′ W. long.;
(141) 40°16.96′ N. lat., 124°31.91′ W. long.;
(142) 40°17.59′ N. lat., 124°45.28′ W. long.;
(143) 40°13.23′ N. lat., 124°32.40′ W. long.;
(144) 40°10.00′ N. lat., 124°24.55′ W. long.;
(145) 40°06.45′ N. lat., 124°19.24′ W. long.;
(146) 40°07.08′ N. lat., 124°17.80′ W. long.;
(147) 40°05.55′ N. lat., 124°18.11′ W. long.;
(148) 40°04.74′ N. lat., 124°18.11′ W. long.;
(149) 40°02.35′ N. lat., 124°16.53′ W. long.;
(150) 40°01.13′ N. lat., 124°12.98′ W. long.;
(151) 40°01.55′ N. lat., 124°09.80′ W. long.;
(152) 39°58.54′ N. lat., 124°12.43′ W. long.;
(153) 39°55.72′ N. lat., 124°07.44′ W. long.;
(154) 39°42.64′ N. lat., 124°02.52′ W. long.;
(155) 39°35.96′ N. lat., 123°59.47′ W. long.;
(156) 39°34.61′ N. lat., 123°59.58′ W. long.;
(157) 39°34.79′ N. lat., 123°58.47′ W. long.;
(158) 39°33.79′ N. lat., 123°56.77′ W. long.;
(159) 39°33.03′ N. lat., 123°57.06′ W. long.;
(160) 39°32.20′ N. lat., 123°59.12′ W. long.;
(161) 39°07.81′ N. lat., 123°59.06′ W. long.;
(162) 39°03.06′ N. lat., 123°57.77′ W. long.;
(163) 38°57.50′ N. lat., 123°57.00′ W. long.;
(164) 38°52.26′ N. lat., 123°56.18′ W. long.;
(165) 38°50.21′ N. lat., 123°55.48′ W. long.;
(166) 38°46.81′ N. lat., 123°51.49′ W. long.;
(167) 38°45.28′ N. lat., 123°51.55′ W. long.;
(168) 38°42.76′ N. lat., 123°49.73′ W. long.;
(169) 38°41.53′ N. lat., 123°47.80′ W. long.;
(170) 38°41.41′ N. lat., 123°46.74′ W. long.;
(171) 38°38.01′ N. lat., 123°45.74′ W. long.;
(172) 38°37.19′ N. lat., 123°43.98′ W. long.;
(173) 38°35.26′ N. lat., 123°41.99′ W. long.;
(174) 38°33.38′ N. lat., 123°41.76′ W. long.;
(175) 38°19.95′ N. lat., 123°32.90′ W. long.;
(176) 38°14.38′ N. lat., 123°25.51′ W. long.;
(177) 38°09.39′ N. lat., 123°24.39′ W. long.;
(178) 38°10.09′ N. lat., 123°27.21′ W. long.;
(179) 38°03.76′ N. lat., 123°31.90′ W. long.;
(180) 38°02.06′ N. lat., 123°31.26′ W. long.;
(181) 38°00.01′ N. lat., 123°29.56′ W. long.;
(182) 37°58.07′ N. lat., 123°27.21′ W. long.;
(183) 37°55.02′ N. lat., 123°27.44′ W. long.;
(184) 37°51.39′ N. lat., 123°25.22′ W. long.;
(185) 37°43.94′ N. lat., 123°11.49′ W. long.;
(186) 37°35.67′ N. lat., 123°02.23′ W. long.;
(187) 37°23.48′ N. lat., 122°57.76′ W. long.;
(188) 37°23.23′ N. lat., 122°53.78′ W. long.;
(189) 37°13.97′ N. lat., 122°49.91′ W. long.;
(190) 37°11.00′ N. lat., 122°45.61′ W. long.;
(191) 37°07.00′ N. lat., 122°46.38′ W. long.;
(192) 37°00.64′ N. lat., 122°37.70′ W. long.;
(193) 36°57.40′ N. lat., 122°28.36′ W. long.;
(194) 36°59.21′ N. lat., 122°25.64′ W. long.;
(195) 36°56.90′ N. lat., 122°25.42′ W. long.;
(196) 36°57.43′ N. lat., 122°22.55′ W. long.;
(197) 36°55.43′ N. lat., 122°22.43′ W. long.;
(198) 36°52.27′ N. lat., 122°13.16′ W. long.;
(199) 36°47.10′ N. lat., 122°07.53′ W. long.;
(200) 36°47.10′ N. lat., 122°02.08′ W. long.;
(201) 36°43.76′ N. lat., 121°59.15′ W. long.;
(202) 36°38.84′ N. lat., 122°02.20′ W. long.;
(203) 36°30.82′ N. lat., 122°01.13′ W. long.;
(204) 36°30.94′ N. lat., 122°00.54′ W. long.;
(205) 36°25.99′ N. lat., 121°59.50′ W. long.;
(206) 36°26.43′ N. lat., 121°59.76′ W. long.;
(207) 36°22.00′ N. lat., 122°01.02′ W. long.;
(208) 36°19.01′ N. lat., 122°05.01′ W. long.;
(209) 36°14.73′ N. lat., 122°01.55′ W. long.;
(210) 36°14.03′ N. lat., 121°58.09′ W. long.;
(211) 36°09.74′ N. lat., 121°45.01′ W. long.;
(212) 36°06.75′ N. lat., 121°40.73′ W. long.;
(213) 36°00.00′ N. lat., 121°35.96′ W. long.;

(214) 35°58.19′ N. lat., 121°34.63′ W. long.;
(215) 35°52.21′ N. lat., 121°32.46′ W. long.;
(216) 35°51.21′ N. lat., 121°30.94′ W. long.;
(217) 35°46.28′ N. lat., 121°30.29′ W. long.;
(218) 35°33.67′ N. lat., 121°20.09′ W. long.;
(219) 35°31.33′ N. lat., 121°15.22′ W. long.;
(220) 35°23.29′ N. lat., 121°11.41′ W. long.;
(221) 35°15.26′ N. lat., 121°04.49′ W. long.;
(222) 35°07.05′ N. lat., 121°00.26′ W. long.;
(223) 35°07.46′ N. lat., 120°57.10′ W. long.;
(224) 34°44.29′ N. lat., 120°54.28′ W. long.;
(225) 34°44.23′ N. lat., 120°58.27′ W. long.;
(226) 34°32.33′ N. lat., 120°50.23′ W. long.;
(227) 34°27.00′ N. lat., 120°42.55′ W. long.;
(228) 34°19.08′ N. lat., 120°31.21′ W. long.;
(229) 34°17.72′ N. lat., 120°19.26′ W. long.;
(230) 34°22.45′ N. lat., 120°12.81′ W. long.;
(231) 34°21.36′ N. lat., 119°54.88′ W. long.;
(232) 34°09.95′ N. lat., 119°46.18′ W. long.;
(233) 34°09.08′ N. lat., 119°57.53′ W. long.;
(234) 34°07.53′ N. lat., 120°06.35′ W. long.;
(235) 34°10.54′ N. lat., 120°19.07′ W. long.;
(236) 34°14.68′ N. lat., 120°29.48′ W. long.;
(237) 34°09.51′ N. lat., 120°38.32′ W. long.;
(238) 34°03.06′ N. lat., 120°35.54′ W. long.;
(239) 33°56.39′ N. lat., 120°28.47′ W. long.;
(240) 33°50.25′ N. lat., 120°09.43′ W. long.;
(241) 33°37.96′ N. lat., 120°00.08′ W. long.;
(242) 33°34.52′ N. lat., 119°51.84′ W. long.;
(243) 33°35.51′ N. lat., 119°48.49′ W. long.;
(244) 33°42.76′ N. lat., 119°47.77′ W. long.;
(245) 33°53.62′ N. lat., 119°53.28′ W. long.;
(246) 33°57.61′ N. lat., 119°31.26′ W. long.;
(247) 33°56.34′ N. lat., 119°26.40′ W. long.;
(248) 33°57.79′ N. lat., 119°26.85′ W. long.;
(249) 33°58.88′ N. lat., 119°20.06′ W. long.;
(250) 34°02.65′ N. lat., 119°15.11′ W. long.;
(251) 33°59.02′ N. lat., 119°02.99′ W. long.;
(252) 33°57.61′ N. lat., 118°42.07′ W. long.;
(253) 33°50.76′ N. lat., 118°37.98′ W. long.;
(254) 33°39.54′ N. lat., 118°18.70′ W. long.;
(255) 33°37.14′ N. lat., 118°18.39′ W. long.;
(256) 33°35.51′ N. lat., 118°18.03′ W. long.;
(257) 33°30.68′ N. lat., 118°10.35′ W. long.;
(258) 33°32.49′ N. lat., 117°51.85′ W. long.;
(259) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(260) 32°35.53′ N. lat., 117°29.67′ W. long.

(l) The 250 fm (457 m) depth contour used between the U.S. border with Canada and 38° N. lat. is defined by straight lines connecting all of the following points in the order stated:
(1) 48°14.68′ N. lat., 125°42.10′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;
(3) 48°12.73′ N. lat., 125°38.87′ W. long.;
(4) 48°12.43′ N. lat., 125°39.12′ W. long.;
(5) 48°11.83′ N. lat., 125°40.01′ W. long.;
(6) 48°11.78′ N. lat., 125°41.70′ W. long.;
(7) 48°10.62′ N. lat., 125°43.41′ W. long.;
(8) 48°09.23′ N. lat., 125°42.80′ W. long.;
(9) 48°08.79′ N. lat., 125°43.79′ W. long.;
(10) 48°08.50′ N. lat., 125°45.00′ W. long.;
(11) 48°07.43′ N. lat., 125°46.36′ W. long.;
(12) 48°06.00′ N. lat., 125°46.50′ W. long.;
(13) 48°05.38′ N. lat., 125°42.82′ W. long.;
(14) 48°04.19′ N. lat., 125°40.40′ W. long.;
(15) 48°03.50′ N. lat., 125°37.00′ W. long.;
(16) 48°01.50′ N. lat., 125°40.00′ W. long.;
(17) 47°57.00′ N. lat., 125°37.00′ W. long.;
(18) 47°55.21′ N. lat., 125°37.22′ W. long.;
(19) 47°54.02′ N. lat., 125°36.57′ W. long.;
(20) 47°53.67′ N. lat., 125°35.06′ W. long.;
(21) 47°54.14′ N. lat., 125°32.35′ W. long.;
(22) 47°55.50′ N. lat., 125°28.56′ W. long.;
(23) 47°57.03′ N. lat., 125°26.52′ W. long.;
(24) 47°57.98′ N. lat., 125°25.08′ W. long.;
(25) 48°00.54′ N. lat., 125°24.38′ W. long.;
(26) 48°01.45′ N. lat., 125°23.70′ W. long.;
(27) 48°01.97′ N. lat., 125°22.34′ W. long.;
(28) 48°03.68′ N. lat., 125°21.20′ W. long.;
(29) 48°01.96′ N. lat., 125°19.56′ W. long.;
(30) 48°00.98′ N. lat., 125°20.43′ W. long.;
(31) 48°00.00′ N. lat., 125°20.68′ W. long.;
(32) 47°58.00′ N. lat., 125°19.50′ W. long.;
(33) 47°57.65′ N. lat., 125°19.18′ W. long.;
(34) 47°58.00′ N. lat., 125°18.00′ W. long.;
(35) 47°56.59′ N. lat., 125°18.15′ W. long.;
(36) 47°51.30′ N. lat., 125°18.32′ W. long.;
(37) 47°49.88′ N. lat., 125°14.49′ W. long.;
(38) 47°49.00′ N. lat., 125°11.00′ W. long.;
(39) 47°47.99′ N. lat., 125°07.31′ W. long.;
(40) 47°46.47′ N. lat., 125°08.63′ W. long.;
(41) 47°46.00′ N. lat., 125°06.00′ W. long.;
(42) 47°44.50′ N. lat., 125°07.50′ W. long.;
(43) 47°43.39′ N. lat., 125°06.57′ W. long.;
(44) 47°42.37′ N. lat., 125°05.74′ W. long.;
(45) 47°40.61′ N. lat., 125°06.48′ W. long.;
(46) 47°37.43′ N. lat., 125°07.33′ W. long.;
(47) 47°33.68′ N. lat., 125°04.80′ W. long.;
(48) 47°30.00′ N. lat., 125°00.00′ W. long.;
(49) 47°28.00′ N. lat., 124°58.50′ W. long.;
(50) 47°28.88′ N. lat., 124°54.71′ W. long.;
(51) 47°27.70′ N. lat., 124°51.87′ W. long.;
(52) 47°24.84′ N. lat., 124°48.45′ W. long.;
(53) 47°21.76′ N. lat., 124°47.42′ W. long.;
(54) 47°18.84′ N. lat., 124°46.75′ W. long.;
(55) 47°19.82′ N. lat., 124°51.43′ W. long.;

