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WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 330, 335, 337, and 410

RIN 3206–AL04

Recruitment, Selection, and Placement (General)

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is revising the regulations on Federal vacancy announcements, reemployment priority list requirements, positions restricted to preference eligibles, the restriction on moving an employee immediately after a competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP). This final rule clarifies the regulations, incorporates longstanding OPM policies, revises placement assistance programs for consistency and effectiveness, removes references to two expired interagency placement assistance programs, and reorganizes information for ease of reading.

DATES: Final rule effective March 3, 2011.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E, contact Linda Watson by telephone at (202) 606–0830; TTY at (202) 418–3134; fax at (202) 606–0390; or e-mail at *linda.watson@opm.gov.* For all other subparts, contact Pam Galemore by telephone at (202) 606–0960; TTY at (202) 418–3134; fax at (202) 606–2329; or e-mail at *pamela.galemore@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is revising the regulations in 5 CFR part 330 governing Federal vacancy announcements, the Reemployment Priority List (RPL), positions restricted to preference eligibles, the restriction on moving an employee immediately after a competitive appointment, the Career Transition Assistance Plan (CTAP), and the Interagency Career Transition Assistance Plan (ICTAP).

On September 8, 2008, OPM published proposed regulations in the **Federal Register** (73 FR 51944) revising part 330 to clarify the regulations, incorporate longstanding OPM policies, revise placement assistance programs for consistency and effectiveness, remove references to two expired interagency placement assistance programs, and reorganize information for ease of reading. The Supplementary Information section of the September 8, 2008, proposed rule contains a discussion of the substantive revisions and changes. The 60-day comment period for the proposed regulations ended on November 7, 2008. During the comment period, OPM received comments from seven executive branch agencies, one legislative branch agency, two labor organizations, and one employee organization. We address the relevant comments received under the subpart headings below. The vast majority of comments received related to provisions in part 330 that were not proposed for revision and so were outside the scope of the proposed regulations. OPM is not responding to those comments, *i.e.,* those comments concerning current regulatory requirements and provisions that we did not propose to change. Although we are not addressing those comments in this final rule, we appreciate that the commenters thought additional clarification would be helpful in applying both continuing and revised part 330 provisions. With this in mind, we will include additional clarifying information both in guidance material accompanying this final regulation and in the Delegated Examining Operations Handbook, as appropriate.

General Comments

Overall, the agencies supported OPM's proposed revisions to part 330 as benefiting employees affected by downsizing actions, clarifying the existing regulations and making them more readable, and adding helpful information.

The employee organization asked whether the revised regulations would affect the Administrative Law Judge (ALJ) Program. The ALJ Program is subject to regulations at 5 CFR part 930, subpart B. Under section 930.201(b), ALJs follow competitive service regulations unless otherwise stated in part 930. Because ALJs are above the GS–15 level, or equivalent, they are not subject to subpart F (the Career Transition Assistance Plan (CTAP)) and subpart G (the Interagency CTAP or ICTAP), which limit selection priority to the GS–15 level, or equivalent, or below. ALJs are specifically covered by subpart B, the Reemployment Priority List, in accordance with section 930.210(c)(1).

The legislative agency questioned the proposed definition of *agency* for the purposes of part 330 in section 330.101, which included the Government Printing Office (GPO). The commenter stated that OPM did not have authority to include the GPO under the *agency* definition because it is an agency in the legislative branch of the Federal Government, and the Presidential Memorandum dated September 12, 1995, directing the establishment of the career transition assistance programs under subparts F and G, CTAP and ICTAP, respectively, was limited to the internal management of the executive branch. The commenter stated that the GPO should not have to assist in the placement of displaced executive branch employees. The commenter also stated that the GPO does not object to inclusion under subpart B, the Reemployment Priority List.

OPM agrees in part and disagrees in part with the commenter's assertion concerning the applicability of part 330 to the GPO. President Cleveland, by an Adopting and Promulgating Order dated June 13, 1895, placed all GPO employees other than unskilled laborers or workmen and those appointed by and with the advice and consent of the Senate into the classified service, subject to the regulations of the Civil Service Commission, which became OPM in 1979. Although the 1895 Order placed GPO employees in the competitive service, we agree with the commenter that the 1995 Presidential Memorandum directing the establishment of career transition assistance programs was limited to the executive branch. Accordingly, we have redefined *agency* from the proposed section 330.602 and section 330.702 to mean an Executive agency as defined in 5 U.S.C. 105, *i.e.,* an Executive

department, a Government corporation, and an independent establishment. The revised definition excludes GPO employees and positions from coverage under subparts F and G, respectively, meaning the GPO is not required to provide selection priority to displaced executive branch employees, and executive branch agencies are not required to provide selection priority to displaced GPO employees. We have also revised section 330.404 to exclude GPO employees from the provisions of section 330.404 through section 330.407 that require placement assistance to preference eligibles separated by reduction in force because of a contracting-out decision made in accordance with Office of Management and Budget Circular A–76. We have not redefined *agency* in subpart B because OPM regulations regarding the RPL, which implement 5 U.S.C. 3315 and 8151, apply to the GPO per the 1895 Adopting and Promulgating Order.

One agency asked if there would be an implementation period for agencies to update their policies, procedures, forms, *etc.* To allow time for agencies to update and revise their policies and procedures to conform to the new regulatory requirements and to consider the new flexibilities, OPM is providing that the final regulations will be effective 4 months from the date of publication in the **Federal Register**. Agencies are required to provide OPM with a copy of their final CTAP plans in accordance with section 330.603(a).

One agency suggested that the regulations define an "excepted service agency" to help employees understand this term. This comment was made in response to the statement on page 51946 of the September 8, 2008, **Federal Register** notice about including entities with positions in the competitive service under subparts F and G. We are not adopting this suggestion because it is unnecessary and would not add to the clarity of this regulation. It is positions, not agencies per se, that are excepted from the competitive service, and title 5 of the United States Code already defines both the term "competitive service" and the term "excepted service" at 5 U.S.C. 2102 and 2103, respectively.

Subpart A—Filling Vacancies in the Competitive Service

One agency commented that, although the Supplementary Information for the proposed regulations indicated that Subpart A was modified to include requirements mandated by the Veterans Employment Opportunities Act (VEOA), the agency did not see any changes that related to VEOA. In fact, section 330.103(b) of the revised regulations is intended to implement section 2 of the VEOA, codified at 5 U.S.C. 3304(f), by requiring that an agency notify OPM when filling any vacancy under its merit promotion procedures if it is accepting applications from outside its permanent competitive service workforce. We have also clarified the purpose of section 330.103 by adding that the information an agency provides to OPM is the vacancy announcement information for the particular vacancy.

One agency commented that recent legislation may have been enacted regarding protected genetic information. The commenter recommended adding genetic information to the Equal Employment Opportunity (EEO) statement suggested in section 330.104(a)(17). OPM is not adopting this suggestion; however, based on the agency's comment, we have removed the proposed recommended EEO statement in section 330.104(a)(17) and replaced it with information as to where an agency can locate OPM's recommended language for an EEO statement. Placing the recommended EEO statement in a central location allows OPM to readily update the statement with any changes or amendments to Federal employment discrimination law. Agencies may either use the recommended EEO statement located on OPM's USAJOBS Web site (*http://www.usajobs.gov/eeo*) or develop its own EEO policy statement.

For the same reason stated above, OPM is removing the current recommended statement for Reasonable Accommodation in section 330.707(b)(14)(ii) (which was moved to section 330.104(b)(2) in the proposed and this final regulation) and replacing it with information as to where an agency can locate OPM's recommended language for a Reasonable Accommodation statement. When interpretive changes to the Americans with Disabilities Act of 1990 occur, OPM will update the recommended language for a Reasonable Accommodation statement at a central location on OPM's USAJOBS Web site (*http://www.usajobs.gov/raps.*) Agencies may either use the recommended language located on OPM's Web site or develop its own Reasonable Accommodation policy statement.

One agency noted the incorrect Web address for USAJOBS in section 330.105. We have corrected the Web address to *http://www.usajobs.gov.*

Subpart B—Reemployment Priority List (RPL)

One agency objected to the proposed renaming of "priority consideration" to "placement priority" throughout subpart B because the renamed term could give the impression that the agency is responsible for placing the employee, rather than the employee being responsible for seeking employment. OPM is retaining the revised term as proposed because the RPL, in fact, provides placement priority for RPL registrants over individuals from outside the agency's permanent competitive service workforce.

Two labor organizations objected to the addition of the "undue interruption" standard to the definition of *qualified* in section 330.202. One organization was concerned about both the deletion of the reference to the *undue interruption* definition in 5 CFR 351.203 and the concept underlying the undue interruption provision. The other organization erroneously referred to the undue interruption provision as a new requirement in subpart B and stated that the 90-day standard for an undue interruption determination is not currently in part 351. ("*Undue interruption*" is defined in section 351.203 as a standard an agency may consider when placing an employee during a reduction in force. The standard may be used when the placement of an otherwise eligible employee could prevent completion of required work 90 days after the placement.) As stated in the Supplementary Information of the proposed rule, the undue interruption provision is an exception to RPL placement in the current regulation at section 330.207(d). The proposed change merely moved the substance of the exception to the *qualified* definition at the beginning of the subpart. Moving the undue interruption provision as an exception to the definition of *qualified* for RPL placement priority makes RPL placement priority consistent with qualifications for placement in a position under part 351. We agree, however, that retaining a specific cross-reference to the undue interruption definition in section 351.203 would provide a more thorough grounding for the provision and be helpful to agencies in making determinations. We have revised section 330.202 accordingly, returning the section 351.203 reference and deleting the parenthetical information that was taken from the section 351.203 definition.

One agency and two labor organizations were concerned about the proposed new provision in section 330.207(b) that allows agencies, at their discretion, to designate a different local commuting area for RPL eligibles when the agency will not have any competitive service positions remaining in the local commuting area. The agency

is concerned that, because no guidelines are provided in the regulation about when or why an agency would exercise this option, major discrepancies could arise in how RPL eligibles are treated among the various agencies. One labor organization recommended that agencies, instead of having discretion, be required to designate a different local commuting area because to leave to their discretion the designation of a different local commuting area would make this provision mere guidance, which agencies could disregard. OPM believes that each agency is in the best position to determine if and when it would be appropriate to use this flexibility. OPM believes that appropriate considerations would include the size and locations of the agency's workforce, available vacancies, and available funds. We have added these general criteria to the regulation in section 330.207(b) for agency consideration when establishing their policies, if they choose to implement this provision.

The other labor organization believes that an RPL eligible should be given the option of registering for expanded consideration in multiple local commuting areas if he or she is willing to cover the costs of relocation upon acceptance of a vacancy offer. OPM cannot adopt this suggestion. The Federal Travel Regulations (41 CFR part 302–2) require that an employee is entitled to relocation allowances if the agency determines the relocation is in the interest of the Government. Because 41 CFR 302–3.205 states that any relocation due to reduction in force is considered to be in the interest of the Government, and 41 CFR 302–3.206 provides that an agency may pay a relocation allowance to a re-employed employee separated by reduction in force or transfer of function, the agency would be required to reimburse the employee should the employee claim relocation expenses at a later date. Based on these considerations, OPM is retaining section 330.207(b) as proposed.

Proposed section 330.207(d) requires an agency to establish a fair and consistent policy for expanding the registration area for an employee whose RPL eligibility is based on recovery from a compensable work injury. One agency commented that section 330.207(d) does not include information regarding the circumstances that would be appropriate for expansion. Proposed section 330.207(d) merely added a requirement to the requirement in current section 330.206(b)(1) to expand consideration "at the time and in a manner as the agency determines will provide the individual with maximum opportunities for consideration." The new requirement is for the agency to establish a fair and consistent policy for expanding consideration Because Federal agencies range from under a hundred positions in one location to thousands of positions worldwide, OPM believes each agency is in the best position to determine if, when, and how it will expand consideration for its employees who have recovered from a compensable injury based on the location and availability of positions for the RPL registrant to exercise placement priority. However, we agree that including examples, such as agency size, geographic scope, and funding availability, would be helpful to agencies with establishing their policies and we have revised section 330.207(d) accordingly.

One agency commented that proposed section 330.208(a) is somewhat confusing, perhaps due to the length of the sentence, and offered revised language to separate the provisions into three sentences. We agree that the section could be clearer; however, to avoid redundancy, we revised section 330.208(a) to retain the events resulting in RPL eligibility within one sentence and separated into a second sentence the provision that an RPL eligible remains registered unless removed from the RPL for a reason specified in section 330.209. Section 330.208(a) as revised reads: "(a) RPL registration expires 2 years from the date of reduction in force separation under part 351 of this chapter, or 2 years from the date the agency registers the RPL eligible because of recovery from a compensable work injury under § 330.206(a)(3)(i) or (ii). An RPL eligible remains registered for the full 2-year period unless the registrant is removed from the RPL for a reason specified in § 330.209."

One agency commented that extending the duration of RPL eligibility in section 330.208(a) to 2 years for both tenure groups I and II will benefit the registrant, but will also prolong the need to check the RPL, ultimately creating more work. OPM disagrees with the agency's comment. Under section 330.210(b), the agency is required to check its RPL for registrants each time it fills a competitive service vacancy from outside its permanent competitive service workforce. Extending the eligibility period for tenure group II RPL registrants will not affect how often the agency checks its RPL.

One agency commented that section 330.208(b) provides OPM the authority to extend an RPL eligible's registration period when the eligible does not receive the 2 full years of placement priority, but it does not indicate how or who notifies OPM of the situation. We agree that additional clarification is needed. We have added a new paragraph to section 330.208(b) allowing either the agency or the RPL eligible to request OPM approval to extend the registration period if the registrant was denied the full 2-year registration period because of administrative or clerical error.

One agency noted the typographical error in section 330.212(c)(2) in referencing section 330.210 instead of section 330.213. We have corrected the reference in this final rule.

One labor organization objected to the provisions of section 330.213(c) and (d) concerning the selection order of RPL placement priority candidates. The labor organization stated the methods create complicated and convoluted components that do not adequately serve RPL candidates in a timely fashion.

In relation to section 330.213(c), the proposed rule only changed the title of the section from "Rating and ranking" to "Numerical scoring." The regulatory provisions in the proposed rule are the same as those in the current regulation in section 330.207(c). Because only the title of the section changed and the rest of the provisions were not proposed for change, the comment concerning section 330.213(c) is outside the scope of the proposed rule.

The labor organization also objected to the addition of section 330.213(d), allowing an agency to use alternative rating and selection procedures (also called category rating) as prescribed in 5 U.S.C. 3319 and part 337 of 5 CFR for the same reason stated above. We are not deleting section 330.213(d) based on the labor organization's objection. We proposed to add the alternative rating provision at section 330.213(d) precisely because we believe it would provide for a less complicated method for agencies to determine the selection order for RPL placement priority candidates. Alternative rating has been established by statute, codified at 5 U.S.C. 3319, and implemented in part 337, as an acceptable method, in addition to assigning numeric scores, for assessing qualified candidates for jobs filled through competitive examination while preserving veterans' preference. Because agencies may have adopted alternative rating in their competitive examination process, we are providing the ability to use this method when determining selection order under the RPL.

One agency commented that it is unclear whether there is an advantage or benefit to amending section 330.213(e) to allow RPL registrants to apply

directly for RPL placement priority, stating that it will create additional work to track the RPL candidate's application. OPM is not revising section 330.213(e) based on the comment. We believe adding this flexibility, which is based on the employee-empowerment model used in CTAP and ICTAP, will be beneficial to both the agency and the RPL registrant by helping to ensure a successful placement. For example, the agency will consider only those RPL registrants who express their interest and availability by applying for the particular vacancy. The RPL registrant can exercise placement priority only for those vacancies in which he or she is interested, instead of being faced with either accepting a less desirable position or being removed from the RPL.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, OPM asked stakeholders to comment on the exceptions to CTAP and ICTAP selection priority. We received comments from three agencies. Two agencies believed the exceptions were appropriate, reasonable and comprehensive. One agency proposed to add in section 330.609 that an employee with reinstatement eligibility who was selected for a term appointment from a competitive examination certificate may be reinstated to a permanent appointment as an exception to CTAP selection priority. OPM is not adopting the proposal. An individual who accepted a term appointment is fully aware of the time-limited nature of the appointment. A CTAP eligible has, by definition, been determined to be in a surplus position and subject to displacement or has received notice of separation from the Federal service through no fault of his or her own. We believe a well-qualified CTAP eligible should retain selection priority for permanent positions over an individual who accepted a designated time-limited offer. However, we understand that a time-limited appointment may be the only option available to a CTAP eligible for continued employment within an agency during a reduction in force. For this reason, we have added paragraph (ee) to section 330.609 to provide an additional exception to applying CTAP selection priority. The new exception allows an agency to convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible.

One labor organization recommended restoring language in section 330.606(b)(1) that was deleted in the proposed rule. OPM is not adopting the recommendation. OPM proposed to delete the statement, "Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees" because it was unnecessary. We continue to believe the statement is unnecessary and, in fact, could be misconstrued. The goal of placing, or not placing, displaced employees is irrelevant to the establishment of selective and quality ranking factors. (Selective factors are knowledge, skills, abilities (KSAs), or special qualifications that are in addition to the minimum requirements in a qualification standard and are determined to be essential to perform the duties and responsibilities of a particular position. Quality ranking factors are KSAs that are expected to enhance performance in a position, but, unlike selective factors, are not essential for satisfactory performance. Quality ranking factors are used to evaluate and determine the best qualified of qualified applicants.) These factors are considered an employment practice and, therefore, must be developed in accordance with 5 CFR 300. Part 300 requires a job analysis to determine the job-related quality ranking factors, or selective factors, as applicable. The fact that placement assistance candidates may apply for the position has no relevance to their establishment or use. These factors are established for the position to be filled before the job is announced and apply to all individuals who apply to the job announcement. (For additional information on selective and quality ranking factors, *see* part E.6 of the *Operating Manual: Qualification Standards for General Schedule Positions* on OPM's Web site at *http://www.opm.gov*.)

One agency and one labor organization commented on the new provision in sections 330.606(c) and 330.704(c) allowing an agency to include the results of a structured scored interview when determining if a CTAP or an ICTAP eligible is well-qualified. Both the agency and the labor organization stated that structured interviews were too subjective for use in making well-qualified determinations. OPM disagrees with the commenters; however, we are deleting this provision as unnecessary from both sections in the final regulations. A scored structured interview is a valid assessment tool that involves eliciting, observing, evaluating, and scoring responses to pre-established job-related questions. A structured interview, when used, is part of an agency's overall assessment process to differentiate the qualified from the highly- or well-qualified applicants for a particular position or group of positions. Because the structured interview is a component of the assessment process, we have determined it is not necessary to separately address this component from other components used in the process.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

One agency and one labor organization commented on section 330.705(d)(2). This section allows an agency to make additional selections from an applicant pool previously established by a vacancy announcement that was open to ICTAP eligibles. The agency states the provision is confusing as written in that it implies the agency could readvertise the vacancy without accepting additional ICTAP eligibles' applications. The labor organization believes reissuing selection certificates without readvertising for ICTAP eligibles may invite the specter of inappropriate or suspect activity on the part of an agency in its execution of ICTAP. OPM is retaining the provision; however, we revised section 330.705(d)(2) for clarity. As stated in the **SUPPLEMENTARY INFORMATION** of the proposed rule, under current ICTAP regulations, an agency must determine if ICTAP eligibles are available whenever it makes a selection that is not an authorized exception to ICTAP. For example, an agency issues a vacancy announcement for one position for which no ICTAP eligibles apply. The agency makes a selection and appoints the selectee. The selectee resigns 2 weeks later. The agency's merit promotion plan allows it to re-issue the selection certificate containing other highly qualified candidates to make a second selection in this circumstance, but, under the current regulation, the agency would have to issue a new vacancy announcement to ensure no ICTAP eligibles are available before it could fill its position. This provision would allow the agency to fill the position from the applicant pool established by the original announcement under which ICTAP eligibles could apply. We see no reason to prohibit the agency from making the second selection in this limited circumstance.