(56) 47°18.13′ N. lat., 124°54.25′ W. long.;
(57) 47°13.50′ N. lat., 124°54.69′ W. long.;
(58) 47°15.00′ N. lat., 125°00.00′ W. long.;
(59) 47°08.00′ N. lat., 124°59.83′ W. long.;
(60) 47°05.79′ N. lat., 125°01.00′ W. long.;
(61) 47°03.34′ N. lat., 124°57.49′ W. long.;
(62) 47°01.00′ N. lat., 125°00.00′ W. long.;
(63) 46°55.00′ N. lat., 125°02.00′ W. long.;
(64) 46°51.00′ N. lat., 124°57.00′ W. long.;
(65) 46°47.00′ N. lat., 124°55.00′ W. long.;
(66) 46°34.00′ N. lat., 124°38.00′ W. long.;
(67) 46°30.50′ N. lat., 124°41.00′ W. long.;
(68) 46°33.00′ N. lat., 124°32.00′ W. long.;
(69) 46°29.00′ N. lat., 124°32.00′ W. long.;
(70) 46°20.00′ N. lat., 124°39.00′ W. long.;
(71) 46°18.16′ N. lat., 124°40.00′ W. long.;
(72) 46°16.00′ N. lat., 124°27.01′ W. long.;
(73) 46°15.00′ N. lat., 124°30.96′ W. long.;
(74) 46°13.17′ N. lat., 124°37.87′ W. long.;
(75) 46°13.17′ N. lat., 124°38.75′ W. long.;
(76) 46°10.50′ N. lat., 124°42.00′ W. long.;
(77) 46°06.21′ N. lat., 124°41.85′ W. long.;
(78) 46°03.02′ N. lat., 124°50.27′ W. long.;
(79) 45°57.00′ N. lat., 124°45.52′ W. long.;
(80) 45°46.85′ N. lat., 124°45.91′ W. long.;
(81) 45°45.81′ N. lat., 124°47.05′ W. long.;
(82) 45°44.87′ N. lat., 124°45.98′ W. long.;
(83) 45°43.44′ N. lat., 124°46.03′ W. long.;
(84) 45°35.82′ N. lat., 124°45.72′ W. long.;
(85) 45°35.70′ N. lat., 124°42.89′ W. long.;
(86) 45°24.45′ N. lat., 124°38.21′ W. long.;
(87) 45°11.68′ N. lat., 124°39.38′ W. long.;
(88) 44°57.94′ N. lat., 124°37.02′ W. long.;
(89) 44°44.28′ N. lat., 124°50.79′ W. long.;
(90) 44°32.63′ N. lat., 124°54.21′ W. long.;
(91) 44°23.20′ N. lat., 124°49.87′ W. long.;
(92) 44°13.17′ N. lat., 124°58.81′ W. long.;
(93) 43°57.92′ N. lat., 124°58.29′ W. long.;
(94) 43°50.12′ N. lat., 124°53.36′ W. long.;
(95) 43°49.53′ N. lat., 124°43.96′ W. long.;
(96) 43°42.76′ N. lat., 124°41.40′ W. long.;
(97) 43°24.00′ N. lat., 124°42.61′ W. long.;
(98) 43°19.74′ N. lat., 124°45.12′ W. long.;
(99) 43°19.62′ N. lat., 124°52.95′ W. long.;
(100) 43°17.41′ N. lat., 124°53.02′ W. long.;
(101) 42°49.15′ N. lat., 124°54.93′ W. long.;
(102) 42°46.74′ N. lat., 124°53.39′ W. long.;
(103) 42°43.76′ N. lat., 124°51.64′ W. long.;
(104) 42°45.41′ N. lat., 124°49.35′ W. long.;
(105) 42°43.92′ N. lat., 124°45.92′ W. long.;
(106) 42°38.87′ N. lat., 124°43.38′ W. long.;
(107) 42°34.78′ N. lat., 124°46.56′ W. long.;
(108) 42°31.47′ N. lat., 124°46.89′ W. long.;
(109) 42°31.00′ N. lat., 124°44.28′ W. long.;
(110) 42°29.22′ N. lat., 124°46.93′ W. long.;
(111) 42°28.39′ N. lat., 124°49.94′ W. long.;
(112) 42°26.28′ N. lat., 124°47.60′ W. long.;
(113) 42°19.58′ N. lat., 124°43.21′ W. long.;
(114) 42°13.75′ N. lat., 124°40.06′ W. long.;
(115) 42°05.12′ N. lat., 124°39.06′ W. long.;
(116) 42°00.00′ N. lat., 124°37.76′ W. long.;
(117) 41°47.93′ N. lat., 124°31.79′ W. long.;
(118) 41°21.35′ N. lat., 124°30.35′ W. long.;
(119) 41°07.11′ N. lat., 124°25.25′ W. long.;
(120) 40°57.37′ N. lat., 124°30.25′ W. long.;
(121) 40°48.77′ N. lat., 124°30.69′ W. long.;
(122) 40°41.03′ N. lat., 124°33.21′ W. long.;
(123) 40°37.40′ N. lat., 124°38.96′ W. long.;
(124) 40°33.70′ N. lat., 124°42.50′ W. long.;
(125) 40°31.31′ N. lat., 124°41.59′ W. long.;
(126) 40°30.00′ N. lat., 124°40.50′ W. long.;
(127) 40°25.00′ N. lat., 124°36.65′ W. long.;
(128) 40°22.42′ N. lat., 124°32.19′ W. long.;
(129) 40°17.17′ N. lat., 124°32.21′ W. long.;
(130) 40°18.68′ N. lat., 124°50.44′ W. long.;
(131) 40°13.55′ N. lat.,124°34.26′ W. long.;
(132) 40°10.00′ N. lat., 124°28.25′ W. long.;
(133) 40°06.72′ N. lat.,124°21.40′ W. long.;
(134) 40°01.63′ N. lat.,124°17.25′ W. long.;
(135) 40°00.68′ N. lat.,124°11.19′ W. long.;
(136) 39°59.09′ N. lat., 124°14.92′ W. long.;
(137) 39°51.85′ N. lat.,124°10.33′ W. long.;
(138) 39°36.90′ N. lat.,124°00.63′ W. long.;
(139) 39°32.41′ N. lat.,124°00.01′ W. long.;
(140) 39°05.40′ N. lat.,124°00.52′ W. long.;
(141) 39°04.32′ N. lat.,123°59.00′ W. long.;
(142) 38°58.02′ N. lat.,123°58.18′ W. long.;
(143) 38°57.50′ N. lat., 124°01.90′ W. long.;
(144) 38°50.27′ N. lat.,123°56.26′ W. long.;
(145) 38°46.73′ N. lat.,123°51.93′ W. long.;
(146) 38°44.64′ N. lat.,123°51.77′ W. long.;
(147) 38°32.97′ N. lat.,123°41.84′ W. long.;
(148) 38°14.56′ N. lat.,123°32.18′ W. long.;
(149) 38°13.85′ N. lat.,123°29.94′ W. long.;
(150) 38°11.88′ N. lat.,123°30.57′ W. long.;
(151) 38°08.72′ N. lat.,123°29.56′ W. long.;
(152) 38°05.62′ N. lat.,123°32.38′ W. long.;
(153) 38°01.90′ N. lat.,123°32.00′ W. long.; and
(154) 38°00.00′ N. lat., 123°30.00′ W. long.

(m) The 250 fm (457 m) depth contour used between the U.S. border with Canada and 38° N. lat., modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.71′ N. lat., 125°41.95′ W. long.;
(2) 48°13.00′ N. lat., 125°39.00′ W. long.;

(3) 48°08.50′ N. lat., 125°45.00′ W. long.;
(4) 48°06.00′ N. lat., 125°46.50′ W. long.;
(5) 48°03.50′ N. lat., 125°37.00′ W. long.;
(6) 48°01.50′ N. lat., 125°40.00′ W. long.;
(7) 47°57.00′ N. lat., 125°37.00′ W. long.;
(8) 47°55.50′ N. lat., 125°28.50′ W. long.;
(9) 47°58.00′ N. lat., 125°25.00′ W. long.;
(10) 48°00.50′ N. lat., 125°24.50′ W. long.;
(11) 48°03.50′ N. lat., 125°21.00′ W. long.;
(12) 48°02.00′ N. lat., 125°19.50′ W. long.;
(13) 48°00.00′ N. lat., 125°21.00′ W. long.;
(14) 47°58.00′ N. lat., 125°20.00′ W. long.;
(15) 47°58.00′ N. lat., 125°18.00′ W. long.;
(16) 47°52.00′ N. lat., 125°16.50′ W. long.;
(17) 47°49.00′ N. lat., 125°11.00′ W. long.;
(18) 47°46.00′ N. lat., 125°06.00′ W. long.;
(19) 47°44.50′ N. lat., 125°07.50′ W. long.;
(20) 47°42.00′ N. lat., 125°06.00′ W. long.;
(21) 47°38.00′ N. lat., 125°07.00′ W. long.;
(22) 47°30.00′ N. lat., 125°00.00′ W. long.;
(23) 47°28.00′ N. lat., 124°58.50′ W. long.;
(24) 47°28.88′ N. lat., 124°54.71′ W. long.;
(25) 47°27.70′ N. lat., 124°51.87′ W. long.;
(26) 47°24.84′ N. lat., 124°48.45′ W. long.;
(27) 47°21.76′ N. lat., 124°47.42′ W. long.;
(28) 47°18.84′ N. lat., 124°46.75′ W. long.;
(29) 47°19.82′ N. lat., 124°51.43′ W. long.;
(30) 47°18.13′ N. lat., 124°54.25′ W. long.;
(31) 47°13.50′ N. lat., 124°54.69′ W. long.;
(32) 47°15.00′ N. lat., 125°00.00′ W. long.;
(33) 47°08.00′ N. lat., 124°59.82′ W. long.;
(34) 47°05.79′ N. lat., 125°01.00′ W. long.;
(35) 47°03.34′ N. lat., 124°57.49′ W. long.;
(36) 47°01.00′ N. lat., 125°00.00′ W. long.;
(37) 46°55.00′ N. lat., 125°02.00′ W. long.;
(38) 46°51.00′ N. lat., 124°57.00′ W. long.;
(39) 46°47.00′ N. lat., 124°55.00′ W. long.;
(40) 46°34.00′ N. lat., 124°38.00′ W. long.;
(41) 46°30.50′ N. lat., 124°41.00′ W. long.;
(42) 46°33.00′ N. lat., 124°32.00′ W. long.;
(43) 46°29.00′ N. lat., 124°32.00′ W. long.;
(44) 46°20.00′ N. lat., 124°39.00′ W. long.;
(45) 46°18.16′ N. lat., 124°40.00′ W. long.;
(46) 46°16.00′ N. lat., 124°27.01′ W. long.;
(47) 46°15.00′ N. lat., 124°30.96′ W. long.;
(48) 46°13.17′ N. lat., 124°38.76′ W. long.;
(49) 46°10.51′ N. lat., 124°41.99′ W. long.;
(50) 46°06.24′ N. lat., 124°41.81′ W. long.;
(51) 46°03.04′ N. lat., 124°50.26′ W. long.;
(52) 45°56.99′ N. lat., 124°45.45′ W. long.;
(53) 45°49.94′ N. lat., 124°45.75′ W. long.;
(54) 45°49.94′ N. lat., 124°42.33′ W. long.;
(55) 45°45.73′ N. lat., 124°42.18′ W. long.;
(56) 45°45.73′ N. lat., 124°43.82′ W. long.;
(57) 45°41.94′ N. lat., 124°43.61′ W. long.;
(58) 45°41.58′ N. lat., 124°39.86′ W. long.;
(59) 45°38.45′ N. lat., 124°39.94′ W. long.;
(60) 45°35.75′ N. lat., 124°42.91′ W. long.;
(61) 45°24.49′ N. lat., 124°38.20′ W. long.;
(62) 45°14.43′ N. lat., 124°39.05′ W. long.;
(63) 45°14.30′ N. lat., 124°34.19′ W. long.;
(64) 45°08.98′ N. lat., 124°34.26′ W. long.;
(65) 45°09.02′ N. lat., 124°38.81′ W. long.;
(66) 44°57.98′ N. lat., 124°36.98′ W. long.;
(67) 44°56.62′ N. lat., 124°38.32′ W. long.;
(68) 44°50.82′ N. lat., 124°35.52′ W. long.;
(69) 44°46.89′ N. lat., 124°38.32′ W. long.;
(70) 44°50.78′ N. lat., 124°44.24′ W. long.;
(71) 44°44.27′ N. lat., 124°50.78′ W. long.;
(72) 44°32.63′ N. lat., 124°54.24′ W. long.;
(73) 44°23.25′ N. lat., 124°49.78′ W. long.;
(74) 44°13.16′ N. lat., 124°58.81′ W. long.;
(75) 43°57.88′ N. lat., 124°58.25′ W. long.;
(76) 43°56.89′ N. lat., 124°57.33′ W. long.;
(77) 43°53.41′ N. lat., 124°51.95′ W. long.;
(78) 43°51.56′ N. lat., 124°47.38′ W. long.;
(79) 43°51.49′ N. lat., 124°37.77′ W. long.;
(80) 43°48.02′ N. lat., 124°43.31′ W. long.;
(81) 43°42.77′ N. lat., 124°41.39′ W. long.;
(82) 43°24.09′ N. lat., 124°42.57′ W. long.;
(83) 43°19.73′ N. lat., 124°45.09′ W. long.;
(84) 43°15.98′ N. lat., 124°47.76′ W. long.;
(85) 43°04.14′ N. lat., 124°52.55′ W. long.;
(86) 43°04.00′ N. lat., 124°53.88′ W. long.;
(87) 42°54.69′ N. lat., 124°54.54′ W. long.;
(88) 42°45.46′ N. lat., 124°49.37′ W. long.;
(89) 42°43.91′ N. lat., 124°45.90′ W. long.;
(90) 42°38.84′ N. lat., 124°43.36′ W. long.;
(91) 42°34.82′ N. lat., 124°46.56′ W. long.;
(92) 42°31.57′ N. lat., 124°46.86′ W. long.;
(93) 42°30.98′ N. lat., 124°44.27′ W. long.;
(94) 42°29.21′ N. lat., 124°46.93′ W. long.;
(95) 42°28.52′ N. lat., 124°49.40′ W. long.;
(96) 42°26.06′ N. lat., 124°46.61′ W. long.;
(97) 42°21.82′ N. lat., 124°43.76′ W. long.;
(98) 42°17.47′ N. lat., 124°38.89′ W. long.;
(99) 42°13.67′ N. lat., 124°37.51′ W. long.;
(100) 42°13.76′ N. lat., 124°40.03′ W. long.;
(101) 42°05.12′ N. lat., 124°39.06′ W. long.;
(102) 42°02.67′ N. lat., 124°38.41′ W. long.;
(103) 42°02.67′ N. lat., 124°35.95′ W. long.;
(104) 42°00.00′ N. lat., 124°35.88′ W. long.;
(105) 41°59.99′ N. lat., 124°35.92′ W. long.;
(106) 41°56.38′ N. lat., 124°34.96′ W. long.;
(107) 41°53.98′ N. lat., 124°32.50′ W. long.;

(108) 41°50.69′ N. lat., 124°30.46′ W. long.;
(109) 41°47.79′ N. lat., 124°29.52′ W. long.;
(110) 41°21.00′ N. lat., 124°29.00′ W. long.;
(111) 41°11.00′ N. lat., 124°23.00′ W. long.;
(112) 41°05.00′ N. lat., 124°23.00′ W. long.;
(113) 40°54.00′ N. lat., 124°26.00′ W. long.;
(114) 40°50.00′ N. lat., 124°26.00′ W. long.;
(115) 40°44.51′ N. lat., 124°30.83′ W. long.;
(116) 40°40.61′ N. lat., 124°32.06′ W. long.;
(117) 40°37.36′ N. lat., 124°29.41′ W. long.;
(118) 40°35.64′ N. lat., 124°30.47′ W. long.;
(119) 40°37.43′ N. lat., 124°37.10′ W. long.;
(120) 40°36.00′ N. lat., 124°40.00′ W. long.;
(121) 40°31.59′ N. lat., 124°40.72′ W. long.;
(122) 40°24.64′ N. lat., 124°35.62′ W. long.;
(123) 40°23.00′ N. lat., 124°32.00′ W. long.;
(124) 40°23.39′ N. lat., 124°28.70′ W. long.;
(125) 40°22.28′ N. lat., 124°25.25′ W. long.;
(126) 40°21.90′ N. lat., 124°25.17′ W. long.;
(127) 40°22.00′ N. lat., 124°28.00′ W. long.;
(128) 40°21.35′ N. lat., 124°29.53′ W. long.;
(129) 40°19.75′ N. lat., 124°28.98′ W. long.;
(130) 40°18.15′ N. lat., 124°27.01′ W. long.;
(131) 40°17.45′ N. lat., 124°25.49′ W. long.;
(132) 40°18.00′ N. lat., 124°24.00′ W. long.;
(133) 40°16.00′ N. lat., 124°26.00′ W. long.;
(134) 40°17.00′ N. lat., 124°35.00′ W. long.;
(135) 40°16.00′ N. lat., 124°36.00′ W. long.;
(136) 40°10.00′ N. lat., 124°22.75′ W. long.;
(137) 40°03.00′ N. lat., 124°14.75′ W. long.;
(138) 39°49.25′ N. lat., 124°06.00′ W. long.;
(139) 39°34.75′ N. lat., 123°58.50′ W. long.;
(140) 39°03.07′ N. lat., 123°57.81′ W. long.;
(141) 38°52.25′ N. lat., 123°56.25′ W. long.;
(142) 38°41.42′ N. lat., 123°46.75′ W. long.;
(143) 38°39.47′ N. lat., 123°46.59′ W. long.;
(144) 38°35.25′ N. lat., 123°42.00′ W. long.;
(145) 38°19.97′ N. lat., 123°32.95′ W. long.;
(146) 38°15.00′ N. lat., 123°26.50′ W. long.;
(147) 38°08.09′ N. lat., 123°23.39′ W. long.;
(148) 38°10.08′ N. lat., 123°26.82′ W. long.;
(149) 38°04.08′ N. lat., 123°32.12′ W. long.; and
(150) 38°00.00′ N. lat., 123°29.85′ W. long.

24. In part 660, subpart G, Tables 1–5 are added to read as follows:

BILLING CODE 3510–22–S

Table 1a. 2005 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), Harvest Guidelines (HGs), and Limited Entry and Open Access Allocations, by management Area (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/ north of 42°N. lat.	1,874		1,048			2,922	1,801	274.2	--	81.0	--	19.0
Lingcod south of 42°N. lat.							612					
Pacific Cod d/	3,200		c/			3,200	1,600	1,600	--	--	--	--
Pacific Whiting e/	181,287 - 725,146					181,287-725,146	181,287-725,146		--	--	--	--
Sablefish f/ north of 36°	8,368					8,368	7,486	6670	6,043	90.6	627	9.4
Sablefish g/ south of 36°							275	275	--	--	--	--
Cabezon h/	c/			103		103	69	--	--	--	--	--
FLATFISH												
Dover sole i/	8,522					8,522	7,476	7,445	--	--	--	-
English sole j/	2,000		1,100			3,100	3,100	-	-	-	-	-
Petrale sole k/	1,262	500	800	200		2,762	2,762	-	-	-	-	-
Arrowtooth flounder l/	5,800					5,800	5,800	-	-	-	-	-
Other flatfish m/	6,781					6,781	4,090		-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	ABC			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch n/	966					966	447	129.1	--	--	--	--
Shortbelly o/	13,900					13,900	13,900	13,894	--	--	--	--
Widow p/	3,218					3,218	285	281.7	-	97.0	--	3.0
Canary q/	270					270	46.8	24.8	--	87.7	--	12.3
Chilipepper r/	c/			2,700		2,700	2,000	1,973	1099	55.7	874	44.3
Bocaccio s/	c/			566		566	307	85.2	--	52.7	--	44.3
Splitnose t/	c/			615		615	461	461	--	--	--	--
Yellowtail u/	3,896			c/		3,896	3,896	3,871	3,550	91.7	321	8.3
Shortspine thornyhead v/ north of 34°27'	1,055					1,055	999	995	992	99.7	3	0.27
Longspine thornyhead w/ north of 36°	2,461				--	2,461	2,461		--	--	--	--
south of 36° x/	--				390	390	195	195	--	--	--	-
Cowcod y/	c/		19		--	19	2.1	0	--	--	--	-
	c/		--		5	5	2.1	0	--	--	--	-
Darkblotched z/	269					269	269	122.1		--		--
Yelloweye aa/	54					54	26	8.5		--		-
Black bb/ north of 46°16' N. lat.	540					540	540		-	--	-	--
Black bb/ south of 46°16' N. lat.	753					753	753					

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish north cc/	3,680			--		3,680	2,250	2,172	1,992	91.7	180	8.3
Minor Rockfish south dd/	--			3,412		3,412	1,968	1,525	849	55.7	676	44.3
Remaining Rockfish	1,612			854		--	--	--	--	--	--	--
bank ee/	c/			350		350	--	--	--	--		-
blackgill ff/	c/			75	268	343	--	--	--	--	--	--
bocaccio north	318					318	--	--	--	--	--	--
chilipepper north	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	-
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--
yellowtail south				116		116	--	--	--	--	--	--
Other rockfish gg/	2,068			2,558		--	--	--	--	--	--	--
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:												
Other fish hh/	2,500	7,000	1,200	3,900		14,600	7,300	--	--	--	--	--