One agency recommended that section 330.708 be revised to allow ICTAP selection priority candidates referred for selection on an agency

certificate to retain their priority until the certificate expires under agency policies. OPM is not adopting this recommendation because to do so would provide some ICTAP eligibles with 1 year of eligibility while providing others with more than 1 year, possibly on the same agency certificate. As noted in the **SUPPLEMENTARY INFORMATION** of the proposed rule, the proposed revision to section 330.708 was a clarification of, not a change to, existing policy. Also as noted in the **SUPPLEMENTARY INFORMATION**, an agency retains the option to select a displaced employee whose ICTAP eligibility has expired, provided no other ICTAP eligibles have selection priority for the vacancy.

One agency suggested section 330.710 retain the example from the current regulation in section 330.708(a)(2)(ii) that lists a Standard Form 50 as an example of documentation to establish ICTAP eligibility. We agree and have retained the Standard Form 50 as an example of proof of eligibility. Also, in reviewing section 330.710, we noted an oversight. The proposed provision requires an ICTAP eligible to submit one of the documents listed under the definition of *displaced* in section 330.702 to establish ICTAP selection priority. However, definition (2) of *displaced* lists former career or career-conditional employees separated by reduction in force under part 351 or removed under part 752 adverse action procedures; no "document" is included in definition (2). We have revised section 330.710 to correct this oversight.

The final regulation also includes minor edits for readability and finalizes the conforming changes in parts 302—Employment in the Excepted Service, 335—Promotion and Internal Placement, 337—Examining System, and 410—Training of OPM's regulations to revise citations because of the movement of rules governing vacancy announcements from subpart G to subpart A. We also clarified in section 330.708 when ICTAP eligibility terminates for a Military Reserve Technician or National Guard Technician. By law in 5 U.S.C. 8337(h) and 8456, a Technician's special annuity terminates upon appointment to a Government position, declination of an appointment, restoration to earning capacity, or recovery from the disability. We have added in section 330.708(f) that ICTAP eligibility for displaced Technicians, as described in section 330.702, terminates when the Technician no longer receives the special disability retirement annuity under 5 U.S.C. 3887(h) or 8456.

For the convenience of the reader, the final part 330 is published in its entirety.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 302, 335, and 337

Government employees.

5 CFR Part 330

Armed forces reserves, District of Columbia, Government employees.

5 CFR Part 410

Education, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is amending 5 CFR parts 302, 330, 335, 337, and 410 as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

§ 302.106 [Amended]

■ 2. In § 302.106, remove "§ 330.707 of subpart G" and add, in its place, "part 330, subpart A".

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 3. Revise part 330 to read as follows:

Subpart A—Filling Vacancies in the Competitive Service

Sec.

Subpart B—Reemployment Priority List (RPL)

Subpart C—[Reserved]

Subpart D—Positions Restricted to Preference Eligibles

Subpart E—Restrictions To Protect Competitive Principles

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart A—Filling Vacancies in the Competitive Service

§ 330.101 Definitions.

(a) In this part:

Agency means:

(1) An Executive department listed at 5 U.S.C. 101;

(2) A military department listed at 5 U.S.C. 102;

(3) A Government owned corporation in the executive branch;

(4) An independent establishment in the executive branch as described at 5 U.S.C. 104; and

(5) The Government Printing Office.

Component means the first major subdivision of an agency, separately organized, and clearly distinguished in work function and operation from other agency subdivisions (*e.g.,* the Internal Revenue Service under the Department of the Treasury or the National Park Service under the Department of the Interior).

Local commuting area has the meaning given that term in § 351.203 of this chapter.

Permanent competitive service workforce and *permanent competitive service employees* mean agency employees serving under career or career-conditional appointments, in tenure group I or II, respectively.

Position change has the meaning given that term in § 210.102 of this chapter.

Rating of record has the meaning given that term in § 351.203 of this chapter.

Representative rate has the meaning given that term in § 351.203 of this chapter.

Tenure groups are described in § 351.501 of this chapter.

(b) In this subpart:

Vacancy means a vacant position in the competitive service, regardless of whether the position will be filled by permanent or time-limited appointment, for which an agency is seeking applications from outside its current permanent competitive service workforce.

§ 330.102 Methods of filling vacancies.

An agency may fill a vacancy in the competitive service by any method authorized in this chapter, including competitive appointment from a list of eligibles, noncompetitive appointment under special authority, reinstatement, transfer, reassignment, change to lower grade, or promotion. The agency must exercise its discretion in each personnel action solely on the basis of merit and fitness, without regard to political or religious affiliation, marital status, or race, and veterans' preference entitlements.

§ 330.103 Requirement to notify OPM.

An agency must provide the vacancy announcement information to OPM promptly when:

(a) Filling a vacancy for more than 120 days from outside the agency's current permanent competitive service workforce, as required by the Interagency Career Transition Assistance Plan, subpart G of this part, unless the action to be taken is listed in subpart G as an exception to that subpart;

(b) Filling any vacancy under the agency's merit promotion procedures when the agency will accept applications from outside its permanent competitive service workforce; and

(c) Filling a vacancy by open competitive examination, including direct hire procedures under part 337 of this chapter, or in the Senior Executive Service, as required by 5 U.S.C. 3327.

§ 330.104 Requirements for vacancy announcements.

(a) Each vacancy announcement must contain the following information:

(1) Name of issuing agency;

(2) Announcement number;

(3) Position title, series, pay plan, and grade (or pay rate);

(4) Duty location;

(5) Number of vacancies;

(6) Opening date and application deadline (closing date) and any other information concerning how receipt of applications will be documented, such as by date of receipt or postmark, and considered, such as by cut-off dates in open continuous announcements;

(7) Qualification requirements, including knowledge, skills, and abilities or competencies;

(8) Starting pay;

(9) Brief description of duties;

(10) Basis of rating;

(11) What to file;

(12) Instructions on how to apply;

(13) Information on how to claim veterans' preference, if applicable;

(14) Definition of "well-qualified," as required by subparts F and G of this part;

(15) Information on how candidates eligible under subparts F and G of this part may apply, including required proof of eligibility;

(16) Contact person or contact point;

(17) Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website.); and

(18) Reasonable accommodation statement.

(b)(1) An agency may use wording of its choice in its statement that conveys the availability of reasonable accommodation required by § 330.104(a)(18). In its reasonable accommodation statement, an agency may not list types of medical conditions or impairments appropriate for accommodation.

(2) Agencies may use the recommended reasonable accommodation statement located on OPM's USAJOBS website.

§ 330.105 Instructions on how to add a vacancy announcement to USAJOBS.

An agency can find the instructions to add a vacancy announcement to USAJOBS on OPM's Web site at *http://www.usajobs.gov.* An electronic file of the complete vacancy announcement must be included within USAJOBS.

§ 330.106 Funding.

Each year, OPM will charge a fee for the agency's share of the cost of providing employment information to the public and to Federal employees as authorized by 5 U.S.C. 3330(f).

Subpart B—Reemployment Priority List (RPL)

§ 330.201 Purpose.

(a) The Reemployment Priority List (RPL) is a required component of an agency's placement programs to assist its current and former competitive service employees who will be or were separated by reduction in force (RIF) under part 351 of this chapter, or who have recovered from a compensable work-related injury after more than 1 year, as required by part 353 of this chapter. In filling vacancies, an agency must give its RPL registrants placement priority for most competitive service

vacancies before hiring someone from outside its own permanent competitive service workforce. An agency may choose to consider RPL placement priority candidates before other agency permanent competitive service employees under its Career Transition Assistance Plan (CTAP) established under subpart F of this part, after fulfilling agency obligations to its CTAP selection priority candidates.

(b) Agencies must use an RPL to give placement priority to their:

(1) Current competitive service employees with a specific notice of RIF separation or a Certification of Expected Separation issued under part 351 of this chapter;

(2) Former competitive service employees separated by RIF under part 351 of this chapter; and

(3) Former competitive service employees fully recovered from a compensable injury (as defined in part 353 of this chapter) after more than 1 year.

(c) All agency components within the local commuting area use a single RPL and are responsible for giving placement priority to the agency's RPL registrants.

(d) With prior OPM approval, an agency may operate an alternate placement program which satisfies the basic requirements of this subpart, including veterans' preference, as an exception to the RPL regulations under this subpart. This provision is limited to reemployment priority because of RIF separation and allows agencies to adopt different placement strategies that are effective for their programs and satisfy employee entitlements to reemployment priority.

§ 330.202 Definitions.

In this subpart:

Competitive area means a competitive area as described in § 351.402 of this chapter.

Competitive service appointment includes new appointments, reinstatements, reemployment, and transfers as defined in § 210.102 of this chapter, and conversions as defined in OPM's "Guide to Processing Personnel Actions."

Injury, in relation to the RPL, has the meaning given that term in § 353.102 of this chapter.

Overseas has the meaning given that term in § 210.102 of this chapter.

Qualified refers to an RPL registrant who:

(1) Meets OPM-established or -approved qualification standards and requirements for the position, including minimum educational requirements, and agency-established selective factors (as this term is used in OPM's "Operating Manual: Qualification Standards for General Schedule Positions");

(2) Will not cause an undue interruption, as defined in § 351.203 of this chapter, that would prevent the completion of required work by the registrant 90 days after the registrant is placed in the position;

(3) Is physically qualified, with or without reasonable accommodation, to perform the duties of the position;

(4) Meets any special OPM-approved qualifying conditions for the position; and

(5) Meets any other applicable requirements for competitive service appointment.

RPL eligible means a current or former employee of the agency who meets the conditions in either paragraph (a) or (b) of § 330.203. As used in this subpart, "RPL eligible" and "eligible" are synonymous.

RPL placement priority candidate means an RPL registrant who is qualified and available for a specific agency vacancy.

RPL registrant means an RPL eligible who submitted a timely RPL application and who is registered on the agency's RPL. As used in this subpart, "RPL registrant" and "registrant" are synonymous.

Vacancy means any vacant position to be filled by a competitive service permanent or time-limited appointment.

§ 330.203 RPL Eligibility.

An employee must meet the conditions in either paragraph (a) or (b) of this section to be an RPL eligible.

(a) For eligibility based on part 351 of this chapter, the employee:

(1) Must be serving in an appointment in the competitive service in tenure group I or II;

(2) Must have received either a specific notice of separation or a Certification of Expected Separation under part 351 of this chapter that has not been cancelled, rescinded, or modified so that the employee is no longer under notice of separation;

(3) Must have received a rating of record of at least fully successful (Level 3) or equivalent as the most recent performance rating of record; and

(4) Must not have declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and with a representative rate at least as high as that of the position from which the employee will be separated.

(b) For eligibility based on part 353 of this chapter, the employee or former employee:

(1) Must be serving in, or separated from, an appointment in the competitive service in tenure group I or II;

(2) Must either have accepted a position at a lower grade or pay level in lieu of separation or have been separated because of a compensable injury or disability. (For the purposes of this subpart, any reference to the position from which an individual was or will be separated includes the position from which the RPL eligible accepted the lower graded or pay level position under this paragraph.);

(3) Must have fully recovered more than 1 year after compensation began; and

(4) Must have received notification from the Office of Workers' Compensation Programs, Department of Labor, that injury compensation benefits have ceased or will cease.

§ 330.204 Agency requirements and responsibilities.

(a) An agency must establish policies and maintain an RPL for each local commuting area in which the agency has RPL eligibles.

(b) An agency must give each RPL eligible information about its RPL program, including Merit Systems Protection Board appeal rights under § 330.214, when:

(1) The agency issues a RIF separation notice or a Certification of Expected Separation under part 351 of this chapter; or

(2) The employee accepts a position at a lower grade or pay level or is separated from the agency because of a compensable work-related injury.

(c) An agency must register an RPL eligible on the appropriate RPL no later than 10 calendar days after receiving the eligible's written application.

(d) Agencies must include in their RPL policies established under this subpart how they will assist RPL eligibles who:

(1) Request an RPL application;

(2) Request help in completing the RPL application; and

(3) Request help in identifying and listing on the RPL application those positions within the agency for which they are qualified and interested.

(e) An agency must give RPL registrants placement priority for personnel actions as described in § 330.210.

(f) An agency must not remove an individual from the RPL under § 330.209(a)(1), (b)(1), or (b)(2) without evidence (such as a Postal Service return receipt signed by addressee only) showing that the offer, inquiry, or scheduled interview was made in writing. The written offer, inquiry, or

scheduled interview must clearly state that failure to respond will result in removal from the RPL for positions at that grade or pay level and for positions at lower grades and pay levels for which registered.

§ 330.205 Agency RPL applications.

Agencies may develop their own application format which must, at a minimum:

(a) Allow an RPL eligible to register for positions at the same representative rate and work schedule (full-time, part-time, seasonal, or intermittent) as the position from which the RPL eligible was, or will be, separated; and

(b) Allow an RPL eligible to specify the conditions under which he or she will accept a position, including grades or pay levels, appointment type (permanent or time-limited), occupations (*e.g.,* position classification series or career groups), and minimum number of hours of work per week, as applicable.

§ 330.206 RPL registration timeframe and positions.

(a) To register, an RPL eligible must:

(1) Meet the eligibility conditions under § 330.203(a) or (b);

(2) Complete an RPL application prescribed by the current or former agency and keep the agency informed of any significant changes in the information provided; and

(3) Submit the RPL application on or before the RIF separation date or, if an RPL eligible under § 330.203(b), within 30 calendar days after the:

(i) Date injury compensation benefits cease; or

(ii) Date the Department of Labor denies an appeal for continuation of injury compensation benefits.

(b) RPL eligibles may register and receive placement priority for positions for which they are qualified and that:

(1) Have a representative rate no higher than the position from which they were, or will be, separated unless the eligible was demoted as a tenure group I or II employee in a previous RIF. If the eligible was so demoted, the eligible can register for positions with a representative rate up to the representative rate of the position held on a permanent appointment immediately before the RIF demotion was effective;

(2) Have no greater promotion potential than the position from which they were, or will be, separated; and

(3) Have the same type of work schedule as the position from which they were, or will be, separated.

§ 330.207 Registration area.

(a) Except as provided in paragraphs (b) through (e) of this section, RPL registration is limited to the local commuting area in which the eligible was, or will be, separated.

(b) If the agency has, or will have, no competitive service positions remaining in the local commuting area from which the RPL eligible will be separated under part 351 of this chapter, the agency may designate a different local commuting area where there are continuing positions for the RPL eligible to exercise placement priority. The agency has sole discretion over whether to offer this option and which local commuting area to designate, taking into consideration the size and locations of its workforce, available vacancies, and available funds.

(c) If the RPL eligible agreed to transfer with his or her function under part 351 of this chapter but will be separated by RIF from the gaining competitive area, registration is limited to the RPL covering the gaining competitive area's local commuting area.

(d) For an individual who is eligible under § 330.203(b), registration is initially limited to the RPL covering the local commuting area of the position from which the employee was separated. The agency must establish a fair and consistent policy that permits RPL eligibles to expand their registration to available local commuting areas mutually acceptable to the RPL eligible and the agency, up to agency-wide as required by 5 U.S.C. 8151. (For example, an agency could consider the number and location(s) of its positions and funding availability when establishing its policies on expanding consideration.) In lieu of expanded registration, the agency policy may provide for the RPL eligible to elect to receive placement priority for the next best available position in the former local commuting area.

(e) If the RPL eligible was, or will be, separated from an overseas position (*see* part 301 of this chapter), RPL registration is limited to the local commuting area in which the eligible was, or will be, separated, unless:

(1) The agency approves a written request by the RPL eligible for registration in the local commuting area from which employed for overseas service, or in another area within the United States that is mutually acceptable to the eligible and the agency; or

(2) The agency has a formal program for rotating employees between overseas areas and the United States, and the RPL eligible's preceding and prospective overseas service would exceed the maximum duration of an overseas duty tour in the rotation program. In this case, the eligible may register for a local commuting area within the United States that is mutually acceptable to the eligible and the agency.

§ 330.208 Duration of RPL registration.

(a) RPL registration expires 2 years from the date of reduction in force separation under part 351 of this chapter, or 2 years from the date the agency registers the RPL eligible because of recovery from a compensable work injury under § 330.206(a)(3)(i) or (ii). An RPL eligible remains registered for the full 2-year period unless the registrant is removed from the RPL for a reason specified in § 330.209.

(b)(1) OPM may extend the registration period when an RPL eligible does not receive a full 2 years of placement priority, for example, because of an agency's administrative or procedural error.

(2) Either the agency or the RPL eligible may request OPM to extend the registration period under paragraph (b)(1) of this section. The request must describe the administrative or procedural error that caused the RPL eligible to be registered for less than the full 2-year period. OPM may request additional information either from the agency or the RPL eligible in connection with any such request. OPM will notify both the agency and the RPL eligible of the decision to approve or deny an extension request. OPM's decision regarding an extension request is not subject to appeal under § 330.214.

§ 330.209 Removal from an RPL.

(a) An RPL registrant is removed from the RPL at all registered grades or pay levels if the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position having the same type of work schedule and a representative rate at least as high as the position from which the registrant was, or will be, separated;

(2) Receives a written cancellation, rescission, or modification to:

(i) The RIF separation notice or Certification of Expected Separation so that the employee no longer meets the conditions for RPL eligibility in § 330.203(a); or

(ii) The notification of cessation of injury compensation benefits so that injury compensation benefits continue;

(3) Separates from the agency for any other reason (such as retirement, resignation, or transfer) before the RIF separation effective date. Registration continues if the RPL registrant retires on

or after the RIF separation effective date. This paragraph does not apply to an RPL registrant under § 330.203(b);

(4) Requests the agency to remove his or her name from the RPL;

(5) Is placed in a position without time limit at any grade or pay level within the agency;

(6) Is placed in a position under a career, career-conditional, or excepted appointment without time limit at any grade or pay level in any agency; or

(7) Leaves the area covered by an overseas RPL (see 5 CFR part 301) or is ineligible for continued overseas employment because of previous service or residence.

(b) An RPL registrant is removed from the RPL at registered grades or pay levels with a representative rate at and below the representative rate of a position offered by the agency if the offered position is below the last grade or pay level held and the registrant:

(1) Declines or fails to reply to the agency's inquiry about an RPL offer of a career, career-conditional, or excepted appointment without time limit for a position meeting the acceptable conditions shown on the RPL registrant's application; or

(2) Declines or fails to appear for a scheduled interview.

(c) An RPL registrant removed from the RPL under paragraph (b) of this section at lower grades or pay levels than the last grade or pay level held remains on the RPL for positions with a representative rate higher than the offered position up to the grade or pay level last held, unless registration expires or otherwise terminates.

(d) Declination of time-limited employment does not affect RPL eligibility.

§ 330.210 Applying RPL placement priority.

(a) RPL placement priority applies to:

(1) Permanent and time-limited positions to be filled by competitive service appointment; and

(2) The grade or pay level at which the agency fills the position. If a position is available at multiple grades or pay levels, placement priority applies at the grade or pay level at which the position is ultimately filled.

(b) An agency must not effect a permanent or time-limited competitive service appointment of another individual if there is an RPL placement priority candidate registered for the vacancy, unless the action is listed as an exception in § 330.211.

(c) An agency must document that there are no RPL placement priority candidates for the vacancy when requesting a competitive certificate of eligibles under part 332 of this chapter. Similarly, an agency must offer the vacancy to any RPL placement priority candidate(s) before effecting an appointment under a noncompetitive appointing authority, such as under part 315 of this chapter.

(d) Once an agency has ensured there are no RPL placement priority candidates for a particular vacancy and documents in writing an employment offer that is accepted by another individual, the agency may fulfill that employment offer to that individual.

§ 330.211 Exceptions to RPL placement priority.