Table 1b. 2005 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial HG for minor rockfish and depth sub-groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North cc/	3,680	2,250	78	2,172	1,992	91.7	180	8.3
Nearshore		122	68	54				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish South dd/	3,412	1,968	443	1,390	774	55.7	616	44.3
Nearshore ii/		615	383	97				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABCs apply to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A coastwide stock assessment was prepared in 2003. Lingcod was believed to be at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south. The ABC projection for 2005 is 2,922 mt and was calculated using an F_{MSY} proxy of F45%. The total catch OY of 2,414 mt (the sum of 1,891 mt in the north and 612 mt in the south) was based on the rebuilding plan with a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2009 (T_{MAX}) then adjusted downward slightly (by 174 mt) to be equal to the 2006 OY value. The harvest control rule will be F=0.17 in the north and F=0.15 in the south. Out of the OY, it is estimated that 620 mt will be taken in the recreational fishery, 4.5 mt will be taken during research activity, and 2.0 mt will be taken in non-groundfish fisheries. Under the proposed regulations, it is currently anticipated that 274.2 mt will be taken in the commercial fisheries (which is being set as a commercial HG), leaving 1,504.5 mt in reserve to be used as necessary during the fishing year. There is a recreational harvest guideline of 206 mt for the area north of 42° N. Lat. and a recreational harvest guideline of 422 mt for the area south of 42° N. Lat. The tribes do not have a specific allocation at this time but are expected to take 25.1 mt of the commercial HG.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial HG of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific Cod - The 3,200 mt ABC is based on historical landings data and is set at the same level as it was in 2004. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment

e/ Pacific whiting - The most recent stock assessment was prepared in early 2004, and the whiting biomass was estimated to be above 40 percent of its unfished biomass in 2003. A range is presented for the ABC and OY values because final adoption of the ABC and OY have been deferred until the Council's March 2005 meeting. It is anticipated that an assessment update will be available in early 2005 and the results of the new assessment will be used to set the 2005 ABC and OY.

f/ Sablefish north of 36° N. lat. - A coastwide sablefish stock assessment was prepared in 2001 and updated for 2002. Following the 2002 stock assessment update, the sablefish biomass north of 34° 27'N. lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,368 mt is based on environmentally driven projections with the F_{MSY} proxy of F45%. The ABC for the management area north of 36° N. lat. is 8,071 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,761 mt is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of 36° N. lat is 7,486 mt and is 96.45 percent of the coastwide OY. The OY is reduced by 10 percent (749 mt) for the tribal allocation. Out of the remaining OY, 48 mt will be taken during research activity, and 19 mt will be taken in non-groundfish fisheries, resulting in a commercial HG of 6,670 mt. The open access allocation is 9.4 percent (627 mt) of the commercial HG and the limited entry allocation is 90.6 percent (6,043 mt) of the commercial HG. The limited entry allocation is further divided with 58 percent (3,505 mt) allocated to the trawl fishery and 42 percent (2,538 mt) allocated to the fixed-gear fishery. To provide for bycatch in the at-sea whiting fishery, 15 mt of the limited entry trawl allocation will be set aside.

g/ Sablefish south of 36° N. lat. - The ABC of 297 mt is 3.55 percent of the ABC from the 2002 coastwide stock assessment update. The total catch OY of 275 mt is 3.55 percent of the OY from the 2002 coastwide stock assessment update. There are no limited entry or open access allocations in the Conception area at this time.

h/ Cabezon was first assessed in 2003 and was believed to be at 34.7 percent of its unfished biomass. The ABC of 103 mt is based on a harvest rate proxy of $F_{45\%}$. The OY of 69 mt is based on a constant harvest level for 2005 and 2006.

i/ Dover sole north of 34° 27' N. lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,522 mt is the 2005 projection from the 2001 assessment with an F_{MSY} proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied, resulting in a total catch OY of 7,476 mt. The OY is reduced by 31 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 7,445 mt.

j/ English sole - Research catch is estimated to be 4.4 mt.

k/ Petrale sole was believed to be at 42 percent of its unfished biomass following a 1999 stock assessment. For 2005, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a F40% F_{MSY} proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2004. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest

assumptions (from the most recent stock assessment for the Vancouver-Columbia area) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2005 was considered to be conservative and based on the best available data. Research catch is estimated to be 1.7 mt and will be taken out of the OY.

l/ Arrowtooth flounder was last assessed in 1993 and was believed to be above 40 percent of its unfished biomass. Research catch is estimated to be 6.7 mt and will be taken out of the OY.

m/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels. The ABC of 6,781 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,909 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species. Research catch is estimated to be 7.6 mt and will be taken out of the OY.

n/ Pacific ocean perch (POP) was declared overfished on March 3, 1999. A stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 966 mt was projected from the 2003 stock assessment and is based on an F_{MSY} proxy of F50%. The OY of 447 mt is based on a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule will be F=0.0257. Out of the OY it is anticipated that 3.6 mt will be taken during research activity and 129.1 mt in the commercial fishery (which is being set as a commercial HG), leaving 314.3 mt in reserve to be used as necessary during the fishing year.

o/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the stock assessment. The OY is reduced by 6.0 mt for the amount expected to be taken during research activity, resulting in a commercial HG of 13,894.

p/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The most recent stock assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass in 2002. The ABC of 3,218 mt is based an F50% F_{MSY} proxy. The 285 mt OY is based on a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule is F=0.0093. Out of the OY, it is anticipated that 0.9 mt will be taken during research activity, 2.3 mt will be taken in the recreational fishery, 0.1 mt will be taken in non-groundfish fisheries, and 281.7 mt will be taken in the commercial fishery (which is being set as the commercial HG). Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2005, but do not have a specific allocation at this time. The set asides of widow rockfish taken in the Pacific whiting fisheries will likely be limited to 231.8 mt.

q/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A stock assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide in 2001. The coastwide ABC of 270 mt is based on a F_{MSY} proxy of F50%. The coastwide OY of

46.8 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2076 (T_{MAX}) and a catch sharing arrangement which has 58 percent of the OY going to the commercial fisheries and 42 percent going to the recreational fishery. The harvest control rule will be F=0.0220. Out of the OY, it is anticipated that 1.7 mt will be taken during the research activity, 17.8 mt will be taken in the recreational fishery, 2.1 mt will be taken in non-groundfish fisheries, and 22.7 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving 2.5 mt in reserve. The reserve, which may be used as necessary during the fishing year, will be further divided with 1.25 mt being available as needed for the recreational and 1.25 mt being available as needed for the commercial fisheries. The recreational HG for the area north of 42° N. lat. will be 8.5 mt. For the area south of 42° N. lat., the recreational HG will be 9.3 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.6 mt of canary rockfish under the commercial HG, but do not have a specific allocation at this time.

r/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50% F_{MSY} proxy. Because the unfished biomass is believed to be above 40 percent the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2005 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery and 12 mt for the amount expected to be taken during research activity, resulting in a commercial HG of 1,973 mt. Open access is allocated 44.3 percent (874 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,099 mt) of the commercial HG.

s/ Bocaccio was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis were prepared for bocaccio in 2003. The bocaccio stock was believed to be at 7.4 percent of its unfished biomass in 2002. The ABC of 566 mt is based on a F50% F_{MSY} proxy. The OY of 307 mt is based on the rebuilding analysis and has a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2032 (T_{MAX}). The harvest control rule is F=0.0498. Out of the OY, it is anticipated that 0.4 mt will be taken during the research activity, 43 mt will be taken in the recreational fishery, 1.3 mt will be taken in non-groundfish fisheries, and 85.2 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving 177.1 mt in reserve which may be used as necessary during the fishing year.

t/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2005 was considered to be conservative and based on the best available data.

u/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was believed to be at 46 percent of its unfished biomass in 2002. The ABC of 3,896 mt is based on the 2003 stock assessment with the F_{MSY} proxy of F50%. The OY of 3,896 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 4.3 mt for the amount estimated to be taken during

research activity, and 5.8 mt for the amount taken in non-groundfish fisheries, resulting in a commercial HG of 3,871 mt. The open access allocation (321 mt) is 8.3 percent of the commercial HG. The limited entry allocation (3,550 mt) is 91.7 percent the commercial HG. Tribal vessels are estimated to land about 506 mt of yellowtail rockfish in 2005, but do not have a specific allocation at this time.

v/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,030 mt) for the area north of Pt. Conception (34° 27' N. lat.) is based on a F50% F_{MSY} proxy. The OY of 999 mt is based on the 2001 survey with the application of the 40-10 harvest policy. The OY is reduced by 4 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 995 mt. Open access is allocated 0.27 percent (3 mt) of the commercial HG and limited entry is allocated 99.73 percent (992 mt) of the commercial HG. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 6.7 mt of shortspine thornyhead in 2005, but do not have a specific allocation at this time.

w/ Longspine thornyhead north of 36° is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on a F50% F_{MSY} proxy. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2005 was considered to be conservative and based on the best available data. The total catch OY (2,461 mt) is set equal to the ABC. The OY is reduced by 11.2 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 2,449.8 mt.

x/ Longspine thornyhead south of 36° - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

y/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 stock assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. The OY of 4.2 mt (2.1 mt in each area) is based on the rebuilding plan adopted under Amendment 16-3, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2099 (T_{MAX}). The harvest control rule is F=0.0009. Cowcod retention will not be permitted in 2005 and 2006. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

z/ Darkblotched rockfish was assessed in 2000 and a stock assessment update was prepared in 2003. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 stock assessment update, the stock was believed to be at 11 percent of its unfished biomass. The ABC is projected to be 269 mt and is based on an F_{MSY} proxy of F50%. The OY of 269 mt is based on the rebuilding plan adopted under Amendment 16-2 and has a >80% probability of rebuilding the stock to B_{MSY} by the year 2047 (T_{MAX}). The harvest control rule is F=0.032. Out of the OY, it is anticipated that 3.8 mt will be taken during research activity, and 90.9 mt will be taken in the commercial fishery (which is being set as a commercial HG), leaving 174.3 mt in reserve to be used as necessary during the fishing year. For anticipated bycatch in the at-sea whiting fishery, 9 mt is being set aside.

aa/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). In 2002

following the stock assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 54 mt coastwide ABC is based on an F_{MSY} proxy of F50%. The OY of 26 mt, based on a revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16-3, have a 80 percent probability of rebuilding to B_{MSY} by the year 2071 (T_{MAX}) and a harvest control rule of F=0.0153. Out of the OY, it is anticipated that 10.4 mt will be taken in the recreational fishery, 1.0 mt will be taken during research activity, 0.8 mt will be taken in non-groundfish fisheries and 8.5 mt will be taken in the commercial fishery (which is being set as a commercial HG), leaving 5.3 mt in reserve to be used as necessary during the fishing year. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial HG in 2005, but do not have a specific allocation at this time.

bb/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 753 mt. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of F50%. Because the unfished biomass is believed to be above 40 percent the OYs were set equal to the ABCs. For the area north of 46°16' N. lat., the OY is 540 mt. A harvest guideline of 30,000 lb (13.6 mt) is set for the tribes. For the area south of 46°16' N. lat the OY is 753 mt. The black rockfish OY in the area south of 46°16' N. lat is subdivided with separate HGs being set for the area north of 42° N. lat (437 mt/58 percent) and for the area south of 42° N. lat (316 mt/42 percent). For the area north of 42° N. lat. 332 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 105 mt. Of the 316 mt of black rockfish attributed to the area south of 42° N. lat., a HG of 190 mt (60 percent) will be applied to the area north of 40°10 min N. lat. and a HG of 126 mt (40 percent) will be applied to the area south of 40°10 min N. lat. For the area between 42° N. lat. and 40°10' N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 116 mt. For the area south of 40°10 min N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 25 mt. Black rockfish was included in the minor rockfish north and other rockfish south categories until 2004.

cc/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery, resulting in a 2,172 mt commercial HG. Open access is allocated 8.3 percent (180 mt) of the commercial HG and limited entry is allocated 91.7 percent (1,992 mt) of the commercial HG. Tribal vessels are estimated to land about 28 mt in 2005, but do not have a specific allocation at this time.

dd/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,412 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain a total catch OY of 1,968

mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 443 mt for the amount estimated to be taken in the recreational fishery, resulting in a 1,525 mt HG for the commercial fishery. Open access is allocated 44.3 percent (676 mt) of the commercial HG and limited entry is allocated 55.7 percent (849 mt) of the commercial HG.

ee/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

ff/ Blackgill rockfish was believed to be at 51 percent of its unfished biomass in 1997. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 stock assessment with an F_{MSY} proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of the lack of information.

gg/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively. The amount estimated to be taken as research catch is 18.8 mt.

hh/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling and other groundfish species noted above in footnote c/. The amount estimated to be taken as research catch is 48.6 mt.

ii/ Minor nearshore rockfish south - The total catch OY is 615 mt. Out of the OY it is anticipated that the recreational fishery will take 383 mt, and 97 mt will be taken by the commercial fishery (which is being set as a commercial HG), 135 mt will be held in reserve.