An agency may effect the following personnel actions as exceptions to § 330.210:

(a) Fill a vacancy with an employee of the agency's current permanent competitive service workforce through detail or position change, subject to the requirements of subpart F of this part;

(b) Appoint a 10-point preference eligible through an appropriate appointing authority;

(c) Appoint a current or former employee exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability within 1 year;

(d) Appoint a current or former employee exercising other statutory or regulatory reemployment rights;

(e) Fill a specific position when all RPL placement priority candidates decline an offer of the position or fail to respond to a written agency inquiry about their availability;

(f) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(g) Reappoint without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less);

(h) Extend an employee's temporary or term appointment up to the maximum permitted by the appointment authority or as authorized by OPM; or

(i) Appoint an individual under an excepted service appointing authority.

§ 330.212 Agency flexibilities.

An agency may provide the following flexibilities within its written RPL policies established under this subpart:

(a) Allow RPL eligibles to register only for certain sub-areas of a local commuting area when the agency has components dispersed throughout a large commuting area. However, an agency cannot deny registration throughout the local commuting area if the RPL eligible requests it.

(b) Suspend an RPL registration for all positions, permanent and time-limited, if the agency is unable, through documented written means, to contact the RPL registrant; however, the agency must reactivate an RPL registration when the registrant submits an updated application or otherwise requests reactivation in writing. Registration suspension and reactivation do not change the expiration date of the original registration period set in § 330.208.

(c)(1) Modify the OPM or OPM-approved qualification standard used to determine if an RPL eligible is qualified for a position, provided the:

(i) Exception is applied consistently and equitably in filling a position;

(ii) RPL registrant meets any minimum educational requirements for the position; and

(iii) RPL registrant has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position, as determined by the agency.

(2) Any modification to the qualification standard under paragraph (c)(1) of this section does not authorize a waiver of the selection order required under § 330.213.

(d) Permit RPL eligibles to register for positions with work schedules different from the work schedule of the position from which they were, or will be, separated.

(e) Permit RPL registrants to update their qualifications or conditions for accepting positions during the RPL registration period. If an agency provides this flexibility in its RPL policies, the agency must update the RPL registrant's registration information within 10 calendar days of receipt of the registrant's written request. The updated registration information would apply only to those vacancies becoming available after the agency updates the RPL registrant's registration.

§ 330.213 Selection from an RPL.

(a) *Methods.* An agency must adopt one of the selection methods in paragraphs (b), (c), or (d) of this section for a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. While an agency may not vary the method used for an individual vacancy, it may at any time change the selection method for all positions covered by a single RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency places qualified RPL placement priority candidates in tenure group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over a candidate in tenure group I to select from tenure group II and, within a tenure group, may not pass over a candidate in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select any candidate without regard to order of retention standing.

(c) *Numerical scoring.* (1) For each vacancy to be filled, the agency rates RPL placement priority candidates according to their job experience and education. The agency must use job-related evaluation criteria for the position to be filled that can distinguish differences in qualifications measured and must apply the criteria in a fair and consistent manner. The agency assigns the candidates a numerical score of at least 70 on a scale of 100, based on the evaluation criteria developed under this paragraph. The agency must grant 5 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3)(A) and (B), and 10 additional points to veterans' preference eligibles under 5 U.S.C. 2108(3) (C) through (G).

(2) RPL placement priority candidates with an eligible numerical score are ranked in the following order:

(i) Veterans' preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional or scientific position at or above the GS–9 level, or equivalent; and

(ii) All other candidates in the order of their augmented ratings. At each score, candidates entitled to 10-point veterans' preference will be entered ahead of all other candidates, and those entitled to 5-point veterans' preference will be entered ahead of those candidates not entitled to veterans' preference.

(3) The agency must make its selection from among the highest three candidates available and may not pass over a veterans' preference eligible to select a nonpreference eligible.

(d) *Alternative rating and selection.* (1) For each vacancy to be filled, the agency may use alternative rating and selection procedures (also called category rating) as described in 5 U.S.C. 3319 and part 337 of this chapter. The agency assesses RPL placement priority candidates against job-related evaluation criteria and then places them into two or more pre-defined quality categories.

(2) To use this method, the agency must:

(i) Establish a system for evaluating RPL placement priority candidates that provides for two or more quality categories;

(ii) Define each quality category through job analysis conducted in accordance with the "Uniform Guidelines on Employee Selection Procedures" at 29 CFR part 1607 and part 300 of this chapter. Each quality category must have a clear definition that distinguishes it from other quality categories; and

(iii) Place candidates into the appropriate quality categories based upon their job-related competencies, knowledge, skills, and abilities.

(3) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2). Veterans' preference points as prescribed in paragraph (c)(1) of this section are not applied under this method.

(4) The agency must make its selection from the highest quality category in accordance with its category rating policy established under part 337 of this chapter.

(e) *Application-based procedure.* (1) An agency may adopt an application-based procedure which allows RPL registrants to apply directly for RPL placement priority under an advertised vacancy announcement. Before using this procedure, the agency must establish policies and procedures for:

(i) Informing RPL registrants of available vacancies;

(ii) Informing RPL registrants of acceptable application formats, including how to permanently change initial registration information and how to apply changes only to the specific vacancy announcement for which the application is made;

(iii) Determining the method under which the RPL registrant will be rated and ranked (paragraph (b), (c), or (d) of this section); and

(iv) Informing each RPL registrant who applies under this method whether he or she was determined to be an RPL placement priority candidate and the outcome of the selection process, if the candidate was referred for selection.

(2) RPL registrants may not be removed from the RPL for failure to apply for a vacancy under this paragraph. Registration continues until it expires or the registrant is removed from the RPL under § 330.209.

§ 330.214 Appeal rights.

An RPL registrant who believes the agency violated his or her reemployment rights under this subpart by employing another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the Board's regulations in part 1200 of this chapter.

Subpart C—[Reserved]

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Restricted positions.

Under 5 U.S.C. 3310, competitive examinations for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*) are restricted to preference eligibles as long as a preference eligible is available. For more information on these restricted positions, refer to the OPM Delegated Examining Operations Handbook.

§ 330.402 Exceptions to restriction.

(a) An agency may fill a restricted position with a nonpreference eligible under the following circumstances:

(1) By competitive examination when no preference eligible applies;

(2) By position change (promotion, demotion, or reassignment) to a position in the organizational entity (*i.e.,* the part of an agency from which selections are normally made for promotion or reassignment to the position in question) in which the nonpreference eligible is employed;

(3) By reemployment in the agency where the nonpreference eligible was formerly employed when he or she is being appointed from the Reemployment Priority List under subpart B of this part;

(4) By reinstatement in the agency where the nonpreference eligible was formerly employed when he or she was last separated because of disability retirement; or

(5) By reappointment of certain temporary employees as provided for in part 316 of this chapter.

(b) Except as indicated in paragraph (a) of this section, OPM must authorize

any other agency noncompetitive action (*e.g.,* under an authority specified in part 315 of this chapter) to fill a restricted position with a nonpreference eligible.

§ 330.403 Positions brought into the competitive service.

An agency may convert the appointment of a nonpreference eligible whose restricted position was brought into the competitive service under part 316 of this chapter, and who meets the requirements for conversion under part 315 of this chapter, to career or career conditional appointment.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities as described in §§ 330.405 and 330.406 are applicable if a preference eligible holds a competitive service position (other than in the Government Printing Office) that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In tenure group I or II, as defined in § 351.501(b)(1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.603, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State units as designated or created under title I of the Workforce Investment Act of 1998 to retrain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;

(b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 Purpose.

The restrictions in this subpart are designed to prevent circumvention of the open competitive examination system defined in Civil Service Rule 1.3 (5 CFR 1.3). These restrictions limit an appointee's immediate movement to another position after appointment from a competitive certificate of eligibles.

§ 330.502 General restriction on movement after competitive appointment.

(a) An agency must wait at least 90 days after an employee's latest nontemporary competitive appointment before the agency may take the following actions:

(1) Promote an employee;

(2) Transfer, reinstate, reassign, or detail an employee to a different position; or

(3) Transfer, reinstate, reassign, or detail an employee to a different geographical area.

(b) Upon written request from an agency, OPM may waive the restriction against movement to a different geographical area when moving such an employee is consistent with open competition principles.

§ 330.503 Ensuring agency compliance with the principles of open competition.

OPM will review appointments made from competitive examinations and subsequent position changes to determine if agencies are complying with open competition principles. The fact that an agency waited 90 days to make the changes, as required under this subpart, is not an absolute protection. If OPM finds that an agency has not complied with these principles, either in an individual instance or on a program-wide basis, OPM will order an agency to correct the situation.

§ 330.504 Exception to the general restriction.

The restrictions in this subpart do not apply to a person who is eligible for a competitive appointment from a certificate of eligibles under part 332 of this chapter.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

§ 330.601 Purpose.

(a) An agency's Career Transition Assistance Plan (CTAP) provides intra-agency selection priority for the agency's eligible surplus and displaced employees. This subpart sets forth minimum requirements for agency plans and establishes requirements for CTAP selection priority.

(b) Consistent with these regulations and at their discretion, an agency may supplement these requirements to expand career transition opportunities to its surplus and displaced workers.

(c) With prior OPM approval, an agency may operate an alternate placement program that satisfies the basic requirements of this subpart as an exception to CTAP selection priority under this subpart. This provision allows agencies to adopt different placement strategies that are effective for their programs while satisfying employee entitlements to selection priority.

§ 330.602 Definitions.

For purposes of this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

CTAP eligible means an agency surplus or displaced employee who has a current performance rating of record of at least fully successful (Level 3) or equivalent. As used in this subpart, "CTAP eligible" and "eligible" are synonymous.

CTAP selection priority candidate means a CTAP eligible who applied for and was determined to be well-qualified by the agency and whom the agency must select over any other applicant for the vacancy, unless the action to be taken is listed as an exception under § 330.609.

Displaced describes an agency employee in one of the following two categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee at grade GS–15 (or equivalent) or below who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside of the local commuting area (e.g., a directed reassignment or change in duty station).

(2) A current excepted service employee on an appointment without time limit at grade level GS–15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a RIF separation notice under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station).

Surplus describes an agency employee in one of the following three categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee at grade GS–15 (or equivalent) or below who received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(2) A current excepted service employee on an appointment without time limit at grade GS–15 (or equivalent) or below who:

(i) Is covered by a law providing both noncompetitive appointment eligibility to, and selection priority for, competitive service positions; and

(ii) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification or notification indicating that the employee's position is surplus (for example, a notice of position abolishment or a notice of eligibility for discontinued service retirement).

(3) A current excepted service employee on a Schedule A or B appointment without time limit at grade level GS–15 (or equivalent) or below who is in an agency offering CTAP selection priority to its excepted service employees and who:

(i) Received a Certification of Expected Separation under part 351 of this chapter or other official agency certification indicating that the employee is surplus (for example, a notice of position abolishment, or notice of eligibility for discontinued service retirement); or

(ii) Received a RIF notice of separation under part 351 of this chapter or a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station).

Vacancy means a vacant competitive service position at grade GS–15 (or equivalent) or below to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement.

§ 330.603 Requirements for agency CTAPs.

(a) Each agency must establish a CTAP for its surplus and displaced employees. Each agency must send its plan, and any modifications, to OPM, Employee Services, after approval by an authorized agency official.

(b) Each agency must uniformly and consistently apply its CTAP and these regulations to all surplus and displaced employees.

(c) In addition to a description of the agency's selection priority policies required by § 330.604, a CTAP must describe the agency's policies with regard to how it will provide career transition services to all its surplus and displaced agency employees, including excepted service and Senior Executive Service employees. The plan must describe:

(1) The types of career transition services the agency will provide;

(2) Policies on employees' and former employees' use of transition services and facilities, including:

(i) Excused absences for transition-related activities;

(ii) Access to services or facilities after separation;

(iii) Orientation sessions on career transition services and information as described in § 330.608(a) and (b), respectively;

(iv) Retraining policies;

(v) Access to agency CTAP services and resources by all employees, including those with disabilities, those in field offices, and those in remote sites;

(vi) Access to other Federal, State, and local resources available to support career transition for employees with disabilities; and

(vii) Availability of employee assistance programs and services.

(d) An agency's CTAP must also describe the agency's policies and procedures for its Reemployment Priority List established under subpart B of this part and the Interagency Career Transition Placement Plan established under subpart G of this part.

§ 330.604 Requirements for agency CTAP selection priority.

In addition to the overall requirements of § 330.603, an agency's CTAP must describe:

(a) How the agency will provide CTAP selection priority to surplus and displaced employees for vacancies in the local commuting area before selecting any other candidate from either within or outside the agency;

(b) Procedures for reviewing CTAP eligibles' qualifications and resolving qualification issues or disputes;

(c) Decisions involving discretionary areas under § 330.607 (such as whether excepted service employees will receive CTAP selection priority, priority of surplus versus displaced employees, designation of agency components, and selection priority beyond the local commuting area); and

(d) When and how the agency will inform its surplus and displaced employees about CTAP eligibility criteria, as required by § 330.608(b), how to apply for agency vacancies, and how to request CTAP selection priority.

§ 330.605 Agency responsibilities for deciding who is well-qualified.

(a) An agency must define what constitutes a well-qualified candidate for its specific vacancies, consistent with this subpart, and uniformly apply that definition to all CTAP eligibles being considered for the vacancy.

(b) An agency must conduct an independent second review and document the specific job-related reasons whenever a CTAP eligible is determined to be not well-qualified under the agency's definition. The agency must give the CTAP eligible the written results of this review as required by § 330.608(e).

§ 330.606 Minimum criteria for agency definition of "well-qualified".

(a) At a minimum, the agency must define "well-qualified" as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of "well-qualified" must

satisfy the criteria in paragraph (b) of this section.

(b) Under an agency's definition of "well-qualified," the agency must be able to determine whether a CTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualifications requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency's rating and ranking process.

§ 330.607 Applying CTAP selection priority.

(a) An agency must not place any other candidate from within or outside the agency into a vacancy if there is an available CTAP selection priority candidate, unless the personnel action to be effected is an exception under § 330.609.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no CTAP eligible is available.

(c) CTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the CTAP eligible's permanent position of record;

(2) Has no greater promotion potential than the CTAP eligible's permanent position of record;

(3) Is in the same local commuting area as the CTAP eligible's permanent position of record;

(4) Is filled during the CTAP eligible's eligibility period; and, if applicable,

(5) Is filled under the same excepted appointing authority as the CTAP eligible's permanent position of record if the CTAP eligible is an excepted service employee and the agency CTAP provides selection priority in the excepted service.

(d) An agency may take actions under § 335.102 of this chapter to place a permanent competitive service employee into a vacancy if there are no CTAP eligible employees in the local commuting area or if no CTAP eligibles apply for the vacancy.

(e) An agency component may place a component employee within the local commuting area in the vacancy after the component applies CTAP selection priority to its employees.

(f) If there are two or more CTAP selection priority candidates for a vacancy, the agency may place any of them. An agency may decide the specific order of selection among CTAP selection priority candidates. For example, an agency may:

(1) Provide a displaced candidate higher priority than a surplus candidate; or

(2) Provide an internal component candidate higher priority than another component's candidate.

(g) After an agency makes the vacancy available to its CTAP eligibles and meets its obligation to any CTAP selection priority candidates, the agency may place into the vacancy any other permanent competitive service candidate from within its workforce, under appropriate staffing procedures.

(h) An agency may provide CTAP selection priority to eligible employees from another commuting area after fulfilling its obligation to CTAP selection priority candidates in the local commuting area.

(i) An agency may deny a CTAP eligible future selection priority if the eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by the agency, to an offer of a permanent appointment at any grade or pay level in the competitive or excepted service.

(j) Before appointing an individual from outside the agency's permanent competitive service workforce, the agency must follow the requirements of subparts B and G of this part.

§ 330.608 Other agency CTAP responsibilities.

(a) An agency must make a career transition orientation session available to all agency surplus and displaced employees with information on selection priority under this subpart and subparts B and G. Such orientation sessions may be in person or web-based through an agency automated training system or intranet.

(b) An agency must give each agency CTAP eligible written information on selection priority under its plan, explaining how to locate and apply for agency vacancies and request selection priority. The agency may meet this requirement by providing a copy of its CTAP established under § 330.603.

(c) An agency must take reasonable steps to ensure that agency CTAP eligibles have access to information on all vacancies, including how CTAP eligibles can apply, what proof of eligibility is required, and the agency definition of "well-qualified" for the vacancy.

(d) If the agency can document that there are no CTAP eligibles in a local commuting area, the agency need not post the vacancy for CTAP eligibles.

(e) An agency must provide a CTAP eligible who applied for a specific vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent, second review under § 330.605(b), if applicable; whether another CTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.609; and whether the recruitment was cancelled.

§ 330.609 Exceptions to CTAP selection priority.

An agency may take the following personnel actions as exceptions to § 330.607:

(a) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of Labor, or has received a notice that his or her compensation benefits will cease because of full recovery from the disabling injury or illness;

(b) Reassign or demote an employee under part 432 or 752 of this chapter;

(c) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(d) Reassign agency employees between or among positions in the local commuting area (sometimes called job swaps) when there is no change in grade or promotion potential and no actual vacancy results;

(e) Convert an employee currently serving under an appointment providing noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-

connected disability of 30 percent or more; and

(3) Make an excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(f) Effect a personnel action under, or specifically in lieu of, part 351 of this chapter;

(g) Effect a position change of an employee into a different position as a result of a formal reorganization, as long as the former position ceases to exist and no actual vacancy results;

(h) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(i) Appoint an individual under an excepted service appointing authority;

(j) Effect a position change of an employee within the excepted service;

(k) Detail an employee within the agency;

(l) Promote an employee for a period limited to 120 or fewer days, including all extensions;

(m) Effect a position change of a surplus or displaced employee in the local commuting area;

(n) Effect a position change of an employee under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who is unable to provide useful and efficient service in his or her current position because of a medical condition;

(o) Effect a position change of an employee to a position that constitutes a reasonable offer as defined in 5 U.S.C. 8336(d) and 8414(b);

(p) Effect a position change of an employee resulting from a reclassification action (such as accretion of duties or an action resulting from application of new position classification standards);

(q) Promote an employee to the next higher grade or pay level of a designated career ladder position;

(r) Recall a seasonal or intermittent employee from nonpay status;

(s) Effect a position change of an injured or disabled employee to a position in which he or she can be reasonably accommodated;

(t) Effect a personnel action pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(u) Reassign or demote an employee under § 315.907 of this chapter for failure to complete a supervisory or managerial probationary period;

(v) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(w) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(x) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(y) Extend a time-limited promotion or appointment up to the maximum period allowed (including any OPM-approved extensions beyond the regulatory limit on the time-limited promotion or appointment), if the original action was made subject to CTAP selection priority and the original announcement or notice stated that the promotion or appointment could be extended without further announcement;

(z) Transfer an employee between agencies under appropriate authority during an interagency reorganization, interagency transfer of function, or interagency mass transfer;

(aa) Appoint a member of the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(bb) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency mass transfer, when both the agencies and the affected employee agree to the transfer;

(cc) Reassign an employee whose position description or other written mobility agreement provides for reassignment outside the commuting area as part of a planned agency rotational program; or

(dd) Transfer or a position change of an employee under part 412 of this chapter.

(ee) Convert an employee's time-limited appointment in the competitive or excepted service to a permanent appointment in the competitive service if the employee accepted the time-limited appointment while a CTAP eligible.

§ 330.610 CTAP eligibility period.

(a) CTAP eligibility begins on the date the employee meets the definition of *surplus* or *displaced* in § 330.602.

(b) CTAP eligibility ends on the date the employee:

(1) Separates from the agency either voluntarily or involuntarily;

(2) Receives a notice rescinding, canceling, or modifying the notice which established CTAP eligibility so that the employee no longer meets the definition of *surplus* or *displaced;*

(3) Is placed in another position within the agency at any grade or pay level, either permanent or time-limited, before the agency separates the employee; or

(4) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

§ 330.611 Establishing CTAP selection priority.