Table 2a. 2006, and Beyond, Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), Harvest Guidelines (HGs), and Limited Entry and Open Access Allocations, by management Area (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/ north of 42° N. lat.	1,694			1,021		2,716	1,801	214.7	--	81.0	--	19.0
Lingcod south of 42° N. lat.							612					
Pacific Cod d/	3,200			c/		3,200	1,600	1,600	--	--	--	--
Pacific Whiting e/	114,297 - 457,186					114,297-457,186	114,297-457,186		--	--	--	--
Sablefish f/ north of 36°	8,175					8,175	7,363	6,522	5,909	90.6	613	9.4
Sablefish g/ south of 36°							271	271	--	--	--	--
Cabezon h/	c\			108		108	69	--	--	--	--	--
FLATFISH												
Dover sole i/	8,589					8,589	7,564	7,504	--	--	--	--
English sole j/	2,000			1,100		3,100	3,100	-	-	-	-	-
Petrale sole k/	1,262		500	800	200	2,762	2,762	-	-	-	-	-
Arrowtooth flounder l/	5,800					5,800	5,800	-	-	-	-	-
Other flatfish m/	6,781					6,781	4,090	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	ABC			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch n/	934					934	447	102.6	--	--	--	--
Shortbelly o/	13,900					13,900	13,900	13,888	--	--	--	--
Widow p/	3,059					3,059	289	285.6	--	97.0	--	3.0
Canary q/	270					270	47.1	22.7	--	87.7	--	12.3
Chilipepper r/	c/			2,700		2,700	2,000	1,964	1,094	55.7	870	44.3
Bocaccio s/	c/			549		549	308	75.2	--	52.7	--	44.3
Splitnose t/	c/			615		615	461	461	--	--	--	--
Yellowtail u/	3,681			c/		3,681	3,681	3655	3,352	91.7	303	8.3
Shortspine thornyhead v/ north of 34°27'	1,077					1,077	1018	1011	984	99.7	27	0.27
Longspine thornyhead w/ north of 36°	2,461				--	2,461	2,461	2449	--	--	--	--
south of 36° x/	--				390	390	195	195	--	--	--	--
Cowcod y/	c/		19		--	19	2.4	0	--	--	--	-
	c/		--		5	5	2.4	0	--	--	--	--
Darkblotched z/	294					294	294	87.4	--	--	--	--
Yelloweye aa/	55					55	27	6.4	--	--	--	--
Black bb/ north of 46°16' N. lat.	540					540	540		-	-	--	--
Black bb/ south of 46°16' N. lat.	736					736	736					

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial Harvest guidelines (Total Catch)	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish north cc/	3,680			--		3,680	2,250	2,172	1,992	91.7	180	8.3
Minor Rockfish south dd/	--			3,412		3,412	1,968	1,525	849	55.7	676	44.3
Remaining Rockfish	1,612			854		--	--	--	--	--	--	--
bank ee/	c/			350		350	--	--	--	--	--	--
blackgill ff/	c/			75	268	343	--	--	--	--	--	--
bocaccio north	318					318	--	--	--	--	--	--
chilipepper north	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	-
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--
yellowtail south				116		116	--	--	--	--	--	--
Other rockfish gg/	2,068			2,558		--	--	--	--	--	--	--
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS												
OTHER FISH ee/	2,500	7,000	1,200	3,900		14,600	7,300	--	--	--	--	--

Table 2b. 2006, and Beyond, OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial HG for minor rockfish and depth sub-groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish north cc/	3,680	2,250	78	2,172	1,992	91.7	180	8.3
Nearshore		122	68	54				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish south dd/	3,412	1,968	443	1,390	774	55.7	616	44.3
Nearshore ii/		615	383	97				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABCs apply to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A coastwide stock assessment was prepared in 2003. Lingcod was believed to be at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south. The ABC projection for 2006 is 2,716 mt and was calculated using an F_{MSY} proxy of F45%. The total catch OY of 2,414 mt (the sum of 1,891 mt in the north and 612 mt in the south) is based on the rebuilding plan with a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2009 (T_{MAX}). The harvest control rule will be F=0.17 in the north and F=0.15 in the south. Out of the OY, it is estimated that 661 mt will be taken in the recreational fishery, 7.2 mt will be taken during research activity, and 2.8 mt will be taken in non-groundfish fisheries. Under the proposed regulations, it is currently anticipated that 214.7 mtwill be taken in the commercial fisheries (which is being set as a commercial HG), leaving 1,528.3 mt in reserve to be used as necessary during the fishing year. There is a recreational harvest guideline of 239 mt for the area north of 42° N. Lat. and a recreational harvest guideline of 422 mt for the area south of 42° N. Lat. The tribes do not have a specific allocation at this time, but are expected to take 25.1 mt of the commercial HG.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial HG of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific Cod - The 3,200 mt ABC is based on historical landings data and is set at the same level as it was in 2004. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment

e/ Pacific whiting - The most recent stock assessment was prepared in early 2004, and the whiting biomass was estimated to be above 40 percent of its unfished biomass in 2003. A range is presented for the ABC and OY values because final adoption of the ABC and OY have been deferred until the Council's March 2006 meeting. It is anticipated that an assessment update will be available in early 2006 and the results of the new assessment will be used to set the 2006 ABC and OY.

f/ Sablefish north of 36° N. lat. - A coastwide sablefish stock assessment was prepared in 2001 and updated for 2002. Following the 2002 stock assessment update, the sablefish biomass north of 34° 27 'N. lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,175 mt is based on environmentally driven projections with the F_{MSY} proxy of F45%. The ABC for the management area north of 36° N. lat. is 7,885 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,634 mt (the sum of 7,363 mt in the north and 271 mt in the south) is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of 36° N. lat is 7,363 mt and is 96.45 percent of the coastwide OY. The OY is reduced by 10 percent (736 mt) for the tribal allocation. Out of the remaining OY, 86 mt will be taken during research activity, and 19 mt will be taken in non-groundfish fisheries, resulting in a commercial HG of 6,522 mt. The open access allocation is 9.4 percent (613 mt) of the commercial HG and the limited entry allocation is 90.6 percent (5,909 mt) of the commercial HG. The limited entry allocation is further divided with 58 percent (3,427 mt) allocated to the trawl fishery and 42 percent (2,482 mt) allocated to the fixed-gear fishery. To provide for bycatch in the at-sea whiting fishery, 15 mt of the limited entry trawl allocation will be set aside.

g/ Sablefish south of 36° N. lat. - The ABC of 290 mt is 3.55 percent of the ABC from the 2002 coastwide stock assessment update. The total catch OY of 271 mt is 3.55 percent of the OY from the 2002 coastwide stock assessment update. There are no limited entry or open access allocations in the Conception area at this time.

h/ Cabezon was first assessed in 2003 and was believed to be at 34.7 percent of its unfished biomass. The ABC of 108 mt is based on a harvest rate proxy of $F_{45\%}$. The OY of 69 mt is based on a constant harvest level for 2005 and 2006..

i/ Dover sole north of 34° 27' N. lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,589 mt is the 2006 projection from the 2001 assessment with an F_{MSY} proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied, resulting in a total catch OY of 7,564 mt. The OY is reduced by 60 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 7,504 mt.

j/ English sole - Research catch is estimated to be 9.7 mt.

k/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 stock assessment. For 2006, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a F40% F_{MSY} proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2005. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment in the Vancouver-Columbia area) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. Research catch is estimated to be 2.9 mt and will be taken out of the OY.

l/ Arrowtooth flounder was last assessed in 1993 and was believed to be above 40 percent of its unfished biomass. Research catch is estimated to be 13.6 mt and will be taken out of the OY.

m/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels. The ABC of 6,781 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,909 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species. Research catch is estimated to be 20.5 mt and will be taken out of the OY.

n/ POP was declared overfished on March 3, 1999. A stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 934 mt was projected from the 2003 stock assessment and is based on an F_{MSY} proxy of F50%. The OY of 447 mt is based on a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule will be F=0.0257. Out of the OY it is anticipated that 4.6 mt will be taken during research activity and 102.6 mt in the commercial fishery (which is being set as a commercial HG), leaving 339.8 mt in reserve to be used as necessary during the fishing year.

o/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the stock assessment. The available OY is reduced by 12 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 13,888 mt.

p/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR

2338). The most recent stock assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass in 2002. The ABC of 3,059 mt is based an F50% F_{MSY} proxy. The 289 mt OY is based on a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule is F=0.0093. Out of the OY, it is anticipated that 1.0 mt will be taken during the research activity, 2.3 mt will be taken in the recreational fishery, 0.1 mt will be taken in non-groundfish fisheries, and 285.6 mt will be taken in the commercial fishery (which is being set as the commercial HG). Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2006, but do not have a specific allocation at this time. The set asides of widow rockfish taken in the Pacific whiting fisheries will likely be limited to 243.2 mt.

q/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A stock assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide in 2001. The coastwide ABC of 279 mt is based on a F_{MSY} proxy of F50%. The coastwide OY of 47.1 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2076 (T_{MAX}) and a catch sharing arrangement which has 58 percent of the OY going to the commercial fisheries and 42 percent going to the recreational fishery. The harvest control rule will be F=0.0220. Out of the OY, it is anticipated that 2.7 mt will be taken during the research activity, 17.8 mt will be taken in the recreational fishery, 2.1 mt will be taken in non-groundfish fisheries, and 22.7 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving 1.8 mt in reserve. The reserve, which may be used as necessary during the fishing year, will be further divided with 0.9 mt being available as needed for the recreational and 0.9 mt being available as needed for the commercial fisheries. A recreational HG for the area north of 42° N. lat. will be 8.5 mt. For the area south of 42° N. lat., the recreational HG will be 9.3 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.6 mt of canary rockfish under the commercial HG, but do not have a specific allocation at this time.

r/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50% F_{MSY} proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery and 21 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,964 mt. Open access is allocated 44.3 percent (870 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,094 mt) of the commercial HG.