(a) CTAP selection priority for a specific agency vacancy begins when:

(1) The CTAP eligible submits all required application materials, including proof of eligibility, within agency-established timeframes; and,

(2) The agency determines the eligible is well-qualified for the vacancy.

(b) An agency may allow CTAP eligible employees to become CTAP selection priority candidates for positions in other local commuting areas only if there are no CTAP selection priority candidates within the local commuting area of the vacancy.

(c) An agency may deny future CTAP selection priority for agency positions if the CTAP eligible declines an offer of permanent appointment at any grade level (whether it is a competitive or excepted appointment).

§ 330.612 Proof of eligibility.

(a) The CTAP eligible must submit a copy of one of the documents listed under the definition of *displaced* or *surplus* in § 330.602 to establish selection priority under § 330.611.

(b) The CTAP eligible may also submit a copy of a RIF notice with an offer of another position, accompanied by the signed declination of the offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.613 OPM's role in CTAP.

OPM has oversight of CTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

§ 330.701 Purpose.

The Interagency Career Transition Assistance Program (ICTAP) provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective

permanent competitive service workforces. The ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency, as permitted by subpart F of this part. This subpart establishes requirements for ICTAP selection priority.

§ 330.702 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

Displaced describes an individual in one of the following categories:

(1) A current career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS–15 (or equivalent) or below whose current performance rating of record is at least fully successful (Level 3) or equivalent and who:

(i) Received a reduction in force (RIF) separation notice under part 351 of this chapter and has not declined an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee will be separated; or

(ii) Received a notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station).

(2) A former career or career-conditional (tenure group I or II) competitive service employee of any agency at grade GS–15 (or equivalent) or below whose last performance rating of record was at least fully successful (Level 3) or equivalent who was either:

(i) Separated by RIF under part 351 of this chapter and did not decline an offer under part 351, subpart G, of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was separated; or

(ii) Removed under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station).

(3) A former career or career-conditional employee of any agency who was separated because of a compensable work-related injury or illness as provided under 5 U.S.C. chapter 81, subchapter I, whose compensation was terminated and who has received certification from the former employing agency that it is unable to place the employee as required by part 353 of this chapter.

(4) A former career or career-conditional (tenure group I or II) competitive service employee of any agency who retired with a disability annuity under 5 U.S.C. 8337 or 8451 and who has received notification from OPM that the disability annuity has been or will be terminated.

(5) A former Military Reserve Technician or National Guard Technician receiving a special disability retirement annuity under 5 U.S.C. 8337(h) or 8456 and who has certification of such annuity from the military department or National Guard Bureau.

(6) A current or former excepted service employee on an appointment without time limit at grade GS–15 (or equivalent) or below whose current or last performance rating of record is or was at least fully successful (Level 3) or equivalent and who:

(i) Has been provided by law with both noncompetitive appointment eligibility and selection priority for competitive service positions; and

(ii) Has received a RIF separation notice under part 351 of this chapter or notice of proposed removal under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station) or has been separated by RIF procedures or removed for declining a geographic relocation outside the local commuting area.

ICTAP eligible means an individual who meets the definition of *displaced*. As used in this subpart, "ICTAP eligible" and "eligible" are synonymous.

ICTAP selection priority candidate means an ICTAP eligible who applied for a vacancy, was determined by the agency to be well-qualified for that vacancy, and who the agency must select over any other candidate from outside the agency's current competitive service workforce for the vacancy, unless the action to be taken is listed as an exception under § 330.707.

Vacancy means a vacant competitive service position at grade GS–15 (or equivalent) or below to be filled for 121 days or more, including extensions.

§ 330.703 Agency responsibilities for deciding who is well-qualified.

(a) Agencies must define "well-qualified" for their specific vacancies, consistent with this subpart, and uniformly apply that definition to all ICTAP eligibles being considered for the vacancy.

(b) Agencies must conduct an independent second review and document the specific job-related reasons whenever an ICTAP eligible is determined to be not well-qualified for the vacancy under the agency's definition. An agency must give the ICTAP eligible the written results of this review as required by § 330.706(d).

§ 330.704 Minimum criteria for agency definition of "well-qualified".

(a) At a minimum, agencies must define "well-qualified" as having knowledge, skills, abilities, and/or competencies clearly exceeding the minimum qualification requirements for the vacancy. The agency definition may or may not equate to the highly or best qualified assessment criteria established for the vacancy; however, the agency definition of "well-qualified" must satisfy the criteria in paragraph (b) of this section.

(b) Under an agency's definition of "well-qualified," the agency must be able to determine whether an ICTAP eligible:

(1) Meets the basic eligibility requirements (including employment suitability requirements under part 731 of this chapter and any medical qualification requirements), qualification standards (including minimum educational and experience requirements), and any applicable selective factors;

(2) Is physically qualified, with or without reasonable accommodation, to perform the essential duties of the position;

(3) Meets any special qualifying conditions of the position;

(4) Is able to satisfactorily perform the duties of the position upon entry; and

(5) At agency discretion, either:

(i) Rates at or above specified level(s) on all quality ranking factors; or

(ii) Rates above minimally qualified in the agency's rating and ranking process.

§ 330.705 Applying ICTAP selection priority.

(a) An agency must not appoint any candidate from outside its permanent competitive service workforce if there is an ICTAP selection priority candidate available for the vacancy, unless the personnel action to be effected is an exception under § 330.707.

(b) ICTAP selection priority applies to a vacancy that:

(1) Is at a grade or pay level with a representative rate no higher than the representative rate of the grade or pay level of the ICTAP eligible's current or last permanent position of record;

(2) Has no greater promotion potential than the ICTAP eligible's current or last permanent position of record;

(3) Is in the same local commuting area as the ICTAP eligible's current or last permanent position of record; and

(4) Is filled during the ICTAP eligible's eligibility period.

(c) An agency may appoint any ICTAP selection priority candidate for a vacancy.

(d)(1) After an agency announces the vacancy and meets its obligation to any ICTAP selection priority candidates, the agency may appoint any other candidate from outside its current permanent competitive service workforce, under appropriate staffing procedures.

(2) An agency may make additional selections or reissue selection certificates in accordance with its merit promotion program without readvertising for ICTAP eligibles only if the additional selections are made from the applicant pool established by the original vacancy announcement, including readvertisements for the same vacancy, under which ICTAP eligibles had an opportunity to apply.

(e) An agency may deny an ICTAP eligible future selection priority for vacancies in that agency if the ICTAP eligible:

(1) Declines an offer of a permanent appointment at any grade or pay level in the competitive or excepted service; or

(2) Fails to respond within a reasonable period of time, as defined by the agency, to an offer or official inquiry of availability for a permanent appointment at any grade or pay level in the competitive or excepted service.

(f) An agency may deny an ICTAP eligible future selection priority for a position previously obtained through ICTAP if the eligible was terminated or removed from that position under part 432 or 752 of this chapter.

§ 330.706 Other agency ICTAP responsibilities.

(a) Before appointing any other candidate from outside the agency's permanent competitive service workforce, the agency must first fulfill its obligation to any employees entitled to selection priority under subparts B and F of this part.

(b) In accordance with the conditions of part 300, subpart E, of this chapter, an agency may not procure temporary help services under that subpart until a determination is made that no ICTAP eligible is available.

(c) An agency must announce all vacancies it intends to fill from outside its permanent competitive service workforce. Vacancy announcements must meet the requirements of subpart A of this part.

(d) An agency must provide an ICTAP eligible who applied for a specific vacancy written notice of the final status of his or her application, including whether the eligible was determined to be well-qualified. The agency notice must include the results of the independent second review under § 330.703(b), if applicable; whether another ICTAP selection priority candidate was hired; whether the position was filled under an exception listed in § 330.707; and whether the recruitment was cancelled.

§ 330.707 Exceptions to ICTAP selection priority.

An agency may take the following personnel actions as exceptions to § 330.705:

(a) Place a current or reinstate a former agency employee with RPL selection priority under subpart B of this part;

(b) Effect a position change of a current permanent competitive service agency employee;

(c) Appoint a 10-point veteran preference eligible through an appropriate appointing authority;

(d) Reemploy a former agency employee with regulatory or statutory reemployment rights, including the reemployment of an injured worker who either has been restored to earning capacity by the Office of Workers' Compensation Programs, Department of Labor, or has received a notice that his or her compensation benefits will cease because of recovery from disabling injury or illness;

(e) Appoint an individual for a period limited to 120 or fewer days, including all extensions;

(f) Effect a personnel action under, or specifically in lieu of, part 351 of this chapter;

(g) Appoint an individual under an excepted service appointing authority;

(h) Convert an employee serving under an appointment that provides noncompetitive conversion eligibility to a competitive service appointment, including from:

(1) A Veterans Recruitment Appointment under part 307 of this chapter;

(2) An appointment under 5 U.S.C. 3112 and part 316 of this chapter of a veteran with a compensable service-connected disability of 30 percent or more; and

(3) An excepted service appointment under part 213 of this chapter, such as for persons with disabilities or in the Presidential Management Fellow Program, the Student Career Experience Program, or the Federal Career Intern Program;

(i) Transfer an employee between agencies under appropriate authority during an interagency reorganization, interagency transfer of function, or interagency mass transfer;

(j) Reemploy a former agency employee who retired under a formal trial retirement and reemployment program and who requests reemployment under the program's provisions and applicable time limits;

(k) Effect a personnel action pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(l) Extend a time-limited appointment up to the maximum period allowed (including any OPM-approved extension past the regulatory limit on the time-limited appointment), if the original action was made subject to ICTAP selection priority and the original vacancy announcement stated that the appointment could be extended without further announcement;

(m) Reappoint a former agency employee into a hard-to-fill position requiring unique skills and experience to conduct a formal skills-based agency training program;

(n) Retain an individual whose position is brought into the competitive service under part 316 of this chapter and convert that individual, when applicable, under part 315 of this chapter;

(o) Retain an employee covered by an OPM-approved variation under Civil Service Rule 5.1 (5 CFR 5.1);

(p) Appoint an appointee of the Senior Executive Service into the competitive service under 5 U.S.C. 3594;

(q) Assign or exchange an employee under a statutory program, such as subchapter VI of chapter 33 of title 5, United States Code (also called the Intergovernmental Personnel Act), or the Information Technology Exchange Program under chapter 37 of title 5, United States Code;

(r) Detail an employee to another agency;

(s) Transfer employees under an OPM-approved interagency job swap plan designed to facilitate the exchange of employees between agencies to avoid or minimize involuntary separations;

(t) Transfer or reinstate an ICTAP eligible who meets the agency's definition of "well-qualified";

(u) Transfer an employee voluntarily from one agency to another under a Memorandum of Understanding or similar agreement under appropriate authority resulting from an interagency reorganization, interagency transfer of function, or interagency realignment, when both the agencies and the affected employee agree to the transfer; or

(v) Transfer or a position change of an employee under part 412 of this chapter.

§ 330.708 ICTAP eligibility period.

(a) ICTAP eligibility begins on the date the employee or former employee meets the definition of *displaced* in § 330.702.

(b) ICTAP eligibility ends 1 year from the date of:

(1) Separation by RIF under part 351 of this chapter;

(2) Removal by the agency under part 752 of this chapter for declining a directed geographic relocation outside the local commuting area (*e.g.,* a directed reassignment or a change in duty station);

(3) Agency certification that it cannot place the employee under part 353 of this chapter; or

(4) OPM notification that an employee's disability annuity has been, or will be, terminated.

(c) ICTAP eligibility ends 2 years after RIF separation if eligible under subpart D of this part.

(d) ICTAP eligibility also ends on the date the eligible:

(1) Receives a notice rescinding, canceling, or modifying the notice which established ICTAP eligibility so that the employee no longer meets the definition of *displaced* in § 330.702;

(2) Separates from the agency for any reason before the RIF or removal effective date; or

(3) Is appointed to a career, career-conditional, or excepted appointment without time limit in any agency at any grade or pay level.

(e) OPM may extend the eligibility period when an ICTAP eligible does not receive a full 1 year (or 2 years under subpart D of this part) of eligibility, for example, because of administrative or procedural error.

(f) ICTAP eligibility for a former Military Reserve Technician or National Guard Technician described in § 330.702 ends when the Technician no longer receives the special disability retirement annuity under 5 U.S.C. 8337(h) or 8456.

§ 330.709 Establishing ICTAP selection priority.

ICTAP selection priority for a specific vacancy begins when:

(a) The ICTAP eligible submits all required application materials, including proof of eligibility, within agency-established timeframes; and

(b) The agency determines the eligible is well-qualified for the vacancy.

§ 330.710 Proof of eligibility.

(a) The ICTAP eligible must submit a copy of one of the documents listed under paragraphs (1) or (3) through (6) of the definition of *displaced* in § 330.702, as applicable, to establish selection priority under § 330.709. To establish selection priority under the paragraph (2) of the definition of *displaced* in § 330.702, the ICTAP eligible must submit documentation of the separation or removal, as applicable, for example, the Notification of Personnel Action, SF 50.

(b) The ICTAP eligible may also submit a copy of the RIF notice with an offer of another position accompanied by the signed declination of that offer. The RIF notice must state that declination of the offer will result in separation under RIF procedures.

§ 330.711 OPM's role in ICTAP.

OPM has oversight of ICTAP and may conduct reviews of agency compliance and require corrective action at any time.

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—Prohibited Practices

§ 330.1001 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government may not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM will cancel the application or eligibility of an applicant or eligible who violates this section, and will impose such other penalty as it considers appropriate.

Subpart K—[Reserved]

Subpart L—[Reserved]

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 4. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

■ 5. In § 335.105, remove "§ 330.707 of subpart G" and add, in its place, "part 330, subpart A".

PART 337—EXAMINING SYSTEM

■ 6. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980; 116 Stat. 2135, 2290; and 117 Stat. 1392, 1665.

§ 337.203 [Amended]

■ 7. In § 337.203, remove "subpart G" and add, in its place, "subpart A".

PART 410—TRAINING

■ 8. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275.

§ 410.307 [Amended]

■ 9. In § 410.307:

■ a. In paragraph (c)(3), remove the phrase "5 CFR 330.604(b) and (f)" and add in its place the phrase, "5 CFR 330.602".

■ b. In paragraph (c)(4), remove the phrase "5 CFR 330.602" and add in its place the phrase, "5 CFR part 330, subpart F".

[FR Doc. 2010–27638 Filed 11–2–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–08–0085; FV08–920–3 FIR]

Kiwifruit Grown in California; Changes to District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that removed the grower district boundaries contained in the administrative rules and regulations of the kiwifruit marketing order (order). The interim rule removed regulatory language referring to eight grower districts from the order's administrative rules and regulations to make them consistent with the recently amended order provisions, which now provide for three grower districts.

DATES: *Effective Date:* Effective November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938; or E-mail:

Laurel.May@ams.usda.gov or *Kathy.Finn@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The order was recently amended by redefining the grower districts into which the California kiwifruit production area is divided. Previously, there were eight grower districts defined in the order. Due to shifts in acreage and the consolidation of grower entities within the production area, the production area is now divided into three grower districts. Language in § 920.131 of the order's administrative rules and regulations provided the specific boundaries for eight grower districts, but that language is not consistent with the amended order.

In an interim rule published in the **Federal Register** on July 23, 2010, and effective on August 1, 2010, § 920.131 specifying the boundaries for eight grower districts was removed. The boundaries for the three grower districts under the amended order are provided in § 920.12.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural growers have been defined as those with annual receipts of less than $750,000.

There are approximately 30 handlers of kiwifruit subject to regulation under the order and approximately 220 growers of kiwifruit in the regulated area. Information provided by the committee indicates that the majority of California kiwifruit handlers and growers would be considered small entities according to the SBA's definition.

The order regulates the handling of kiwifruit grown in the State of California. At the time the order was promulgated, kiwifruit acreage was more widespread throughout California and there were many more growers involved in kiwifruit production. The order originally provided for eight grower districts within the production area, with one membership seat apportioned to each district, and an additional seat reallocated annually to each of the three districts with the highest production in the preceding year. The structure was designed to afford equitable representation for all districts on the committee.

Planted acreage has been gradually concentrated into two main regions in recent years. That, and the decline in the number of growers over time, prompted consolidation of the districts and reallocation of grower member seats through the formal rulemaking process. Under the amended order, the production area is divided into three grower districts, and committee membership is allocated proportionately among the districts based upon the previous five years' average production for each district. These changes are expected to better reflect the current composition of the industry.

This rule continues in effect the action that removed § 920.131 from the order's administrative rules and regulations, effective August 1, 2010. The section specified the boundaries for eight grower districts. As such, it would be inconsistent with the amended § 920.12, which provides the boundaries for three grower districts.

The changes in the interim rule were necessary to conform with amendments to the order, which became effective on August 1, 2010. No alternatives to this action were deemed appropriate.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the change. The revision in the interim rule provides consistency between the amended marketing order and its administrative rules and regulations. The order amendment is expected to ensure that the interests of all large and small entities are represented appropriately during committee deliberations.

Committee meetings in which regulatory recommendations and other decisions are made are open to the public. All members are able to participate in committee deliberations, and each committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

At committee meetings held on January 30, 2008, April 22, 2008, and July 9, 2008, the committee voted unanimously to recommend amending the order by revising the grower districts into which the production area is divided. The committee's recommendations were submitted to AMS on August 15, 2008. Growers approved the amendment to redefine district boundaries in a referendum held in March 2010. The amendment became effective August 1, 2010.

This rule will not impose any additional reporting or recordkeeping requirements on large or small kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Comments on the interim rule were required to be received on or before September 21, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *www.regulations.gov* and type the following docket number into the keyword search section: FV08–920–3 IR. Follow the link provided in the "Results" section of the page.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E–Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that

finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 43038; July 23, 2010), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule that amended 7 CFR part 920 and that was published at 75 FR 43038 on July 23, 2010, is adopted as a final rule without change.

Dated: October 25, 2010.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010–27788 Filed 11–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS–FV–10–0057; FV10–993–1 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Prune Marketing Committee (Committee) for the 2010–11 and subsequent crop years from $0.16 to $0.27 per ton of salable dried prunes handled. The Committee locally administers the marketing order that regulates the handling of dried prunes grown in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Andrea.Ricci@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2010, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the Committee for the 2010–11 and subsequent crop years from $0.16 to $0.27 per ton of salable dried prunes handled.

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

For the 2009–10 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 24, 2010, and unanimously recommended 2010–11 expenditures of $58,353 and an assessment rate of $0.27 per ton of salable dried prunes. In comparison, last year's budgeted expenditures, as amended in March of 2010, were $57,756. The assessment rate of $0.27 is $0.11 higher than the rate currently in effect.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At this assessment rate, the expected assessment income for the 2010–11 crop year is $40,500. The Committee believes 2010–11 assessment income, plus extra assessment income carried in from the 2009 crop year and interest income, will be adequate to cover its estimated expenses of $58,353.

The Committee's budget of expenses of $58,353 includes a twenty percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about $42,511. The Committee also included $15,842 for contingencies, which is substantially less than the $19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year.

The major expenditures recommended by the Committee for the 2010–11 year include $31,781 for salaries and benefits, $10,730 for

operating expenses, and $15,842 for contingencies. Budgeted expenses for these items in 2009–10 were $26,450, $11,780, and $19,526 respectively.

The assessment rate recommended by the Committee was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2010–11 crop year, and estimated interest income. As mentioned earlier, dried prune production for the year is estimated at 150,000 salable tons, which should provide $40,500 in assessment income. The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2009–10 crop year (currently estimated at $17,847) for up to 5 months beyond the end of the crop year to meet its 2010–11 crop year expenses. At the end of the 5 months, the Committee must either refund or credit excess funds back to handlers.