s/ Bocaccio was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis were prepared for bocaccio in 2003. The bocaccio stock was believed to be at 7.4 percent of its unfished biomass in 2002. The ABC of 549 mt is based on a F50% F_{MSY} proxy. The OY of 308 mt is based on the rebuilding analysis and has a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2032 (T_{MAX}). The harvest control rule is F=0.041. Out of the OY, it is anticipated that 0.6 mt will be taken during the research activity,

43.0 mt will be taken in the recreational fishery, 1.3 mt will be taken in non-groundfish fisheries, and 75.2 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving 187.9 mt in reserve which may be used as necessary during the fishing year.

t/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data.

u/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was believed to be at 46 percent of its unfished biomass in 2002. The ABC of 3,681 mt is based on the 2003 stock assessment with the F_{MSY} proxy of F50%. The OY of 3,681 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 5 mt for the amount estimated to be taken during research activity, and 6 mt for the amount taken in non-groundfish fisheries, resulting in a commercial HG of 3,655 mt. The open access allocation (303 mt) is 8.3 percent of the commercial HG. The limited entry allocation (3,352 mt) is 91.7 percent the commercial HG. Tribal vessels are estimated to land about 506 mt of yellowtail rockfish in 2006, but do not have a specific allocation at this time.

v/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,077 mt) for the area north of Pt. Conception (34° 27' N. lat.) is based on a F50% F_{MSY} proxy. The OY of 1,018 mt is based on the 2001 survey with the application of the 40-10 harvest policy. The OY is reduced by 7 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,011 mt. Open access is allocated 0.27 percent (27 mt) of the commercial HG and limited entry is allocated 99.73 percent (984 mt) of the commercial HG. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 6.6 mt of shortspine thornyhead in 2006, but do not have a specific allocation at this time.

w/ Longspine thornyhead north of 36° is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on a F50% F_{MSY} proxy. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The total catch OY (2,461 mt) is set equal to the ABC. The OY is reduced by 12 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 2,449 mt.

x/ Longspine thornyhead south of 36° - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

y/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 stock assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. The OY of 4.2 mt (2.1 mt in each

area) is based on the rebuilding plan adopted under Amendment 16-3, which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2099 (T_{MAX}). The harvest control rule is F=0.0009. Cowcod retention will not be permitted in 2006. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

z/ Darkblotched rockfish was assessed in 2000 and a stock assessment update was prepared in 2003. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 stock assessment update, the Darkblotched rockfish stock was believed to be at 11 percent of its unfished biomass. The ABC is projected to be 294 mt and is based on an F_{MSY} proxy of F50%. The OY of 294 mt is based on the rebuilding plan adopted under Amendment 16-2 and has a >80% probability of rebuilding the stock to B_{MSY} by the year 2047 (T_{MAX}). The harvest control rule is F=0.032. Out of the OY, it is anticipated that 5.2 mt will be taken during the research activity, and 87.4 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving 201.4 mt in reserve to be used as necessary during the fishing year. For anticipated bycatch in the at-sea whiting fishery, 9 mt is being set aside.

aa/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the stock assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 55 mt coastwide ABC is based on an F_{MSY} proxy of F50%. The OY of 27 mt, based on a revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16-3, have a 80 percent probability of rebuilding to B_{MSY} by the year 2071 (T_{MAX}) and a harvest control rule of F=0.0153. Out of the OY, it is anticipated that 10.4 mt will be taken in the recreational fishery, 1.0 will be taken during research activity, 0.8 mt will be taken in non-groundfish fisheries and 6.4 mt will be taken in the commercial fishery (which is being set as a commercial HG), leaving 8.4 mt in reserve to be used as necessary during the fishing year. Tribal vessels are estimated to land about 2.4 mt of yelloweye rockfish of the commercial HG in 2006, but do not have a specific allocation at this time.

bb/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 736 mt. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of F50%. The unfished biomass is believed to be above 40 percent. Therefore, the OYs were set equal to the ABCs, 540 mt for the area north of 46°16' N. lat. and 736 mt for the area south of 46°16' N. lat. A harvest guideline of 30,000 lb (13.6 mt) is set for the tribes. The black rockfish OY in the area south of 46°16' N. lat is subdivided with separate HGs being set for the area north of 42° N. lat (427 mt/58 percent) and for the area south of 42° N. lat (309 mt/42 percent). For the 427 mt attributed to the area north of 42° N. lat. 290-360 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 67-137 mt. A range is being provided because the recreational and commercial shares are not currently available. Of the 309 mt of black rockfish attributed to the area south of 42° N. lat., a HG of 185 mt (60 percent) will be applied to the area north of 40°10' N. lat. and a HG of 124 mt (40 percent) will be applied to the area south of 40°10' N. lat. For the area between 42° N. lat. and 40°10 min N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 111 mt. For the area south of 40°10' N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 23 mt. Black rockfish was included in the minor rockfish north and other rockfish south categories until 2004.

cc/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been

assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery, resulting in a 2,172 mt commercial HG. Open access is allocated 8.3 percent (180 mt) of the commercial HG and limited entry is allocated 91.7 percent (1,992 mt) of the commercial HG. Tribal vessels are estimated to land about 28 mt of minor rockfish in 2006, but do not have a specific allocation at this time.

dd/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,412 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain a total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 443 mt for the amount estimated to be taken in the recreational fishery, resulting in a 1,525 mt HG for the commercial fishery. Open access is allocated 44.3 percent (676 mt) of the commercial HG and limited entry is allocated 55.7 percent (849 mt) of the commercial HG.

ee/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

ff/ Blackgill rockfish was believed to be at 51 percent of its unfished biomass in 1997. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 stock assessment with an F_{MSY} proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of the lack of information.

gg/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively. The amount expected to be taken during research activity is reduced by 22.1 mt.

hh/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote c/. The amount expected to be taken during research activity is 55.7 mt.

ii/ Minor nearshore rockfish south - The total catch OY is 615 mt. Out of the OY it is anticipated that the recreational fishery will take 383 mt, and 97 mt will be taken by the commercial fishery (which is being set as a commercial HG), 135 mt will be held in reserve.

Table 3 (North) to Subpart G. 2005-2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
North of 40°10' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm

Selective flatfish trawl gear is required shoreward of the RCA, all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See § 660.390 for Conservation Area Descriptions and Coordinates.

1	**Minor slope rockfish[2/] & Darkblotched rockfish**	8,000 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish						
5	large & small footrope gear	9,500 lb/ 2 months		17,000 lb/ 2 months			8,000 lb/ 2 months
6	selective flatfish trawl gear	1,500 lb/ 2 months		10,000 lb/ 2 months			1,500 lb/ 2 months
7	Longspine thornyhead						
8	large & small footrope gear	15,000 lb/ 2 months		23,000 lb/ 2 months			15,000 lb/ 2 months
9	selective flatfish trawl gear	1,000 lb/ 2 months					
10	Shortspine thornyhead						
11	large & small footrope gear	3,500 lb/ 2 months		4,900 lb/ 2 months			3,500 lb/ 2 months
12	selective flatfish trawl gear	1,000 lb/ 2 months		3,000 lb/ 2 months			1,000 lb/ 2 months
13	Dover sole						
14	large & small footrope gear	69,000 lb/ 2 months		30,000 lb/ 2 months			69,000 lb/ 2 months
15	selective flatfish trawl gear	20,000 lb/ 2 months	35,000 lb/ 2 months	50,000 lb/ 2 months			20,000 lb/ 2 months
16	**Flatfish** (except Dover sole)						
17	Other flatfish[3/], English sole & Petrale sole						
18	large & small footrope gear for Other flatfish[3/] & English sole	110,000 lb/ 2 months	Other flatfish, English sole, & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
19	large & small footrope gear for Petrale sole	Not limited					Not limited
20	selective flatfish trawl gear	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.				100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.
21	Arrowtooth flounder						
22	large & small footrope gear	Not limited	150,000 lb/ 2 months				Not limited
23	selective flatfish trawl gear	70,000 lb/ 2 months					

TABLE 3 (North)

Table 3 (North). Continued

24	Whiting	Before the primary whiting season: 20,000 lb/trip -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip			TABLE 3 (North) con't
25	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**				
26	large & small footrope gear	300 lb/ 2 months			
27	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
28	selective flatfish trawl gear	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	
29	**Canary rockfish**				
30	large & small footrope gear	CLOSED			
31	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
32	Yellowtail				
33	large & small footrope gear	300 lb/ 2 months			
34	midwater trawl	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
35	selective flatfish trawl gear	2,000 lb/ 2 months			
36	**Minor nearshore rockfish & Black rockfish**				
37	large & small footrope gear	CLOSED			
38	selective flatfish trawl gear	300 lb/ month			
39	Lingcod[4/]				
40	large & small footrope gear	500 lb/ 2 months			
41	selective flatfish trawl gear	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
42	**Other Fish[5/] & Pacific cod**	Not limited			

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Subpart G. 2005-2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	40°10' - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
	Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See § 660.390 for Conservation Area Descriptions and Coordinates.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
2	**Splitnose**	40,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish	14,000 lb/ 2 months					
5	Longspine thornyhead	19,000 lb / 2 months					
6	Shortspine thornyhead	4,200 lb/ 2 months					
7	Dover sole	50,000 lb/ 2 months					
8	**Flatfish** (except Dover sole)						
9	Other flatfish[3/] & English sole	110,000 lb/ 2 months					110,000 lb/ 2 months
10	Petrale sole	No limit	Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole				No limit
11	Arrowtooth flounder	No limit	10,000 lb/ 2 months				No limit
12	**Whiting**	Before the primary whiting season: 20,000 lb/trip -- During the primary whiting season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip					
13	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
14	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
15	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months		12,000 lb/ 2 months		8,000 lb/ 2 months	
16	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
17	small footrope trawl	300 lb/ month					
18	**Bocaccio**						
19	large footrope or midwater trawl	300 lb/ 2 months					
20	small footrope trawl	CLOSED					

TABLE 3 (South)

Table 3 (South) Continued

21	**Canary rockfish**			
22	large footrope or midwater trawl	CLOSED		
23	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month
24	**Cowcod**	CLOSED		
25	**Minor nearshore rockfish & Black rockfish**			
26	large footrope or midwater trawl	CLOSED		
27	small footrope trawl	300 lb/ month		
28	**Lingcod**[4/]			
29	large footrope or midwater trawl	500 lb/ 2 months		
30	small footrope trawl	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months
31	**Other Fish**[5/] **& Cabezon**	Not limited		