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2010–11 budget, and those for subsequent crop years, would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 900 producers of dried prunes in the California area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Committee data indicates that about 64 percent of the handlers ship less than $7,000,000 worth of dried prunes. Dividing the 2009–10 prune crop value of $188,400,000 reported by the National Agricultural Statistics Service by the number of producers (900) yields an average producer revenue of about $209,333. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent crop years from $0.16 to $0.27 per ton of salable dried prunes. The Committee unanimously recommended 2010–11 expenditures of $58,353 and an assessment rate of $0.27 per ton of salable dried prunes. The assessment rate of $0.27 is $0.11 higher than the 2009–10 rate. The quantity of assessable dried prunes for the 2010–11 year is estimated at 150,000 tons. Thus, the $0.27 rate should provide $40,500 in assessment income. The Committee believes that 2010–11 assessment income, plus extra assessment income carried in from the 2009–10 crop year and anticipated interest income, should be adequate to cover its estimated expenses of $58,353.

The major expenditures recommended by the Committee for the 2010–11 year include $31,781 for salaries and benefits, $10,730 for operating expenses, and $15,842 for contingencies. Budgeted expenses for these items in 2009–10 were $26,450, $11,780, and $19,526 respectively.

The Committee recommended the higher assessment rate based on a production estimate of 150,000 tons of salable dried prunes for this year, which is substantially less than the 165,488 tons produced last year. At this assessment rate, the assessment income for the 2010–11 crop year should be $40,500. The Committee's budget of expenses of $58,353 includes a twenty percent increase in personnel expenses, and a nine percent decrease in operating expenses. Combined personnel and operational expenses are about eleven percent higher than last year, or about $42,511. The Committee also included $15,842 for contingencies, which is substantially less than the $19,526 included for last year's budget. Most of the Committee's expenses reflect its portion of the joint administration costs of the Committee and the CDPB. Based on the Committee's reduced activities in recent years, it is funding only five percent of the shared expenses of the two programs. This funding level is similar to that of last year.

The Committee reviewed and unanimously recommended 2010–11 expenditures of $58,353, which included an increase in personnel expenses and a decrease in operational expenses. Prior to arriving at its budget of $58,353, the Committee considered information from various sources, including its Executive Subcommittee. The assessment rate of $0.27 per ton of salable dried prunes was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2010–11 crop year, and estimated interest income. The Committee considered the alternative of continuing with the $0.16 per ton assessment rate. However, an assessment rate of $0.27 per ton of salable dried prunes, along with excess funds from the 2009–10 crop year, is needed to provide enough income to fund the Committee's operations.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2008–09 crop year was $1,500 per ton, that the grower price for the 2009–10 crop year was $1,200 per ton, and that the grower price for the 2010–11 crop year could range between $1,000 and $1,100 per ton of salable dried prunes. Based on an estimated 150,000 salable tons of dried prunes, assessment revenue as a percentage of producer prices during the 2010–2010 crop year is expected to range between .027 and .025 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry, and all

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 24, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 24, 2010 (75 FR 51956). Copies of the proposed rule were also mailed or sent via facsimile to all dried prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 23, 2010, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2010–11 crop year began on August 1, 2010, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2010, an assessment rate of $0.27 per ton of salable dried prunes is established for California dried prunes.

Dated: October 25, 2010.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010–27796 Filed 11–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1215

[Document Number AMS–FV–10–0010]

Popcorn Promotion, Research, and Consumer Information Order; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Popcorn Promotion, Research and Consumer Information Order (Order) to reduce the Popcorn Board (Board) membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry. In accordance with the Popcorn Promotion, Research and Consumer Information Order which is authorized by the Popcorn Promotion, Research and Consumer Information Act (Act), the number of members on the Board may be changed by regulation; provided, that the Board consist of not fewer than four members and not more than nine members. In addition, the Order states that for purposes of nominating and appointing processors to the Board, the Secretary may take into account the geographical distribution of popcorn processors.

DATES: *Effective Date:* November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Simmons, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *deborah.simmons@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Popcorn Promotion, Research, and Consumer Information Order [7 CFR part 1215]. The Order is authorized under the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481–7491]. This rule amends the Popcorn Promotion, Research and Consumer Information Order to reduce the Popcorn Board membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the U.S. Department of Agriculture (Department) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides

or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the processors that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

Small agricultural service firms which include processors who are covered under the Order, have been defined by the Small Business Administration (13 CFR 121.607) as those having annual receipts of no more than $7 million. Almost 50 percent of the industry is exempt from paying assessments. Based on information from the Board there are currently a total of 40 processors in the industry. Of those, 21 processors pay mandatory assessments into the program. Of the 21 processors, 11 are be classified as small processors representing 7 percent of the popcorn assessed. The top five popcorn producing states are Nebraska, Indiana, Illinois, Ohio and Iowa. In 2009, Indiana, Kansas, Michigan and Ohio had decreases in acreage planted and harvested while Kentucky, Illinois, Iowa, Missouri and Nebraska had increases in acreage planted and harvested over the acreage planted and harvested in 2008. Overall 2009 acreage planted increased by 1 percent and acreage harvested increased by 4 percent over 2008 numbers.

Most of the processors are classified as small businesses under the criteria established by the Small Business Administration. Processors who process and distribute 4 million pounds or less of popcorn annually are exempt from this program. Persons that operate under an approved National Organics program (NOP) (7 CFR part 206) system plan; process only products that are eligible to be labeled as 100 percent organic under the NOP and are not split operations shall be exempt from the payment of assessments.

The Board currently consists of 9 members which represent small, medium and large processors in the industry.

The Board voted during its October 5, 2009, conference call to request that the Secretary reduce the number of members from nine to five and to appoint persons to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry who will equitably make up the board between large, medium and small processors. The Board will continue to strive for diversity within the industry.

Nominations and appointments to the Board are conducted pursuant to sections 1215.22, 1215.23, and 1215.25 of the Order. Appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1215.22(3)(i) of the Order, nominations for each position shall be made by processors, and be submitted to the Secretary for appointment to the Board. The Order requires that two nominees be submitted for each vacant position.

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

Background

The Order became effective on July 22, 1997, and it is authorized under the Act. The Board is composed of nine processors. Nominations take into consideration the geographical distribution of popcorn production. The States that currently have representation on the Board are Nebraska, Indiana, Iowa, Missouri and Colorado. Based on information from the Board, in 2008, the top five popcorn producing states were Nebraska, Indiana, Illinois, Ohio and Iowa.

Under the Order, the Board administers a nationally coordinated program of promotion, research, consumer information and industry information designed to strengthen the position of popcorn in the marketplace, and to maintain and expand domestic and foreign markets and uses for popcorn. This program is financed by assessments on processors who process and distribute 4 million pounds or more of popcorn annually. The current rate of assessment is 6 cents per hundredweight of popcorn. The Order specifies that processors are responsible for submitting the assessment to the Board and maintaining records necessary to verify their reporting(s). Processors who processes and distributes less than 4 million pounds of popcorn annually are exempt from this assessment.

On October 5, 2009, the Board voted to decrease its membership from nine to five.

A proposed rule was published in the **Federal Register** on June 4, 2010 [75 FR 31730]. Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. That rule provided a 30-day comment period which ended July 6, 2010. One comment was received by the deadline.

This rule amends the Popcorn Promotion, research and Consumer Information Order (Order) to reduce the Popcorn Board (Board) membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry.

Summary of Comments

In response to the proposed rule, the Department received one comment in support of the proposed amendment to the Order to reduce the Popcorn Board membership from nine to five members to reflect the consolidation of the popcorn industry and therefore, fewer popcorn processors in the industry.

Accordingly, the Department is not making any changes to the proposed rule based on this comment.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because a final rule needs to be in effect before the Board makes a call for nominations for the term of office beginning January 1, 2011.

List of Subjects in 7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1215 is amended as follows:

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1215 continues to read as follows:

Authority: 7 U.S.C. 7481–7491; 7 U.S.C. 7401.

■ 2. In § 1215.21, paragraph (a) is revised to read as follows:

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of five members. The number of members on the board may be changed by rulemaking: *Provided,* that the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

* * * * *

Dated: October 25, 2010.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010–27786 Filed 11–2–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD; Amendment 39–16489; AD 2010–17–12R1]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co. KG. (RRD) Models Tay 650–15 and Tay 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; revision.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for the products listed above. This AD revision results from the need to correct the applicability paragraph of that AD, and from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Strip results from some of the engines listed in the applicability section of this AD revealed excessively corroded low-pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this European Aviation Safety Agency (EASA) AD 2008–0122 was intended to avoid a failure of a low-pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane. It has been later realized that the same unsafe condition could potentially occur on more serial numbers for the Tay 650–15 engines and on the Tay 651–54 engines. This AD, superseding EASA AD 2008–0122, retaining its requirements, is therefore issued to expand the Applicability in adding further engine serial numbers for the Tay 650–15 engines and in adding the Tay 651–54 engines.

We are issuing this AD to detect corrosion that could cause the stage 2 or stage 3 disk of the LP turbine to fail, uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective November 18, 2010.

We must receive comments on this AD by December 3, 2010.

The Director of the Federal Register approved the incorporation by reference of RRD Alert Service Bulletin No. TAY–72–A1524, Revision 3, dated March 24, 2010, as of September 27, 2010 (75 FR 51651, August 23, 2010).

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* phone: (781) 238–7758; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

On August 23, 2010, we published AD 2010–17–12, Amendment 39–16404, in the **Federal Register** (75 FR 51651). That AD is applicable to RRD models Tay 650–15 and Tay 651–54 turbofan engines. We discovered that the applicability paragraph of that AD is in error. This AD revision corrects that applicability paragraph. The requirements of that AD remain the same in this AD revision.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, they have notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by the European Aviation Safety Agency and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this AD revision reduces the applicability, and the impact on the affected U.S. registered fleet remains unchanged. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16404, and adding the following new airworthiness directive (AD):

2010–17–12R1 Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc, Derby, England): Amendment 39–16489.; Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD.

Effective Date

(a) This AD becomes effective November 18, 2010.

Affected ADs

(b) This AD revises AD 2010–17–12, Amendment 39–16404.

Applicability

(c) This AD applies to:

(1) RRD model Tay 650–15 turbofan engines that have a serial number listed in Table 1, Table 2, or Table 3 of this AD, with a low-pressure (LP) turbine module M05300AA installed; and

(2) All RRD model Tay 651–54 turbofan engines with an LP turbine module M05300AA installed.

(3) These engines are installed on, but not limited to, Fokker F.28 Mark 0070 and 0100 airplanes, and Boeing 727 airplanes modified in accordance with Supplemental Type Certificate No. SA8472SW.

TABLE 1—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2008–10–14 AND AD 2009–22–01)

Engine serial No.
17251
17255
17256
17273
17275
17280
17281
17282
17300
17301
17327
17332
17365
17393
17437
17443
17470
17520
17521
17523
17539
17542
17556
17561
17562
17563
17580
17581
17612
17618
17635
17637

TABLE 1—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2008–10–14 AND AD 2009–22–01)—Continued

Engine serial No.
17645
17661
17686
17699
17701
17702
17736
17737
17738
17739
17741
17742
17808

TABLE 2—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2009–22–01)

Engine serial No.
17249
17303
17358
17370
17425
17426
17433
17438
17445
17446
17460
17474
17478
17490
17491
17517
17518
17522
17534
17535
17536
17538
17540
17541
17552
17553
17585
17613
17723
17724
17740
17759
17760
17807

TABLE 3—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (ADDED NEW IN THIS AD)

Engine serial No.
17344
17360
17376
17413
17537

TABLE 3—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (ADDED NEW IN THIS AD)—Continued

Engine serial No.
17694
17698
17707
17716
17718
17719
17731
17756
17757

Reason

(d) This AD revision results from:

(1) The need to correct the applicability paragraph of AD 2010–17–12; and

(2) From mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI states:

(3) Strip results from some of the engines listed in the applicability section of this AD revealed excessively corroded low-pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this European Aviation Safety Agency (EASA) AD 2008–0122 was intended to avoid a failure of a low-pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane. It has been later realized that the same unsafe condition could potentially occur on more serial numbers for the Tay 650–15 engines and on the Tay 651–54 engines. This AD, superseding EASA AD 2008–0122, retaining its requirements, is therefore issued to expand the Applicability in adding further engine serial numbers for the Tay 650–15 engines and in adding the Tay 651–54 engines.

We are issuing this AD to detect corrosion that could cause the stage 2 or stage 3 disk of the LP turbine to fail, uncontained engine failure, and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Prior to accumulating 11,700 flight cycles (FC) since new of disk life, and thereafter at intervals not exceeding 11,700 FC of disk life, inspect the LP turbine disks stage 2 and stage 3 for corrosion using RRD Alert Service Bulletin (ASB) No. TAY–72–A1524, Revision 3, dated March 24, 2010.

(2) For engines with disk life that already exceed 11,700 FC on the effective date of this AD, perform the inspection within 90 days after the effective date of this AD.

(3) When, during any of the inspections as required by paragraphs (e)(1) and (e)(2) of this AD, corrosion is found, replace the affected parts. RRD TAY 650 Engine Manual—E–TAY–3RR, Tasks 72–52–23–200–000 and 72–52–24–200–000, and RRD TAY 651 Engine Manual—E–TAY–5RR, Tasks 72–52–23–200–000 and 72–52–24–200–000, contain guidance on performing the inspection for corrosion and rejection criteria.

Previous Credit

(f) Initial inspections done before the effective date of this AD on LP turbine disks stage 2 and stage 3 listed in Table 1 and Table 2 of this AD using RRD ASB No. TAY–72–A1524, Revision 1, dated September 1, 2006, or Revision 2, dated June 13, 2008, comply with the initial inspection requirements specified in this AD.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA AD 2010–060R1, dated April 14, 2010, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlwitz, 15827 Blankenfelde-Mahlow, Germany; phone: 011 49 (0) 33–7086–1883; fax: 011 49 (0) 33–7086–3276, for a copy of the service information referenced in this AD.

(i) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* phone: (781) 238–7758; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce Deutschland Ltd & Co KG Alert Service Bulletin No. TAY–72–A1524, Revision 3, dated March 24, 2010, to do the inspections required by this AD.

(1) The Director of the Federal Register previously approved the incorporation by reference of RRD Alert Service Bulletin No. TAY–72–A1524, Revision 3, dated March 24, 2010, listed in the AD as of September 27, 2010 (75 FR 51651, August 23, 2010).

(2) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlwitz, 15827 Blankenfelde-Mahlow, Germany; phone: 011 49 (0) 33–7086–1883; fax: 011 49 (0) 33–7086–3276.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 22, 2010.

Peter A. White,

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

[FR Doc. 2010–27486 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22690; Directorate Identifier 2005–NE–35–AD; Amendment 39–16495; AD 2010–23–06]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Five-Blade Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires removing certain propeller hubs from service at new, reduced life limits and eddy current inspections (ECIs) of the propeller hub. This new AD requires removing certain propeller hubs from service before they exceed 6,000 hours time-since-new (TSN). This AD was prompted by a report of a crack in a propeller hub. We are issuing this AD to prevent cracked propeller hubs, which could cause failure of the propeller hub, blade separation, and loss of control of the airplane.

DATES: This AD is effective December 8, 2010.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, *telephone:* (316) 946–4148; *fax:* (316) 946–4107; *e-mail: jeff.janusz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to supersede airworthiness directive (AD) 2005–24–08, Amendment 39–14388. (70 FR 71756, November 30, 2005). That AD applies to the specified products. That NPRM published in the **Federal Register** on June 17, 2010 (75 FR 34390). That NPRM proposed to require:

- Removing from service the hub of any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, if the hub exceeds 6,000 hours TSN on the effective date of this AD, within 250 hours time-in-service (TIS) after the effective date of this AD.
- Removing from service the hub of any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, if the hub has fewer than 6,000 hours TSN, not later than 6,000 hours TSN.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 30 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove the propeller hub from service	42 work-hours × $85 per hour = $3,570	$6,000	$9,570	$287,100

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–24–08, Amendment 39–14388. (70 FR 71756, November 30, 2005), and adding the following new AD:

2010–23–06 McCauley Propeller Systems: Amendment 39–16495; Docket No. FAA–2005–22690; Directorate Identifier 2005–NE–35–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 8, 2010.

Affected ADs

(b) This AD supersedes AD 2005–24–08, Amendment 39–14388.

Applicability

(c) This AD applies to McCauley Propeller Systems propeller assemblies, part numbers (P/Ns) B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propeller assemblies are installed on BAE Systems (Operations) Limited Jetstream Model 4100 series airplanes.

Unsafe Condition

(d) This AD results from a report of a cracked propeller hub. We are issuing this AD to prevent cracked propeller hubs, which could cause failure of the propeller hub, blade separation, and loss of control of 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.

Propeller Hub Reduced Life Limits

(f) For any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, with a hub that exceeds 6,000 hours time-since-new (TSN) on the effective date of this AD, remove the propeller hub from service within 250 hours time-in-service after the effective date of this AD.

(g) For any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, with a hub with fewer than 6,000 hours TSN, remove the propeller hub from service not later than 6,000 hours TSN.

Prohibition of Hubs Exceeding Life Limit

(h) After the effective date of this AD, don't install any hub removed from any propeller assembly that was removed by paragraphs (f) or (g) of this AD into any propeller assembly.

Alternative Methods of Compliance

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

Related Information

(j) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, *telephone:* (316) 946–4148; *fax:* (316) 946–4107, for more information about this AD.

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on October 25, 2010.

Karen M. Grant,

Acting Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–27608 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AB03]

Appliance Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Trade Commission (“Commission”) is issuing technical corrections to the Appliance Labeling Rule (16 CFR Part 305). This document republishes the text of § 305.20(f) concerning catalog requirements not published in the CFR and corrects text in Appendix D4 concerning labels for instantaneous water heaters.

DATES: *Effective Date:* July 19, 2011.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: The Commission is republishing § 305.20(f) of the Appliance Labeling Rule (16 CFR Part 305) which appeared in the **Federal Register** on October 23, 2008 (73 FR 63066, 63068), but was inadvertently not printed in the Code of Federal Regulations. In addition, the Commission is correcting text in Appendix D4 to the change the phrase “First Hour Rating” to “Capacity (maximum flow rate); gallons per minute (gpm).” [1]

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (“APPLIANCE LABELING RULE”)

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.20, paragraph (f) is added to read as follows:

305.20 Paper catalogs and Web sites.

* * * * *

(f) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a ceiling fan in a catalog, from which it may be purchased, shall disclose clearly and conspicuously in such catalog, on each page that lists the covered product, all the information concerning the product required by § 305.13(a)(1).

■ 3. Appendix D4 is revised to read as follows:

APPENDIX D4 TO PART 305—WATER HEATERS—INSTANTANEOUS—GAS RANGE INFORMATION

Capacity	Range of estimated annual operating costs (dollars/year)			
	Natural gas ($/year)		Propane ($/year)	
Capacity (maximum flow rate); gallons per minute (gpm)	LOW	HIGH	LOW	HIGH
Under 1.00	285	285	479	479
1.00 to 2.00	280	285	456	471
2.01 to 3.00	174	268	346	445
Over 3.00	199	290	301	486

* No data submitted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–27692 Filed 11–2–10; 8:45 am]

BILLING CODE 6750–01–P

[1] The Commission last amended Appendix D4 (comparability ranges for instantaneous gas water heaters) on August 29, 2007 (72 FR 49948). The correct capacity descriptor for instantaneous water heaters is maximum flow rate measured in gallons per minute, not ‘‘first hour rating’’ as the current Rule indicates.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2010–0002; T.D. TTB–87; Re: Notice No. 104]

RIN 1513–AB65

Yamhill-Carlton Viticultural Area (2008R–305P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision renames the "Yamhill-Carlton District" viticultural area, located in Yamhill and Washington Counties, Oregon, as the "Yamhill-Carlton" viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* December 3, 2010.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Yamhill-Carlton District Viticultural Area Background

In 2002, TTB's predecessor Agency, the Bureau of Alcohol, Tobacco and Firearms, received a petition from Mr. Alex Sokol-Blosser, Secretary of the North Willamette Valley [American Viticultural Area] Group, and Mr. Ken Wright, on behalf of certain grape growers, to establish a new viticultural area called the "Yamhill-Carlton District." Located in northwestern Oregon, the Yamhill-Carlton District is about 35 miles southwest of Portland, Oregon, and 25 miles from the Pacific Ocean, in Yamhill and Washington Counties, Oregon, and entirely within the larger Willamette Valley viticultural area (27 CFR 9.90).