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Subpart G. 2005-2006 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]: North of 46°16' N. lat	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See § 660.390 for Conservation Area Descriptions and Coordinates.						
1	Minor slope rockfish[2/] & Darkblotched rockfish	4,000 lb/ 2 months					
2	Pacific ocean perch	1,800 lb/ 2 months					
3	Sablefish	300 lb/ day or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4	Longspine thornyhead	10,000 lb/ 2 months					
5	Shortspine thornyhead	2,100 lb/ 2 months					
6	Dover sole	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
7	Arrowtooth flounder						
8	Petrale sole						
9	English sole						
10	Other flatfish[1/]						
11	Whiting	10,000 lb/ trip					
12	Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
13	Canary rockfish	CLOSED					
14	Yelloweye rockfish	CLOSED					
15	Minor nearshore rockfish & Black rockfish	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
16	Lingcod[4/]	CLOSED		800 lb/ 2 months			CLOSED
17	Other fish[5/] & Pacific cod	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Subpart G. 2005-2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm					
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See § 660.390 for Conservation Area Descriptions and Coordinates.						
1	Minor slope rockfish[2/] & Darkblotched rockfish	40,000 lb/ 2 months					
2	Splitnose	40,000 lb/ 2 months					
3	Sablefish						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
6	Longspine thornyhead	19,000 lb / 2 months					
7	Shortspine thornyhead	4,200 lb/ 2 months					
8	Dover sole	5,000 lb/ month When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
9	Arrowtooth flounder						
10	Petrale sole						
11	English sole						
12	Other flatfish[1/]						
13	Whiting	10,000 lb/ trip					
14	Minor shelf rockfish[2/], Shortbelly, & Widow rockfish						
15	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
16	South of 34°27' N. lat.	2,000 lb/ 2 months		2,000 lb/ 2 months			
17	Chilipepper rockfish	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
18	Canary rockfish	CLOSED					
19	Yelloweye rockfish	CLOSED					
20	Cowcod	CLOSED					
21	Bocaccio						
22	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		300 lb/ 2 months	
23	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			
24	Minor nearshore rockfish & Black rockfish						
25	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
26	Deeper nearshore						
27	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/month	500 lb/ 2 months
28	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
29	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
30	Lingcod[3/]	CLOSED		800 lb/ 2 months			CLOSED
31	Other fish[4/] & Cabezon	Not limited					

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Subpart G. 2005-2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]: North of 46°16' N lat	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See § 660.390 for Conservation Area Descriptions and Coordinates.						
1	Minor slope rockfish[1/] & Darkblotched rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2	Pacific ocean perch	100 lb/ month					
3	Sablefish	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4	Thornyheads	CLOSED					
5	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs					
6	Arrowtooth flounder						
7	Petrale sole						
8	English sole						
9	Other flatfish[2/]						
10	Whiting	300 lb/ month					
11	Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
12	Canary rockfish	CLOSED					
13	Yelloweye rockfish	CLOSED					
14	Minor nearshore rockfish & Black rockfish	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
15	Lingcod[4/]	CLOSED		300 lb/ month			CLOSED
16	Other Fish[5/] & Pacific cod	Not limited					
17	PINK SHRIMP NON-GROUNDFISH TRAWL *(not subject to RCAs)*						
18	North	**Effective April 1 - October 31:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month, canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
19	SALMON TROLL						
20	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.					

TABLE 5 (North)

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Subpart G. 2005-2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 082004

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rocktish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat	60 fm - 150 fm					
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See § 660.390 for Conservation Area Descriptions and Coordinates.						
1	Minor slope rockfish[1/] & Darkblotched rockfish						
2	40°10' - 38° N. lat	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat	10,000 lb/ 2 months					
4	Splitnose	200 lb/ month					
5	Sablefish						
6	40°10' - 36° N. lat	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
7	South of 36° N. lat	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	Thornyheads						
9	40°10' - 34°27' N. lat	CLOSED					
10	South of 34°27' N. lat	50 lb/ day, no more than 1,000 lb/ 2 months					
11	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	Arrowtooth flounder						
13	Petrale sole						
14	English sole						
15	Other flatfish[2/]						
16	Whiting	300 lb/ month					
17	Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish						
18	40°10' - 34°27' N. lat	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat	500 lb/ 2 months		500 lb/ 2 months			
20	Canary rockfish	CLOSED					
21	Yelloweye rockfish	CLOSED					
22	Cowcod	CLOSED					
23	Bocaccio						
24	40°10' - 34°27' N. lat	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat	100 lb/ 2 months		100 lb/ 2 months			
26	Minor nearshore rockfish & Black rockfish						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/month	500 lb/ 2 months
30	South of 34°27' N. lat			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
32	Lingcod[3/]	CLOSED		300 lb/ month, when nearshore open			CLOSED
33	Other Fish[4/] & Cabezon	Not limited					

TABLE 5 (South)

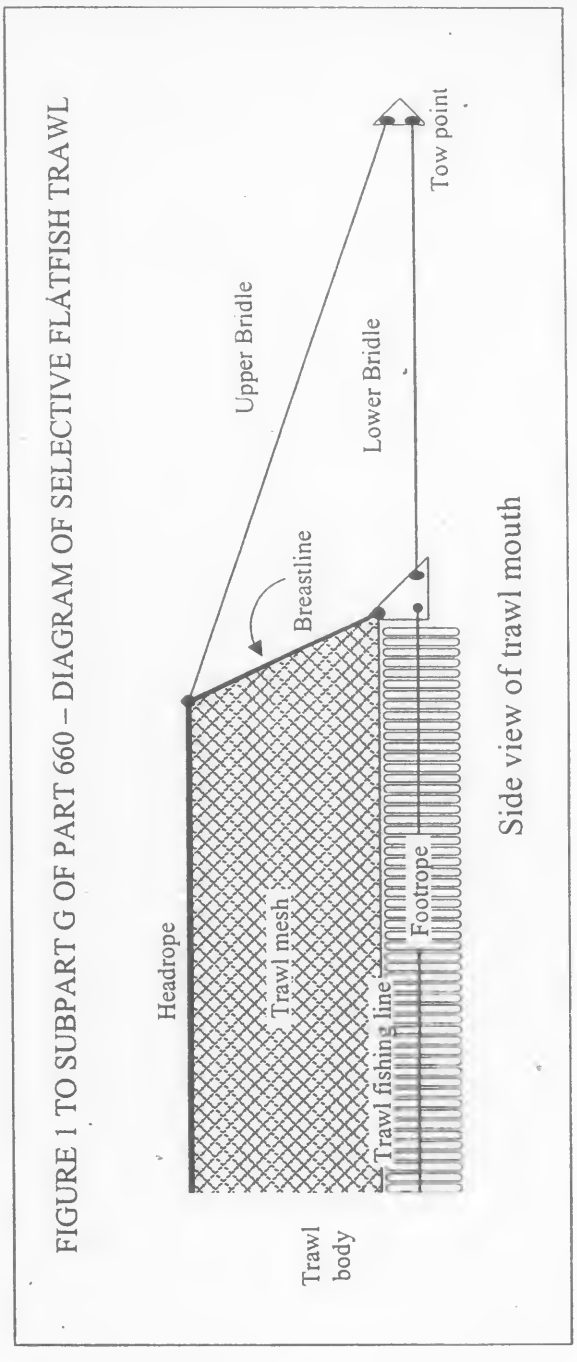
Table 5 (South). Continued

TABLE 5 (South) con't

34	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*			
35	South	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**			
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:**			
38	40°10' - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm	75 fm - 150 fm
39	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast, shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	75 fm - 150 fm along the mainland coast, shoreline - 150 fm around islands
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:**			
41	40°10' - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm	75 fm - 150 fm
42	South of 34°27' N lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		
43		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N lat are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).		

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

25. In part 660, subpart G, Figure 1, "Diagram of SElective Flatfish Trawl" is added to read as follows:



[FR Doc. 04–20888 Filed 9–20–04; 8:45 am]

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Federal Register

Tuesday,
September 21, 2004

Part IV

The President

Federal Register
Vol. 69, No. 182
Tuesday, September 21, 2004

Presidential Documents

Title 3—

The President

Proclamation 7816 of September 17, 2004

National Hispanic Heritage Month, 2004

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Month, we recognize Hispanic Americans for helping to shape our national character and strengthen our communities. The warmth and vitality of the Hispanic culture are great gifts to America and are part of the unique fabric of our country.

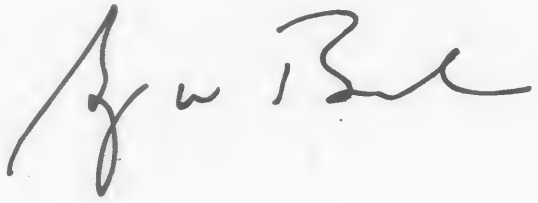
Hispanic Americans have enriched our Nation through contributions in many professions and fields, including education, law, government, business, science, sports, and the arts. Since our Nation's founding, Hispanic Americans have served bravely in the United States Armed Forces, earning more than 3 dozen Medals of Honor and numerous distinguished military decorations for their leadership, courage, and patriotism. Today, Hispanic Americans in our Armed Forces, National Guard, and Reserve units continue this proud legacy as they stand watch on the front lines of freedom. The hard work, values, and devotion to community of Hispanic Americans set a positive example for all Americans.

Across our country, we are working to continue helping Hispanic Americans realize the great promise of America. In 2002, I set a goal of increasing the number of minority homeowners by at least 5.5 million by the end of the decade. We are making good progress—having added more than 1.6 million minority homeowners so far. My Administration's business agenda and economic policies have helped create an environment in which Latino small business owners in the United States are starting new businesses and employing millions of people, expanding trade throughout the Americas, and generating billions in revenue. Through the No Child Left Behind Act of 2001, we are working to ensure that schools are serving every student. In addition, we are committed to improving immigration services while strengthening national security.

I join with all Americans in celebrating the heritage, culture, spirit, and contributions of Hispanic Americans. To honor the achievements of Hispanic Americans, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15, as "National Hispanic Heritage Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 15 through October 15, 2004, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–21353
Filed 9–20–04; 11:00 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7817 of September 17, 2004

Citizenship Day and Constitution Week, 2004

By the President of the United States of America

A Proclamation

Two hundred and seventeen years ago this week, delegates to the Constitutional Convention in Philadelphia signed one of the most enduring documents in history: the Constitution of the United States. Our Constitution is the foundation of our liberty and has guaranteed the rights of our people through a history of tremendous change and progress.

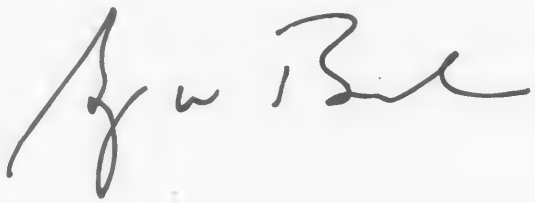
Today, we marvel at the wisdom of the Framers who toiled through a long summer of learned and contentious debates. Their work produced a document that upholds high ideals, while answering the most practical questions of governance. The charter they crafted—with its separate branches of Government, enumerated powers, checks and balances, and later the specific protections provided by our Bill of Rights—guides our Nation and inspires others around the world.