On October 7, 2003, TTB published in the **Federal Register** (68 FR 57845) Notice No. 19, proposing the establishment of the Yamhill-Carlton District viticultural area. In response to that notice, the only comment TTB received was in support of the proposed establishment. On December 9, 2004, TTB published in the **Federal Register** (69 FR 71372) Treasury Decision (T.D.) TTB–20, establishing the Yamhill-Carlton District viticultural area (27 CFR 9.183) as proposed.

T.D. TTB–20 states that the Yamhill-Carlton District viticultural area boundary line surrounds the towns of Yamhill and Carlton, which lie 3 miles apart, along Route 47, in Yamhill County. The "Name Evidence" section states that the first time the two names were used together was in the 1853 establishment of the Yamhill-Carlton Pioneer Cemetery. The cemetery is identified on the USGS Carlton Quadrangle map (published in 1957; revised in 1992). The name was used again in 1955, when the Yamhill-Carlton Union High School was established in the Yamhill-Carlton School District. Residents still use the "Yamhill-Carlton" name today.

Petition To Change to the Yamhill-Carlton District Viticultural Area Name

In 2008, Mr. Ken Wright, of Ken Wright Cellars, submitted a petition to TTB to change the name of the viticultural area from "Yamhill-Carlton District" to "Yamhill-Carlton." In this petition, Mr. Wright asserts that when the viticultural area was originally proposed "[t]he inclusion of the word 'District' was completely discretionary and added only to enforce the idea of the AVA [American viticultural area] being a regionalized area." Further, he states that "[h]istorically, the area has always been referred to as simply 'Yamhill-Carlton.' Additionally, the length of the current name is very difficult to fit on a [wine] label. Many wineries have found it impossible, given their current label graphics, to utilize the name."

Many others joined Mr. Wright, writing letters included with the petition, in support of renaming the Yamhill-Carlton District viticultural area as the Yamhill-Carlton viticultural area. Kathie Oriet, Mayor of the city of Carlton, Oregon, wrote: "As Mayor of the small city of Carlton, I feel the

viticultural area designation should represent the more commonly known name of Yamhill-Carlton. Many area joint ventures are known as Yamhill-Carlton in both Yamhill and Carlton, including the local school district, local sports groups and even the community luncheon group."

Laurent Montalieu, winemaker at Solena Cellars, stated: "Historically, the area has been more commonly referred to [as] Yamhill-Carlton rather than the Yamhill-Carlton District, as well as the wines." Mr. Mantalieu also noted that a change to the shorter "Yamhill-Carlton" would be helpful in printing [wine] labels.

David Grooters, owner of Carlton Cellars, explained: "The area is always referred to as Yamhill-Carlton. As in: 'I went to Yamhill-Carlton High School,' or 'I grew up in Yamhill-Carlton.' The simpler Yamhill-Carlton AVA [name] would be much preferable for use in our labeling and marketing materials."

Brian O'Donnell of Belle Pente Vineyard and Winery stated that the region is more generally known as "Yamhill-Carlton," not "Yamhill-Carlton District." Mr. O'Donnell added: "I believe that there is a broad consensus with the Yamhill-Carlton winegrower community that making this change is the right thing to do, and I hope that the TTB will be able to take action."

Jacki Bessler of Barbara Thomas Wines stated that shortening the name "will greatly impact our ability to attractively place the AVA designation on our label. Perhaps more important, however, is that by adding the word 'District' to Yamhill-Carlton, we have actually moved away [from] historical and geographic accuracy. I personally know of no other geographic, public, historic, or other Yamhill-Carlton name that has the term 'district' attached. We are known, simply, by Yamhill-Carlton."

Name Evidence

TTB notes that the 2002 petition to establish the Yamhill-Carlton District viticultural area included entries in the local telephone book for the Yamhill-Carlton School District and the Yamhill-Carlton High School.

The current petition provides several recent examples of usage of the Yamhill-Carlton name without the word "District." On March 17, 2007, the Community Press newspaper ran an advertisement for a dance sponsored by the Yamhill-Carlton Booster Club at the Yamhill-Carlton High School cafeteria. The Lincoln County School District Boys Basketball online schedule (accessed February 11, 2008) showed that the Yamhill-Carlton Tournament had been scheduled for November 30 and December 1, 2007. The Oregonian, a newspaper published in Portland, reported "Yamhill-Carlton 6, Seaside 5" in prep baseball (date unknown). A flyer, distributed by the Yamhill-Carlton Anti-Drug Coalition to announce it would meet on January 25, [2008] at 7 p.m., was addressed to "Dear Yamhill-Carlton Community Partner." On February 11, 2008, "The Statesman Journal" reported biographical information online about Ed Glad, candidate for State Representative and formerly a member of the Yamhill-Carlton High School Site Counsel, according to the petition.

Additional examples of the use of the Yamhill-Carlton name provided with the petition include: (1) An e-mail announcing the Yamhill-Carlton Community Luncheon; (2) a brown bag lunch event with the police chiefs of Yamhill and Carlton as the guest speakers at Yamhill City Hall, on February 12, 2008; (3) a June 1, 2008, photograph showing the sign for the "Historic Yamhill-Carlton Pioneer Memorial Cemetery, Established 1853"; and (4) a listing for the "Yamhill-Carlton FFA Alumni" with the Oregon Future Farmers of America Association.

Search for the Term "Yamhill-Carlton"

A TTB query of the "Yamhill-Carlton" name on the USGS Geographic Names Information System database yielded no hits for the exact "Yamhill-Carlton" name usage. However, our query of the "Yamhill-Carlton" name using an Internet search engine yielded 44,000 results, some of which reference the existing Yamhill-Carlton District viticultural area within the general area of the Yamhill-Carlton region in northwest Oregon.

Notice of Proposed Rulemaking and Comments Received

On March 4, 2010, TTB published in the **Federal Register** (75 FR 9831) Notice No.104 setting forth a proposal to change the Yamhill-Carlton District viticultural area name to Yamhill-Carlton. We received no comments in response to that notice; we had received five letters of comment, all in support of the name change, with Mr. Wright's 2008 petition.

TTB Finding

After careful review of the petition, TTB finds that the evidence submitted supports changing the name of the "Yamhill-Carlton District" viticultural area to "Yamhill-Carlton." Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we amend § 9.183 of the TTB regulations to re-name the Yamhill-Carlton District viticultural area as the Yamhill-Carlton viticultural area, effective 30 days from the publication date of this document.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With approval of this viticultural area name change, the new name, "Yamhill-Carlton," will be recognized under 27 CFR 4.39(i)(3) as a term of viticultural significance. The text of the amended regulation clarifies this point. This name change will affect vintners who currently and properly use the "Yamhill-Carlton District" viticultural area name as explained in the *Transition Period for "Yamhill-Carlton District" Labels* discussion below. "Yamhill-Carlton" has been recognized as a term of viticultural significance by TTB since the establishment of the Yamhill-Carlton District viticultural area. Therefore, dropping "District" from the viticultural area name will not change the viticultural significance of the term "Yamhill-Carlton."

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Transition Period for "Yamhill-Carlton District" Labels

With adoption of the final rule renaming this viticultural area, under the new regulatory text, current holders of labels that were approved before the effective date of the final rule that use the "Yamhill-Carlton District" name to

designate a viticultural area will be permitted to use those approved labels during a 2-year transition period. At the end of the 2-year period, holders of approved "Yamhill-Carlton District" wine labels must discontinue their use as their certificates of label approval will be revoked by operation of the final rule. (See 27 CFR 13.51 and 13.72(a)(2).) The new regulatory text includes a statement to this effect as a new paragraph (d) in § 9.183. We believe the 2-year period will provide such label holders with adequate time to use up their supply of previously approved "Yamhill-Carlton District" labels.

TTB notes that label holders who continue to use labels showing the "Yamhill-Carlton District" name during the transition period also may apply for certificates of label approval with the Yamhill-Carlton name, and use such labels, if approved.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.183 is amended by revising the section heading, paragraph (a), and the introductory text of paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

§ 9.183 Yamhill-Carlton.

(a) *Name.* The name of the viticultural area described in this section is "Yamhill-Carlton". For purposes of part 4 of this chapter, "Yamhill-Carlton" is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yamhill-Carlton viticultural area are eight 1:24,000 scale United States Geological Survey topography maps. They are titled:

* * * * *

(c) *Boundary.* The Yamhill-Carlton viticultural area is located in Yamhill and Washington Counties, Oregon, and is entirely within the Willamette Valley viticultural area. The Yamhill-Carlton viticultural area is limited to lands at or above 200 feet in elevation and at or below 1,000 feet in elevation within its boundary, which is described as follows—

* * * * *

(d) From February 7, 2005, until December 2, 2010, the name of this viticultural area was "Yamhill-Carlton District". Effective December 3, 2010, this viticulture area is named "Yamhill-Carlton". Existing certificates of label approval showing "Yamhill-Carlton District" as an appellation of origin are revoked by operation of this regulation on December 3, 2012.

Signed: July 20, 2010.

John J. Manfreda,

Administrator.

Approved: September 2, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010–27739 Filed 11–2–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0902]

RIN 1625–AA00

Safety Zone: Richardson Ash Scattering by Fireworks, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay 1,500 feet off Yellow Bluff, Sausalito, CA during a fireworks display in support of the Richardson Ash Scattering. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port or her designated representative.

DATES: This rule is effective from 3:30 p.m. through 7 p.m. on November 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0902 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0902 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Liz Ellerson, U.S. Coast Guard Sector San Francisco; telephone 415–399–7436, e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, as it would be impracticable because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the

event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Basis and Purpose

The Richardson Ash Scattering by Fireworks is scheduled to take place on November 6, 2010, on the navigable waters of San Francisco Bay, 1500 feet off Yellow Bluff, Sausalito, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

During the set up of the fireworks and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around the fireworks loading site within a radius of 100 feet. The loading of the pyrotechnics onto the boat is scheduled to commence at 4 p.m. on November 6, 2010 and last approximately thirty minutes at the Sausalito Ferry docks in Sausalito, CA. From 6:15 p.m. until 7 p.m., the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 400 feet.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

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

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

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off Sausalito, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–368 to read as follows:

§ 165.T11–368 Safety zone; Richardson Ash Scattering by Fireworks, San Francisco, CA

(a) *Location.* This temporary safety zone is established for the waters of San Francisco Bay 1500 feet off Yellow Bluff, Sausalito, CA. The fireworks launch site will be located in position 37°50′9″ N, 122°27′59″ W (NAD 83). From 3:30 p.m. to 6:15 p.m. on November 6, 2010, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 6:15 p.m. until 7 p.m. on November 6, 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 400 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23 of this title, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone 415–399–3547.

(d) *Effective period.* This section is effective from 3:30 p.m. through 7 p.m. on November 6, 2010.

Dated: October 22, 2010.

C.L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–27703 Filed 11–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0721]

RIN 1625–AA87

Temporary Security Zones; San Francisco Bay, Delta Ports, Monterey Bay and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones on the navigable waters of San Francisco Bay, Delta Ports, Monterey Bay and Humboldt Bay, CA, in support of increasing the size of security zones currently provided by 33 CFR 165.1183 from 100 yards to 500 yards. These temporary security zones are necessary to effectively protect cruise ships, high interest vessels (HIVs), or tankers, as defined under 33 CFR 165.1183. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the temporary security zones unless authorized by the Captain of the Port or her designated representative.

DATES: This rule is effective in the CFR from November 3, 2010 through April 15, 2011. This rule is effective with actual notice for purposes of enforcement from October 5, 2010, through April 15, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0721 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0721 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Liezl Nicholas, Waterways Management, U.S. Coast Guard Sector San Francisco, Coast Guard; telephone 415–399–7443, e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) at this time with respect to this temporary rule because it was contrary to the public interest to wait. The COTP has deemed this temporary rule as necessary because it allows the Coast Guard to better protect HIVs. As noted in the Discussion of the Rule section below, the Coast Guard has initiated a separate, notice-and-comment rulemaking while this temporary rule is in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It would be contrary to the public interest not to publish this rule, as it is necessary to put the Coast Guard in better position to afford protection to HIVs.

Basis and Purpose

Based on experience with actual security zone enforcement operations, observations during boat tactics training, and discussions with Coast Guard experts, Sector San Francisco has concluded that the current 100-yard security zones are not large enough to sufficiently protect cruise ships, HIVs, or tankers from sabotage, other subversive acts, criminal actions or other causes of a similar nature. The increase of the security zones to 500 yards would allow reaction time to a vessel closing in at 20 knots to increase from 9 seconds (for 100 yards) to 36 seconds (for 500 yards). In addition, 500 yards would establish a consistent standard for all escort operations in the San Francisco Bay area that would benefit tactical coxswains and minimize the potential for confusion on the part of the boating public.

Discussion of Rule

This rule establishes temporary security zones that will be enforced from October 5, 2010, through April 5, 2011. This rule also temporarily suspends 33 CFR 165.1183. The Coast Guard has initiated a separate rulemaking that proposes to revise § 165.1183 so that it contains security zones the same size as the zones established by this temporary final rule. The Coast Guard expects to complete that separate notice-and-comment rulemaking during the effective period of this temporary final rule. To comment on that rulemaking [Docket No. USCG–2010–1004] for a permanent revision of § 165.1183, please find our notice of proposed rulemaking entitled, "Security Zone; Increase of Security Zones under 33 CFR 165.1183 from 100 to 500 yards; San Francisco Bay, Delta Ports, Monterey Bay, and Humboldt Bay, CA," published elsewhere in today's issue of the **Federal Register.**

The limits of these temporary security zones include all waters in San Francisco Bay, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel Buoys 7 and 8 (LLNR 4190 and 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

In Monterey Bay, the limits of the security zones include all waters, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored or moored within the Monterey Bay area shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′ N, 122°01.60′ W, and Cypress Point, Monterey to the south, in position 36°34.90′ N, 121°58.70′ W.

In Humboldt Bay the limits of these temporary security zones apply to all waters, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within Humboldt Bay area shoreward of a 4 nautical mile radius line drawn to the west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8230), in position 40°46.25′ N, 124°16.13′ W.

The temporary security zones are necessary to effectively protect cruise ships, high interest vessels (HIV), and tankers as defined under 33 CFR 165.1183 from sabotage or other subversive acts, criminal actions, or other causes of a similar nature. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the temporary safety zones unless authorized by the Captain of the Port, or her designated representative.

The temporary security zones will be enforced by Coast Guard patrol craft and San Francisco Harbor Police as authorized by the Captain of the Port. See 33 CFR 6.04–11, Assistance of other agencies.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. In addition, due to National Security interests, the implementation of these temporary security zones is necessary for the protection of the United States

and its people. The size of the zones is the minimum necessary to provide adequate protection for cruise ships, HIVs, and tankers as defined under 33 CFR 165.1183 assets.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Francisco Bay, Delta Ports, Monterey Bay and Humboldt Bay from October 5, 2010 through April 5, 2011.

The security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will issue local notice to mariners (LNM) and broadcast notice to mariners (BNM) alerts via VHF–FM marine channel 16 before the security zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a security zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From November 3, 2010, through April 5, 2011, temporarily suspend § 165.1183 and temporarily add § 165.T11–362 to read as follows:

§ 165.T11–362 Temporary Security Zones; San Francisco Bay, Delta Ports, Monterey Bay and Humboldt Bay, CA.

(a) *Location.* (1) *San Francisco Bay.* The limits of these security zones include all waters in San Francisco Bay, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel Buoys 7 and 8 (LLNR 4190 and 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(2) *Monterey Bay.* In Monterey Bay, the limits of the security zones include all waters, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored or moored within Monterey Bay area shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′ N, 122°01.60′ W and Cypress Point, Monterey to the south in position 36°34.90′ N, 121°58.70′ W.

(3) *Humboldt Bay.* In Humboldt Bay the limits of the security zones apply to all waters, extending from the surface to the sea floor, within 500 yards ahead, astern and extending 500 yards along either side of any cruise ship, tanker or HIV that is underway, anchored, or moored within Humboldt Bay area shoreward of a 4 nautical mile radius line drawn to the west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8230), in position 40°46.25′ N, 124°16.13′ W.

(b) *Definitions.* As used in this section—

Cruise ship means any vessel over 100 gross register tons, carrying more than 12 passengers for hire which makes voyages lasting more than 24 hours, of which any part is on the high seas. Passengers from cruise ships are embarked or disembarked in the U.S. or its territories. Cruise ships do not include ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays and Sounds" that transit international waters for only short periods of time on frequent schedules.

Designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

High Interest Vessel or *HIV* means any vessel deemed by the Captain of the Port, or higher authority, as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

Tanker means any self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

(c) *Enforcement period.* This section will be enforced from October 5, 2010, through April 5, 2011. If the need to enforce the security zones in paragraph (a) of this section terminates before this rule expires, the Captain of the Port will cease enforcement of the security zones and will announce that fact via Broadcast Notice to Mariners.

(d) *Regulations.* (1) Entry into, transit through or anchoring within the security zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port of San Francisco or her designated representative.

(2) Mariners requesting permission to transit through the security zone may request authorization to do so from the Patrol Commander (PATCOM), a designated representative. The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: October 4, 2010.

C.L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–27704 Filed 11–2–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0665; FRL–9212–8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Volatile Organic Compound Site-Specific State Implementation Plan for Abbott Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving into the Illinois State Implementation Plan (SIP) amendments to Illinois' manufacturing rules. On July 17, 2009, the Illinois Environmental Protection Agency (Illinois EPA) submitted amendments to its pharmaceutical manufacturing rules for approval into its SIP. These amendments consist of a site-specific rulemaking for certain of Abbott Laboratories' (Abbott) tunnel dryers and fluid bed dryers. This site-specific rule revision is approvable because it lowers the allowable emissions from these dryers and it is consistent with the Clean Air Act (CAA) and EPA regulations. EPA proposed these rules for approval on July 14, 2010, and received no comments.

DATES: This final rule is effective on December 3, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Nos. EPA–R05–OAR–2009–0665. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard,

Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed approval and what is EPA's response?

EPA's July 14, 2010, proposed action at 75 FR 40760 provided a 30-day public comment period. We did not receive any comments on the proposed action.

II. What action is EPA taking today and what is the purpose of this action?

EPA is approving revisions to Illinois' pharmaceutical manufacturing rule for three of Abbott's fluid bed dryers and four of its tunnel dryers. Specifically, EPA is approving amendments to 35 Ill. Adm. Code 218.480 adopted August 21, 2008, and effective August 26, 2008. Each of the three fluid bed dryers previously had a five tons volatile organic compound (VOC) per year applicability cutoff and each of the four tunnel dryers had a 7.5 tons VOC per year applicability cutoff. This rule revision replaces these individual cutoffs with an overall combined cutoff for all seven dryers of 20.6 tons VOC per year.

In EPA's July 14, 2010, proposal (75 FR 40760), we present a detailed legal and technical analysis of the State's submission. The reader is referred to that notice for additional background on the submission and the bases for EPA's approval.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(186), to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(186) On July 17, 2009, Illinois submitted amendments to its pharmaceutical manufacturing rules for approval into its state implementation plan. These amendments consist of a site-specific rulemaking for certain of Abbott Laboratories' (Abbott) tunnel dryers and fluid bed dryers.

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission

Standards and Limitations for Stationary Sources, Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart T: Pharmaceutical Manufacturing, Section: 218.480 Applicability, effective August 26, 2008.

(ii) Additional material.

(A) Letter from Laurel L. Kroack, Illinois Environmental Protection Agency, to Cheryl Newton, EPA, dated May 12, 2010, with attachments, that establishes how compliance with Abbott's 20.6 tons VOC per year limit is determined as well as Abbott's recordkeeping requirements.

[FR Doc. 2010–27636 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0814; FRL–9219–5]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Clark County Department of Air Quality and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national emission standards for hazardous air pollutants (NESHAP) to Clark County, Nevada. The preamble outlines the process that Clark County will use to receive delegation of any future NESHAP, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed Clark County's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting Clark County the authority to implement and enforce the unchanged NESHAP categories listed in this rule.

DATES: This rule is effective on January 3, 2011 without further notice, unless EPA receives adverse comments by December 3, 2010. 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: Submit comments, identified by docket number EPA–R09–OAR–2010–0814, by one of the following methods:

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

2. E-mail: *steckel.andrew@epa.gov*.

3. *Mail or Deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

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

Table of Contents

I. Background

A. Delegation of NESHAP

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA or the Act), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, Subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR part 63, Subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. Clark County Delegation Request

On July 13, 1995, EPA approved Clark County's program for accepting delegation of CAA section 112 standards that are unchanged from the Federal standards as promulgated (*see* 60 FR 36070). The approved program reflects an adequate demonstration by Clark County of general resources and authorities to implement and enforce CAA section 112 standards. However, formal delegation for an individual standard does not occur until Clark County obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves Clark County's formal delegation request for that standard.

Clark County informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of CAA section 112 standards by incorporating the standards into local codes of regulation. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA)

between Clark County and EPA, and are available for public inspection at the U.S. EPA Region IX office.

On August 9, 2010, the Clark County Department of Air Quality and Environmental Management requested delegation for several individual CAA section 112 standards that have been incorporated by reference into the Clark County Air Quality Regulations. The standards that are being delegated by today's action are listed in the table at the end of this rule.

II. EPA Action

A. Delegation to Clark County for Specific Standards

After reviewing Clark County's request for delegation of various NESHAP, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, Clark County is granted the authority to implement and enforce the requested NESHAP. These delegations will be effective on January 3, 2011. A table of the NESHAP categories that will be delegated to Clark County is shown at the end of this rule. Although Clark County will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a State or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to Clark County.

In its August 9, 2010, request, Clark County included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR part 63, Subpart D. These requirements apply to State or local agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). Clark County received final interim approval of its title V operating permits program on July 13, 1995 (see 60 FR 36070). State or local agencies implementing the requirements under Subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR part 63, Subpart D to Clark County.

Clark County also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (*see* 59 FR 26447). Therefore, State or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR part 63, Subpart B to Clark County.

In its delegation request, Clark County also included a request for delegation of 40 CFR part 63, Subpart C. Subpart C contains changes to the Federal list of hazardous air pollutants established at CAA section 112(b)(1) and does not contain any authorities delegable to State, local, or tribal agencies. Therefore, EPA is not taking action to delegate 40 CFR part 63, Subpart C to Clark County.

B. Clark County's Delegation Mechanism for Future Standards

Today's document serves to notify the public of the details of Clark County's procedure for receiving delegation of future NESHAP. As set forth in the MOA, Clark County intends to incorporate by reference, into local codes of regulation, each newly promulgated NESHAP for which it intends to seek delegation. Clark County will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR section 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAP should do so at this time.

C. Public Comment and Final Action

As authorized in section 112(l)(5) of the Act, EPA is approving the submitted delegation request because we believe it fulfills 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** publication, we are simultaneously proposing approval of the same submitted request. If we receive adverse comments by *December 3, 2010,* 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 January 3, 2011.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve delegation requests that comply with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7412(l); 40 CFR 63.91(b). Thus, in reviewing delegation submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• 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);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the delegations are not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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 63

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

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: October 5, 2010.

Deborah Jordan,

Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising the table in paragraph (a)(29)(i) to read as follows:

§ 63.99 Delegated Federal Authorities.

(a) * * *

(29) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP [1]	Washoe [2]	Clark [3]
A	General Provisions	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X		X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		X
J	Polyvinyl Chloride and Copolymers Production	X		X
L	Coke Oven Batteries	X		X
M	Perchloroethylene Dry Cleaning	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X
Q	Industrial Process Cooling Towers	X		X
R	Gasoline Distribution Facilities	X	X	X
S	Pulp and Paper	X		X
T	Halogenated Solvent Cleaning	X	X	X
U	Group I Polymers and Resins	X		X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		X
X	Secondary Lead Smelting	X		X
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		X
BB	Phosphate Fertilizers Production Plants	X		X

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	Washoe [2]	Clark [3]
CC	Petroleum Refineries	X		X
DD	Off-Site Waste and Recovery Operations	X		X
EE	Magnetic Tape Manufacturing Operations	X		X
GG	Aerospace Manufacturing and Rework Facilities	X		X
HH	Oil and Natural Gas Production Facilities	X		X
II	Shipbuilding and Ship Repair (Surface Coating)	X		X
JJ	Wood Furniture Manufacturing Operations	X		X
KK	Printing and Publishing Industry	X	X	X
LL	Primary Aluminum Reduction Plants	X		X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X		X
OO	Tanks—Level 1	X		X
PP	Containers	X		X
QQ	Surface Impoundments	X		X
RR	Individual Drain Systems	X		X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		X
TT	Equipment Leaks—Control Level 1	X		X
UU	Equipment Leaks—Control Level 2	X		X
VV	Oil-Water Separators and Organic-Water Separators	X		X
WW	Storage Vessels (Tanks)—Control Level 2	X		X
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X		X
YY	Generic MACT Standards	X		X
CCC	Steel Pickling	X		X
DDD	Mineral Wool Production	X		X
EEE	Hazardous Waste Combustors	X		X
GGG	Pharmaceuticals Production	X		X
HHH	Natural Gas Transmission and Storage Facilities	X		X
III	Flexible Polyurethane Foam Production	X		X
JJJ	Group IV Polymers and Resins	X		X
LLL	Portland Cement Manufacturing Industry	X		X
MMM	Pesticide Active Ingredient Production	X		X
NNN	Wool Fiberglass Manufacturing	X		X
OOO	Manufacture of Amino/Phenolic Resins	X		X
PPP	Polyether Polyols Production	X		X
QQQ	Primary Copper Smelting	X		X
RRR	Secondary Aluminum Production	X		X
TTT	Primary Lead Smelting	X		X
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X		X
VVV	Publicly Owned Treatment Works	X	X	X
XXX	Ferroalloys Production	X		X
AAAA	Municipal Solid Waste Landfills	X		X
CCCC	Manufacturing of Nutritional Yeast	X		X
DDDD	Plywood and Composite Wood Products	X		X
EEEE	Organic Liquids Distribution (non-gasoline)	X	X	X
FFFF	Miscellaneous Organic Chemical Manufacturing	X		X
GGGG	Solvent Extraction for Vegetable Oil Production	X		X
HHHH	Wet-Formed Fiberglass Mat Production	X		X
IIII	Surface Coating of Automobiles and Light-Duty Trucks	X		X
JJJJ	Paper and Other Web Coating	X		X
KKKK	Surface Coating of Metal Cans	X		X
MMMM	Miscellaneous Metal Parts and Products	X		X
NNNN	Large Appliances	X		X
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X		X
PPPP	Surface Coating of Plastic Parts and Products	X		X
QQQQ	Wood Building Products	X		X
RRRR	Surface Coating of Metal Furniture	X		X
SSSS	Surface Coating of Metal Coil	X		X
TTTT	Leather Finishing Operations	X		X
UUUU	Cellulose Products Manufacturing	X		X
VVVV	Boat Manufacturing	X		X
WWWW	Reinforced Plastics Composites Production	X	X	X
XXXX	Tire Manufacturing	X		X
YYYY	Stationary Combustion Turbines	X		X
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X	X	X
AAAAA	Lime Manufacturing Plants	X		X
BBBBB	Semiconductor Manufacturing	X		X
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X		X
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters	X		X
EEEEE	Iron and Steel Foundries	X		X

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	Washoe [2]	Clark [3]
FFFFF	Integrated Iron and Steel	X		X
GGGGG	Site Remediation	X		X
HHHHH	Miscellaneous Coating Manufacturing	X		X
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants			X
JJJJJ	Brick and Structural Clay Products Manufacturing	X		X
KKKKK	Clay Ceramics Manufacturing	X		X
LLLLL	Asphalt Roofing and Processing	X		X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X		X
NNNNN	Hydrochloric Acid Production	X		X
PPPPP	Engine Test Cells/Stands	X		X
QQQQQ	Friction Products Manufacturing	X		X
RRRRR	Taconite Iron Ore Processing			X
SSSSS	Refractory Products Manufacturing	X		X
TTTTT	Primary Magnesium Refining			X
WWWWW	Hospital Ethylene Oxide Sterilizers	X	X	X
YYYYY	Electric Arc Furnace Steelmaking Facilities (area sources)	X		X
ZZZZZ	Iron and Steel Foundries Area Sources	X		X
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants and Pipeline Facilities.		X	X
CCCCCC	Gasoline Dispensing Facilities		X	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X		X
EEEEEE	Primary Copper Smelting Area Sources	X		X
FFFFFF	Secondary Copper Smelting Area Sources	X		X
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium.	X		X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.		X	X
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X		X
MMMMMM	Carbon Black Production Area Sources	X		X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X		X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X	X	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X		X
QQQQQQ	Wood Preserving Area Sources	X		X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X		X
SSSSSS	Glass Manufacturing Area Sources	X		X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X		X
WWWWWW	Area Source Standards for Plating and Polishing Operations		X	X
XXXXXX	Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.		X	X
YYYYYY	Area Sources: Ferroalloys Production Facilities			X
ZZZZZZ	Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.			X

[1] Nevada Division of Environmental Protection.
[2] Washoe County District Health Department, Air Quality Management Division.
[3] Clark County, Department of Air Quality and Environmental Management.

* * * * *

[FR Doc. 2010–27803 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–30, 301–31, Appendix E to Chapter 301, and Parts 302–3, 302–4, 302–6, and 303–70

[FTR Amendment 2010–06; FTR Case 2010–303; Docket Number 2010–0019, Sequence 1]

RIN 3090–AJ06

Federal Travel Regulation (FTR); Terms and Definitions for "Dependent", "Domestic Partner", "Domestic Partnership" and "Immediate Family"

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Interim rule with request for comments.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by adding terms and definitions for "Dependent", "Domestic partner" and "Domestic partnership", and by revising the definition of "Immediate family" to include "Domestic partner" and children, dependent parents, and dependent brothers and sisters of the Domestic partner as named members of the employee's household. This interim rule also adds references to domestic partners and committed relationships, where applicable, in the FTR.

DATES: *Effective Date:* March 3, 2011.

Comment Due Date: Interested parties should submit written comments to the Regulatory Secretariat on or before December 20, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FTR case 2010–303 by any of the following methods:

- *Federal eRulemaking Portals: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FTR Case 2010–303" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FTR Case 2010–303." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FTR Case 2010–303" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NW., 7th Floor, Attn: Hada Flowers, Washington, DC 20417.

Instructions: Please submit comments only and cite FTR case 2010–303 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), 7th Floor, GS Building, Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Rick Miller, Office of Travel, Transportation, and Asset Management (MT), General Services Administration, at (202) 501–3822 or e-mail at *rodney.miller@gsa.gov.* Please cite FTR Amendment 2010–06 FTR case 2010–303.

SUPPLEMENTARY INFORMATION:

A. Background

On June 17, 2009, President Obama signed a Presidential Memorandum on Federal Benefits and Non-Discrimination stating that "[t]he heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees." The GSA conducted its review and, as part of that review, identified a number of changes to the FTR that could be made. Subsequently, on June 2, 2010, President Obama signed a Presidential Memorandum directing agencies to immediately take actions, consistent with existing law, to extend certain benefits, including travel and relocation benefits, to same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees.

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who are traveling while in the performance of official business away from their official stations. Similarly, 5 U.S.C. 5738 mandates that the Administrator of General Services prescribe regulations relating to official relocation. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300–304 (41 CFR Chapters 300–304).

Pursuant to this authority, this interim rule adds the same terms and definitions, based on published Office of Personnel Management memorandum to agencies, dated June 2, 2010, "Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partner of Federal Employees, and guidance from 5 CFR Part 875—"Federal Long Term Care Insurance Program", for "Domestic partner" and "Domestic partnership", adds a definition for "Dependent", and revises the definition of "Immediate family" to include "Domestic partner" and children, dependent parents, and dependent brothers and sisters of the Domestic partner as named members of the employee's household. This rule also adds references to "Domestic partners" and "Domestic partnership," where applicable, to travel and relocation allowances permitted under existing statutes. Due to current statutory restrictions, this interim rule does not apply to house-hunting trip expense reimbursement, the relocation income tax allowance, the income tax reimbursement allowance or non-federal source travel.

B. Executive Order 12866

This is a significant regulatory action and, therefore, has been reviewed in accordance with Section 6(a)(3)(B) of Executive Order 12866, Regulatory Planning and Review. This interim rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation is on a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)). However, this is being published as an interim rule because this is a significant rule as defined in Executive Order 12866 and to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 301–30, 301–31, Appendix E to Chapter 301, and Parts 302–3, 302–4, 302–6, and 303–70

Government employees, Relocation, Travel, and Transportation expenses.

Dated: October 26, 2010.

Martha Johnson,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 5721–5738, and 5741–5742, GSA amends 41 CFR parts 300–3, 301–30, 301–31, Appendix E to Chapter 301, and parts 302–3, 302–4, 302–6, and 303–70 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended; 3 CFR, 1971–1975 Comp., p. 586, OMB Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by adding, in alphabetical order, the definitions for "Dependent", "Domestic partner" and "Domestic partnership"; and by revising the definition for "Immediate family".

The added and revised text reads as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Dependent—An immediate family member of the employee.

Domestic partner—An adult in a domestic partnership with an employee of the same-sex.

Domestic Partnership—A committed relationship between two adults of the same sex, in which they—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not a domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which they reside;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under *18 U.S.C. 1001,* and that the method for securing such certification, if required, shall be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Immediate family—Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members:

(1) Spouse;

(2) Domestic partner;

(3) Children of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee, of the employee's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the employee's effective date of transfer.);

(4) Dependent parents (including step and legally adoptive parents) of the employee, of the employee's spouse, or of the employee's domestic partner; and

(5) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

* * * * *

PART 301–30—EMERGENCY TRAVEL

■ 3. The authority citation for 41 CFR part 301–30 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–30.2 [Amended]

■ 4. Amend § 301–30.2 by adding the words "or domestic partner's" after the word "spouse's".

PART 301–31—THREATENED LAW ENFORCEMENT/INVESTIGATIVE EMPLOYEES

■ 5. The authority citation for 41 CFR part 301–31 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–31.2 [Amended]

■ 6. Amend § 301–31.2 by adding the words "or domestic partner's" after the word "spouse's".

§ 301–31.10 [Amended]

■ 7. Amend § 301–31.10, in the table, in the heading, second and third columns, by adding the words ", domestic partner" after the word "spouse".

Appendix E to Chapter 301—Suggested Guidance for Conference Planning [Amended]

■ 8. Amend Appendix E to Chapter 301, under the heading "NOTIFICATION", in the eleventh bulleted entry, by adding the words ", domestic partners," after the words "Activity schedule for spouses" and adding the words ", domestic partners" after the words "attributed to spouses".

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

■ 9. The authority citation for 41 CFR part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§ 302–3.227 [Amended]

■ 10. Amend § 302–3.227—

■ a. In the heading by adding the words "or terminate my committed relationship with my domestic partner" after the words "from my spouse", and adding the words "or domestic partner" after the words "my former spouse".

■ b. By adding the words "or terminate your committed relationship with your domestic partner" after the words "from your spouse", and adding the words "or domestic partner" after the words "your former spouse".

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

■ 11. The authority citation for 41 CFR part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–4.203 [Amended]

■ 12. Amend § 302–4.203—

■ a. In the heading by adding the words "or domestic partner" after the words "will my spouse".

■ b. By adding the words "or domestic partner" after the words "your spouse".

§ 302–4.204 [Amended]

■ 13. Amend § 302–4.204—

■ a. In the heading by adding the words "or domestic partner" after the words "If my spouse".

■ b. By adding the words "or domestic partner" after the words "If your spouse".

§ 302–4.205 [Amended]

■ 14. Amend § 302–4.205—

■ a. In the heading by adding the words "or domestic partner" after the words "If my spouse" and adding the words "or domestic partner" after the words "is my spouse".

■ b. By adding the words "or domestic partner" after the words "and your spouse".

PART 302–6—ALLOWANCES FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES

■ 15. The authority citation for 41 CFR part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–6.100 [Amended]

■ 16. Amend § 302–6.100—

■ a. In the table, in the heading of the second column, by adding the words "or

domestic partner" after the words "unaccompanied spouse".

■ b. In the table, in the heading of the third column, by adding the words ", domestic partner" after the words "accompanied spouse".

■ c. In footnote 1 of the table, by adding the words "or domestic partner" after the words "when the spouse".

PART 303–70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

■ 17. The authority citation for 41 CFR part 303–70 continues to read as follows:

Authority: 5 U.S.C. 5721–5738; 5741–5742; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–70.305 [Amended]

■ 18. Amend § 303–70.305 by adding in paragraph (c) the words "or domestic partner" after the words "unaccompanied spouse".

[FR Doc. 2010–27691 Filed 11–2–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 237 and 252

RIN 0750–AG88

Defense Federal Acquisition Regulation Supplement; Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule to implement section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 1038 prohibits contractor personnel from interrogating detainees under the control of the Department of Defense. It also allows the Secretary of Defense to waive the prohibition for a limited period of time, if determined necessary to the national security interests of the United States.

DATES: *Effective Date:* November 3, 2010. *Comment Date:* Comments on the interim rule should be submitted to the address shown below on or before January 3, 2011, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments, identified by DFARS Case 2010–D027, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D027" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 20109–D027." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D027" on your attached document.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D027 in the subject line of the message.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310. Please cite DFARS Case 2010–D027.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) prohibits the interrogation of detainees by contractor personnel. DoD is amending the DFARS at subpart 237.1, Service Contracts—General, to add DFARS 237.173, Prohibition on Interrogation of Detainees by Contractor Personnel, adding a DFARS clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel; adding this new clause to paragraphs (b) and (c) of the clause at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items; and to paragraph (c) of the clause at 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

DFARS language at 237.173 prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). It also covers permissible support roles for contractors by providing that contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogations, if they meet the criteria provided by DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix (*http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf*); DoD Directive 2310.01E, The Department of Defense Detainee Program (*http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf*); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning (*http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf*).

Furthermore, the statute allows the Secretary of Defense to waive for a limited period of time the prohibition on interrogation of detainees by contractor personnel, if determined necessary to the national security interests of the United States.

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it only affects companies that provide intelligence-related services by precluding them from interrogating detainees. However, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

The objective of this rule is to implement section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). This statute provides that no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the DoD, or otherwise under detention in a DoD facility in connection with hostilities, may be interrogated by contractor personnel. In fiscal year 2009, DoD awarded contracts for intelligence-related requirements to only 255 unique Data Universal Numbering System (DUNS) numbers. Of this total, there were 143 unique DUNS numbers for

small business concerns. This rule only prescribes polices that prohibit interrogation of detainees by contractor personnel. DoD anticipates that there will be no additional costs imposed on small business. There is no reporting or recordkeeping requirement established by this rule. This rule does not duplicate, overlap, or conflict with any other Federal rules. DoD anticipates that there will be limited, if any, additional costs imposed on small business.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D027) in correspondence.