During Constitution Week, our Nation reflects on the significance of our Constitution and gives thanks for the blessings of liberty that this document helps to secure. We honor the men and women who have supported and defended it throughout our history, at times with their lives. On Citizenship Day, we reaffirm our commitment to freedom, to ensuring that our history endures, and to instilling in America's next generation the values that make our country great.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106, as amended), designated September 17 as "Citizenship Day," and by joint resolution of August 2, 1956 (36 U.S.C. 108, as amended), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 17, 2004, as Citizenship Day, and September 17 through September 23, 2004, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that celebrate our Constitution and reaffirm our rights and obligations as citizens of our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Vol. 69, No. 182

Tuesday, September 21, 2004

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

53335–53602 1
53603–53790 2
53791–53998 3
53999–54192 7
54193–54556 8
54557–54748 9
54749–55060 10
55061–55314 13
55315–55498 14
55499–55718 15
55719–55940 16
55941–56152 17
56153–56344 20
56345–56664 21

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 10, 2004) 55313
7807 54737
7808 54739
7809 55711
7810 55713
7811 55715
7812 55717
7813 56147
7814 56149
7815 56151
7816 56661
7817 56663

Executive Orders:
12333 (See EO 13354) 53589
12333 (Amended by EO 13355) 53593
12333 (See EO 13356) 53599
12958 (See EO 13354) 53589
12958 (See EO 13356) 53599
13223 (See Notice of September 10, 2004) 55313
13235 (See Notice of September 10, 2004) 55313
13253 (See Notice of September 10, 2004) 55313
13286 (See Notice of September 10, 2004) 55313
13311 (See EO 13356) 53599
13353 53585
13354 53589
13355 53593
13356 53599

Administrative Orders:
Notices:
Notice of September 10, 2004 55313
Presidential Determinations:
No. 2004–44 of September 10, 2004 56153
No. 2004–45 of September 10, 2004 55497
No. 2004–46 of September 10, 2004 56155

5 CFR

550 55941

7 CFR

59 53784
226 53502
301 ..... 53335, 55315, 56157
319 55719
457 ..... 53500, 54179
635 56345
916 53791
917 53791
920 ..... 54193, 55733
924 54199
1435 55061
1469 56159

Proposed Rules:
784 54049

8 CFR

215 53603
235 53603
252 53603

10 CFR

35 55736

Proposed Rules:
110 55785

12 CFR

Proposed Rules:
205 55996
345 56175
615 55362

14 CFR

21 53335
23 56348
39 ..... 53336, 53603, 53605, 53607, 53609, 53794, 53999, 54201, 54204, 54206, 54211, 54213, 54557, 55320, 55321, 55323, 55326, 55329, 55943, 56160, 56480
71 ..... 53614, 53976, 54000, 54749, 54750, 55499, 55947
73 ..... 53795, 53796
91 53337
97 ..... 53798, 56161

Proposed Rules:
23 55367
25 53841
39 ..... 53366, 53655, 53658, 53846, 53848, 53853, 53855, 53858, 54053, 54055, 54058, 54060, 54065, 54250, 54596, 55120, 55369, 56175, 56375
71 ..... 53661, 53860, 53861, 54758

15 CFR

801 54751

16 CFR

305 ..... 54558, 55063

309.....55332
Proposed Rules:
436.....53661

17 CFR

1.....55949
200.....54182
240.....54182
270.....54728
Proposed Rules:
37.....53367
38.....53367
210.....53550
240.....53550
248.....56304
249.....53550

18 CFR

342.....53800

19 CFR

122.....54179

20 CFR

422.....55065
Proposed Rules:
404.....55874
1002.....56266

21 CFR

20.....53615
201.....53801
522.....53617, 53618
1301.....55343
Proposed Rules:
20.....53662

22 CFR

22.....53618

23 CFR

630.....54562

24 CFR

24.....53978
236.....53558
Proposed Rules:
291.....56118

26 CFR

1.....53804, 55499, 55740, 55743
20.....55743
25.....55743
31.....55743
40.....55743
41.....55743
44.....55743
53.....55743
55.....55743
156.....55743
301.....55743
Proposed Rules:
1.....53373, 53664, 54067, 55790
26.....53862
301.....54067, 56377

28 CFR

549.....53804

29 CFR

1915.....55668
4022.....55500
4044.....55500
Proposed Rules:
1210.....53373

30 CFR

204.....55076
870.....56122
914.....55347
920.....55353
943.....55356
Proposed Rules:
870.....56132
872.....56132
917.....55373
946.....55375

31 CFR

1.....54002
356.....53619
Proposed Rules:
356.....54251

32 CFR

199.....55358

33 CFR

100.....54372, 55949, 55951
110.....55952
117.....53337, 53805, 54572, 55747
165.....54215, 54573, 55502, 55952, 55954
277.....54215
Proposed Rules:
100.....53373, 54598
117.....53376, 56379
165.....55122, 55125, 56011

36 CFR

7.....53626, 53630
292.....55092
1254.....55505
Proposed Rules:
7.....54072
294.....54600
1228.....54091, 56015

37 CFR

1.....55505, 56482
5.....56482
10.....56482
41.....55505, 56482
104.....56482

38 CFR

19.....53807
20.....53807

39 CFR

111.....53641, 53808, 54005
310.....54006
320.....54006
501.....55506
Proposed Rules:
111.....53664, 53665, 53666

40 CFR

52.....53778, 53835, 52006, 54019, 54216, 54574, 54575, 55749, 55752, 56163, 56170, 56171, 56351, 56355
62.....54753
63.....53338, 53980, 55218, 55759
70.....54244
81.....55956, 56163
170.....53341
180.....55506, 55963, 55975
239.....54756
258.....54756
261.....56357
281.....56363
432.....54476
761.....54025
1620.....55512
Proposed Rules:
16.....55377
51.....53378
52.....54097, 54600, 54601, 55386, 55790, 56182, 56381
62.....54759
63.....53380, 53987, 55791
70.....54254
82.....56182
85.....54846
86.....54846
89.....54846
90.....54846
91.....54846
92.....54846
94.....54846
112.....56182, 56184
136.....55547, 56480
166.....53866
239.....54760
258.....54760
261.....56382
312.....54097, 56016, 56382
1039.....54846
1048.....54846
1051.....54846
1065.....54846
1068.....54846

42 CFR

414.....55763

43 CFR

Proposed Rules:
25.....54602

44 CFR

64.....53835
201.....55094
206.....55094
Proposed Rules:
67.....56383

45 CFR

61.....56364
160.....55515

46 CFR

67.....53838
221.....54247
296.....54347

47 CFR

0.....55097
1.....55097, 55516
2.....54027, 55982
5.....54581
15.....54027
22.....55516
24.....55516
25.....53838, 54037, 54581, 55516
32.....53645
51.....53645, 54589, 55111
54.....55097, 55983
64.....53346, 55765, 55985
65.....53645
73.....53352, 55112, 55517, 55780, 55781
97.....54581
Proposed Rules:
51.....55128
64.....53382
73.....54612, 54613, 54614, 54760, 54761, 54762, 55547

48 CFR

207.....55986
209.....55987
217.....55987
219.....55986
225.....55989
226.....55989
237.....55991
246.....55987
252.....55989, 55992
511.....55934
552.....55934, 55938
1871.....53652
Proposed Rules:
2.....56316
10.....56316
12.....56316
16.....56316
19.....53780
52.....53780, 56316

49 CFR

106.....54042
107.....54042
171.....53352, 54042, 55113
172.....54042, 55113
173.....54042, 55113
178.....54042
179.....54042
180.....54042
192.....54248, 54591
195.....54591
541.....53354
571.....54249, 55517, 55531, 55993
1552.....56324
Proposed Rules:
10.....53385
229.....54255
395.....53386
571.....54255, 55548, 55896
572.....55550
585.....55896
595.....56018
1507.....54256

50 CFR

17.....56367
20.....53564, 53990, 55994
31.....54350
32.....54350, 55994
216.....55288
600.....53359
635.....53359
648.....53359, 53839, 54593, 56373
660.....53359, 53362, 54047, 55360
679.....53359, 53364, 53653, 54594, 55361, 55782, 55783, 55784, 55995
Proposed Rules:
221.....54615
223.....54620
224.....54620, 55135

635.....56024
648.....55388
660.....56550
679.....53397, 56384
680.....53397

REMINDERS
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 21, 2004

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Buildings and facilities; construction and alterations; published 7-23-04

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; published 9-21-04

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 7-23-04
Solid wastes:
Hazardous waste; identification and listing—
Exclusions; published 9-21-04

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Tinian Monarch; removed from list; published 9-21-04

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 8-17-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Energy conservation standards—
Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

NUCLEAR REGULATORY COMMISSION
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

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H.R. 5005/P.L. 108–303

Emergency Supplemental Appropriations for Disaster Relief Act, 2004 (Sept. 8, 2004; 118 Stat. 1124)

Last List August 18, 2004

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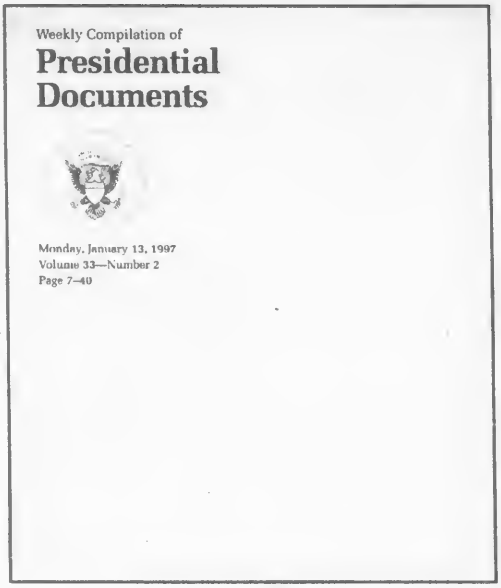

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108th Congress

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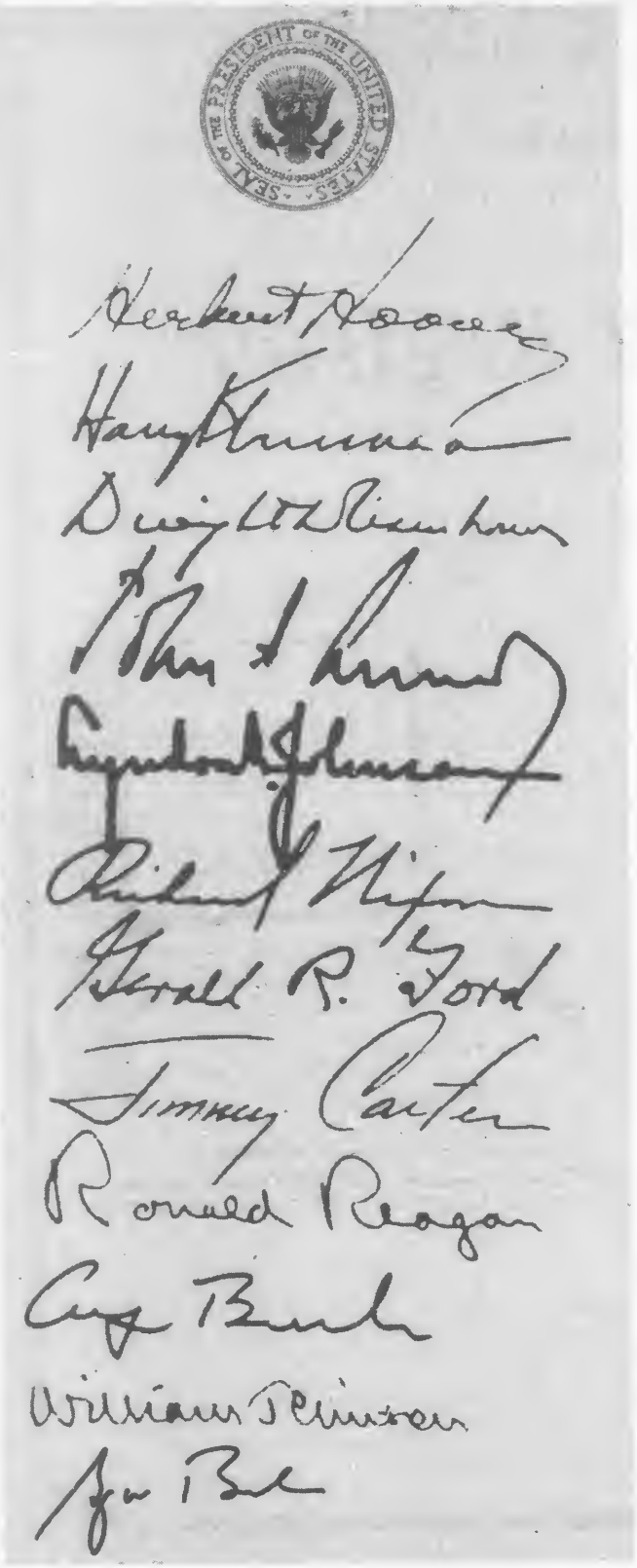

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