IV. Paperwork Reduction Act

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

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments pursuant to 41 U.S.C. 418b and FAR 1.501–3(b). This interim rule is necessary to implement section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), which restricts the unauthorized interrogation of detainees by contractor personnel. The U.S. military continues to make extraordinary efforts in Iraq and Afghanistan to ensure mission success. Interrogation of detainees is a key tool it uses to protect U.S. forces, host nation forces and citizens, and provide support for the governments of Iraq and Afghanistan during a critical period in their existence. It is imperative that contractor activities in support of these efforts comply with the law and do not detract from the commander's intent in order to contribute to mission success. A lack of compliance affects the perception of both local citizens and the international community, which would provide support to our adversaries that will adversely impact the U.S. Government's efforts. Immediate implementation of this statute is necessary to preclude a contracting officer from inadvertently awarding a contract that allows for the interrogation of detainees by contractor personnel.

DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Sections 237.173 through 237.173–5 are added to subpart 237.1 to read as follows:

237.173 Prohibition on interrogation of detainees by contractor personnel.

237.173–1 Scope.

This section prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the Fiscal Year 2010 National Defense Authorization Act (Pub. L. 111–84).

237.173–2 Definitions.

As used in this subpart—

Detainee means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

Interrogation of detainees means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.173–3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if—

(1) Such personnel are subject to the same laws, rules, procedures, and policies (including DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix (*http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf*); DoD Directive 2310.01E, The Department of Defense Detainee Program (*http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf*); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning (*http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf*)); pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

237.173–4 Waiver.

The Secretary of Defense may waive the prohibition in 237.173–3(a) for a period of 60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.173–5 Contract clause.

Insert the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts for the provision of services.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

■ a. Revise the clause date;

■ b. Redesignate paragraphs (b)(21) through (b)(25) as paragraphs (b)(22) through (b)(26), respectively.

■ c. Add new paragraph (b)(21);

■ d. Redesignate paragraphs (c)(2) through (c)(4) as paragraphs (c)(3) through (c)(5), respectively; and

■ e. Add new paragraph (c)(2).

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2010)

* * * * *

(b) * * *

(21) ____ 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

* * * * *

(c) * * *

(2) 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84).

* * * * *

■ 4. Section 252.237–7010 is added to read as follows:

252.237–7010 Prohibition on interrogation of detainees by contractor personnel.

As prescribed in 237.173–5, use the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (NOV 2010)

(a) *Definitions.* As used in this clause—

Detainee means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

Interrogation of detainees means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

■ 5. Section 252.244–7000 is amended as follows:

■ a. Revise the clause date;

■ b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and

■ c. Add new paragraph (c).

252.244–7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (NOV 2010)

* * * * *

(c) 252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111–84)].

* * * * *

[FR Doc. 2010–27780 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 325

[Docket No. FMCSA–2006–24065]

RIN–2126–AB31

Compliance With Interstate Motor Carrier Noise Emission Standards: Exhaust Systems

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) confirms the effective date of the direct final rule, titled "Compliance with Interstate Motor Carrier Noise Emission Standards: Exhaust Systems," published on September 20, 2010, in the **Federal Register** (75 FR 57191). This rule eliminates turbochargers from the list of equipment considered to be noise dissipative devices.

DATES: This rule is effective November 19, 2010.

ADDRESSES: The docket for this rulemaking (FMCSA–2006–24065) is available for inspection at *http://www.regulations.gov.* If you do not have access to the Internet, you may also view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Brian Routhier, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, at *FMCSA_MCPSV@dot.gov* or (202) 366–1225.

SUPPLEMENTARY INFORMATION: On September 20, 2010, FMCSA published a direct final rule entitled "Compliance with Interstate Motor Carrier Noise Emission Standards: Exhaust Systems" in the **Federal Register** (75 FR 57191). The direct final rule amends 49 CFR part 325 by removing turbochargers from the list of equipment considered to be noise dissipative devices. FMCSA used the direct final rule procedures (75 FR 29915, May 28, 2010) because it was a routine and non-controversial amendment, and the Agency did not expect any adverse comments. The direct final rule advised the public that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received by October 20, 2010, the Agency would provide notice confirming the effective date. Because FMCSA did not receive any comments to the docket by October 20, 2010, the direct final rule will become effective November 19, 2010.

Issued on: October 27, 2010.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2010–27797 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2010–0186]

RIN–2126–AB27

Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) confirms the effective date of the direct final rule titled "Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems," published on September 21, 2010, in the **Federal Register** (75 FR 57393). This rule made permanent the existing requirement in the Federal Motor Carrier Safety Regulations that each trailer with an antilock brake system be equipped with an external malfunction indicator lamp.

DATES: This rule is effective November 22, 2010.

ADDRESSES: The docket for this rulemaking (FMCSA–2010–0186) is available for inspection at *http://www.regulations.gov.* If you do not have

access to the Internet, you may also view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, phone (202) 366–4325, e-mail *michael.huntley@dot.gov.*

SUPPLEMENTARY INFORMATION: On September 21, 2010, FMCSA published a direct final rule entitled "Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems" in the **Federal Register** (75 FR 57393). This direct final rule amends 49 CFR Part 393 by requiring that each trailer with an anitlock brake system be equipped with an external malfunction indicator lamp. FMCSA used the Agency's direct final rule procedures (75 FR 29915, May 28, 2010) because it was a routine and non-controversial amendment, and the Agency did not expect any adverse comments. The direct final rule advised the public that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received by October 21, 2010, the Agency would provide notice confirming the effective date. Because the Agency did not receive any comments to the docket by October 21, 2010, the direct final rule will become effective November 22, 2010.

Issued on: October 27, 2010.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2010–27799 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 75, No. 212
Wednesday, November 3, 2010

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2010–0340; Draft NUREG–0561, Revision 2]

RIN 3150–AI64

Physical Protection of Shipments of Irradiated Reactor Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of draft guidance for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its security regulations pertaining to the transport of irradiated reactor fuel (for purposes of this rulemaking, the terms "irradiated reactor fuel" and "spent nuclear fuel" (SNF) are used interchangeably). The NRC has prepared a revision to current guidance to address implementation of the proposed regulations. This notice is announcing the availability of the draft guidance for public comment.

DATES: Submit comments by February 11, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID: NRC–2010–0340 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2010–0340. Address questions about NRC dockets to Carol Gallagher, telephone (301) 492–3668; e-mail *Carol.Galagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax comments to: RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: R. Clyde Ragland, Office of Nuclear Security, and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7008, e-mail *Clyde.Ragland@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* The draft implementation guidance is available electronically under ADAMS Accession Number ML101800231.

Federal Rulemaking Website: Public comments and supporting materials related to the implementation guidance, including the draft implementation guidance, can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0340. Documents related to the proposed rule can be found by searching on Docket ID: NRC–2009–0163.

Discussion

The NRC recently published a proposed rule that would revise and amend the security regulations pertaining to the transport of spent nuclear fuel. The proposed rule was published on October 13, 2010 (75 FR 62695), and the public comment period runs through January 11, 2011. Documents related to the proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0163.

In conjunction with the proposed rule, the NRC has revised NUREG–0561, "Physical Protection of Shipments of Irradiated Reactor Fuel." This document provides guidance to a licensee or applicant for implementation of proposed 10 CFR 73.37, "Requirements for Physical Protection of Irradiated Reactor Fuel in Transit." and proposed 10 CFR 73.38, "Personnel Access Authorization Requirements for Irradiated Reactor Fuel in Transit." It is intended for use by applicants, licensees, and NRC staff. Revised NUREG–0561 describes methods acceptable to the NRC staff for implementing the proposed rules. The approaches and methods described in the document are provided for information only. Methods and solutions different from those described in the document are acceptable if they meet the requirements in proposed 10 CFR 73.37 and 10 CFR 73.38 as applicable. Revised NUREG–0561 is available electronically under ADAMS Accession Number ML101800231, and can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0340.

At this time, the NRC is announcing the availability for public comment of NUREG–0561, Revision 2, "Physical

Protection of Shipments of Irradiated Reactor Fuel." The document provides guidance on implementing the provisions of proposed 10 CFR 73.37, "Requirements for Physical Protection of Byproduct Material" and proposed 10 CFR 73.38, "Personnel Access Authorization Requirements for Irradiated Reactor Fuel in Transit."

Dated at Rockville, Maryland, this 25th day of October 2010.

For the Nuclear Regulatory Commission.

Robert K. Caldwell,

Chief, Fuel Cycle and Transportation Security Branch, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. 2010–27825 Filed 11–2–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0027]

RIN 1904–AC28

Energy Conservation Program for Certain Commercial and Industrial Equipment: Framework Document for Commercial and Industrial Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of comment period.

SUMMARY: This notice announces an extension of the time period for submitting written comments on the framework document for certain commercial and industrial electric motors. The comment period is extended to November 24, 2010.

DATES: The comment period for the framework document for certain commercial and industrial electric motors, referenced in the notice of public meeting and availability published on September 28, 2010 (75 FR 59657), is extended to November 24, 2010.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–STD–0027, by any of the following methods:

- *E-mail: ElecMotors-2010-STD-0027@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0027 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Electric Motors, EERE–2010–STD–0027, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. Note that all comments received will be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, 202–586–8654, *e-mail: Jim.Raba@ee.doe.gov,* Ms. Ami Grace-Tardy, 202–586–5709, *e-mail: Ami.Grace-Tardy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

The U.S. Department of Energy (DOE) published a document in the **Federal Register** on September 28, 2010, concerning a public meeting and availability of a framework document initiating the rulemaking process to amend the energy conservation standards for certain commercial and industrial electric motors. DOE seeks comment from interested parties on the procedural and analytical approaches it anticipates using to evaluate energy conservation standards for commercial and industrial electric motors, which are addressed in the framework document, available at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/electric_motors.html.* The framework document is the starting point for potentially amending the energy conservation standards for electric motors prescribed in the Energy Policy and Conservation Act of 1975, as amended, (EPCA) and codified in Title 10 of the Code of Federal Regulations, Part 431. The notice of public meeting and availability of the framework document published on September 28, 2010 (75 FR 59657) informed interested parties that DOE would accept written comments on the framework document no later than October 28, 2010.

The National Electrical Manufacturers Association (NEMA), American Council for an Energy-Efficient Economy (ACEEE), and the Appliance Standards Awareness Project (ASAP) requested a comment deadline extension of two weeks after the transcript of the October 18, 2010, framework document public meeting is posted on-line and available for public review.

Based on the joint request from NEMA, ACEEE, and ASAP, DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until November 24, 2010, to provide interested parties additional time to prepare and submit comments. DOE will accept comments received no later than November 24, 2010 and will not consider any further extensions to the comment period. If DOE receives any comments after October 28, 2010, but before the date of publication of this notice in the **Federal Register**, DOE will consider those comments to be timely filed.

Issued in Washington, DC, on October 28, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–27741 Filed 11–2–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1042; Directorate Identifier 2010–NM–094–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–700, –700C, –800, and –900ER Series Airplanes, Model 747–400F Series Airplanes, and Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 737–700, –700C, –800, and –900ER series airplanes, Model 747–400F series airplanes, and Model 767–200 and –300 series airplanes. This proposed AD would require an inspection for affected serial numbers of the crew oxygen mask stowage box units; and replacement of the crew oxygen mask stowage box unit with a new crew oxygen mask stowage unit, if necessary. This proposed AD results

from reports indicating that certain crew oxygen mask stowage box units were possibly delivered with a burr in the inlet fitting. The burr may break loose during test or operation and may pose an ignition source or cause an inlet valve to jam. We are proposing this AD to prevent an ignition source, which could result in an oxygen-fed fire; or could cause an inlet valve to jam in a crew oxygen mask stowage box unit, which could result in restricted flow of oxygen.

DATES: We must receive comments on this proposed AD by December 20, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1042; Directorate Identifier 2010–NM–094–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports indicating that crew oxygen mask stowage box units having part number (P/N) MXP147, MXP147–2, MXP147–3, MXP147–5, MXP402, and MXP410–1, that were manufactured between July 12, 2007, and November 20, 2007, were possibly delivered with a burr in the inlet fitting. If not corrected, the burr may break loose during test or operation and may pose an ignition source, which could result in an oxygen-fed fire; or could cause an inlet valve to jam in an oxygen mask stowage box unit, which could result in restricted flow of oxygen.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 737–35A1121, dated December 14, 2009; 747–35A2126, dated October 8, 2009; and 767–35A0057, dated October 8, 2009. The service bulletins describe procedures for a general visual inspection for affected serial numbers of the crew oxygen mask stowage box units, and replacement of the affected crew oxygen mask stowage box unit with a new crew oxygen mask stowage box unit.

The service information refers to Intertechnique Service Bulletin MXP1/4–35–175, dated September 11, 2009, for inspecting the serial numbers of the crew oxygen mask stowage box units.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 40 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $3,400, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 AD:

The Boeing Company: Docket No. FAA–2010–1042; Directorate Identifier 2010–NM–094–AD.

Comments Due Date

(a) We must receive comments by December 20, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 737–700, –700C, –800, –900ER series airplanes, as identified in Boeing Alert Service Bulletin 737–35A1121, dated December 14, 2009.

(2) Model 747–400F series airplanes, as identified in Boeing Alert Service Bulletin 747–35A2126, dated October 8, 2009.

(3) Model 767–200 and –300 series airplanes, as identified in Boeing Alert Service Bulletin 767–35A0057, dated October 8, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from reports indicating that certain crew oxygen mask stowage box units were possibly delivered with a burr in the inlet fitting. The Federal Aviation Administration is issuing this AD to prevent an ignition source, which could result in an oxygen-fed fire; or could cause an inlet valve to jam in an oxygen mask stowage box unit, which could result in restricted flow of oxygen.

Compliance

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

Inspection and Corrective Action

(g) Within 24 months after the effective date of this AD: Do a general visual inspection to determine if the serial number of the crew oxygen mask stowage box units is identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, dated September 11, 2009, in accordance with the Accomplishment Instructions of the applicable Boeing Alert Service Bulletin listed in Table 1 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the crew oxygen mask stowage box units can be conclusively determined from that review. If any crew oxygen mask stowage box unit has a serial number identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, dated September 11, 2009: Before further flight, replace the crew oxygen mask stowage box unit with a new unit, in accordance with the Accomplishment Instructions of the applicable Boeing alert service bulletin listed in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

Boeing airplane model	Document	Date
737–700, –700C, –800, –900ER series airplanes	Boeing Alert Service Bulletin 737–35A1121	December 14, 2009.
747–400F series airplanes	Boeing Alert Service Bulletin 747–35A2126	October 8, 2009.
767–200 and –300 series airplanes	Boeing Alert Service Bulletin 767–35A0057	October 8, 2009.

Parts Installation

(h) As of the effective date of this AD, no person may install a crew oxygen mask stowage box unit identified in the Appendix of Intertechnique Service Bulletin MXP1/4–35–175, dated September 11, 2009, on any airplane.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on October 26, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27745 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1099; Directorate Identifier 2010–CE–054–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A Model PIAGGIO P–180 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation

product. The MCAI describes the unsafe condition as:

> Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment. A limitation was added to the approved Airplane Flight Manual, stating that the towing bar P/N 01–1227–0000 or similar ferromagnetic masses are prohibited to be carried in the baggage compartment.

Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, include MCAI that has maintenance requirements and/or airworthiness limitations developed by Piaggio Aero Industries S.p.A. and Piaggio Aero Industries. These revisions are approved and considered mandatory by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. Failure to comply with the MCAI constitutes an unsafe condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 20, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1099; Directorate Identifier 2010–CE–054–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Piaggio Aero Industries S.p.A. and Piaggio Aero Industries have issued service information (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The service information and limitations are considered mandatory by the EASA, which is the Technical Agent for the Member States of the European Community. The MCAI states:

> Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment. A limitation was added to the approved Airplane Flight Manual, stating that the towing bar P/N 01–1227–0000 or similar ferromagnetic masses are prohibited to be carried in the baggage compartment.

Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, include MCAI that has maintenance requirements and/or airworthiness limitations developed by Piaggio Aero Industries S.p.A. and Piaggio Aero Industries. These revisions are approved and considered mandatory by the EASA, which is the Technical Agent for the Member States of the European Community. Ferro-magnetic masses stowed in the baggage compartment may cause an erroneous indication from the compass (loss of heading information), which could result in loss of control of the airplane. The MCAI requires incorporating a temporary change to the airplane flight manual and placard installation. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Piaggio Aero Industries S.p.A. has issued Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009, and Piaggio Aero Industries has issued P180–Service Letter No. SL–80–0202, dated January 30, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 100 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $50 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $13,500, or $135 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this 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 and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 AD:

Piaggio Aero Industries S.p.A.: Docket No. FAA–2010–1099; Directorate Identifier 2010–CE–054–AD.

Comments Due Date

(a) We must receive comments by December 20, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Piaggio Aero Industries S.p.A. Model PIAGGIO P–180 airplanes, all manufacturer serial numbers (MSN), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 50: Cargo and Accessory Compartments.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment. A limitation was added to the approved Airplane Flight Manual, stating that the towing bar P/N 01–1227–0000 or similar ferromagnetic masses are prohibited to be carried in the baggage compartment.

Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, include MCAI that has maintenance requirements and/or airworthiness limitations developed by Piaggio Aero Industries S.p.A. and Piaggio Aero Industries. These revisions are approved and considered mandatory by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. Failure to comply with the MCAI constitutes an unsafe condition. The MCAI requires incorporating a temporary change to the airplane flight manual and placard installation.

Actions and Compliance

(f) Unless already done, within 5 flights after the effective date of this AD, do the following actions:

(1) *For MSN 1004 through 1104:* Incorporate Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, in the Limitations Section following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009.

(2) *For MSN 1105 and subsequent:* Incorporate Temporary Change No. 11 to the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, in the Limitations Section following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009, and Piaggio Aero Industries P180–Service Letter No. SL–80–0202, dated January 30, 2009.

(3) *All MSN:* Install the part number 80K347593–005 limitation placard in the front of the baggage compartment door following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Revisions and changes to the Limitations Section of the AFM are mandatory in Europe as part of the European regulatory process upon issuance by the type certificate holder. The FAA must mandate any such changes through rulemaking, specifically in this case an airworthiness directive.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not 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 current

valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009, and Piaggio Aero Industries P180–Service Letter No. SL–80–0202, dated January 30, 2009, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on October 28, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27723 Filed 11–2–10; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 30

RIN 3038–AC15

Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend its regulations regarding the investment of customer segregated funds and funds held in an account subject to Commission Regulation 30.7 (30.7 funds). Certain amendments reflect the implementation of new statutory provisions enacted under Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rules address: Certain changes to the list of permitted investments, a clarification of the liquidity requirement, the removal of rating requirements, an expansion of concentration limits including asset-based, issuer-based, and counterparty concentration restrictions. It also addresses revisions to the acknowledgment letter requirement for investment in a money market mutual fund (MMMF), revisions to the list of exceptions to the next-day redemption requirement for MMMFs, the application of customer segregated funds investment limitations to 30.7 funds, the removal of ratings requirements for depositories of 30.7 funds, and the elimination of the option to designate a depository for 30.7 funds.

DATES: Comments must be received on or before December 3, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* or Jon DeBord, Attorney-Advisor, 202–418–5478, *jdebord@cftc.gov,* or Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Regulation 1.25

Under Section 4d(a)(2) of the Commodity Exchange Act (Act),[2] the investment of customer segregated funds is limited to obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities), and general obligations of any State or of any political subdivision thereof (municipal securities). Pursuant to authority under Section 4(c) of the Act,[3] the Commission substantially expanded the list of permitted investments by amending Commission Regulation 1.25 [4] in December 2000 to permit investments in general obligations issued by any enterprise sponsored by the United States (government sponsored enterprise securities or GSE securities), bank certificates of deposit (CDs), commercial paper, corporate notes,[5] general obligations of a sovereign nation, and interests in MMMFs.[6] In connection

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] 7 U.S.C. 6d(a)(2).

[3] 7 U.S.C. 6(c).

[4] 17 CFR 1.25.

[5] This category of permitted investment was later amended to read "corporate notes or bonds." *See* 70 FR 28190, 28197 (May 17, 2005).

[6] *See* 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating

with that expansion, the Commission included several provisions intended to control exposure to credit, liquidity, and market risks associated with the additional investments, *e.g.,* requirements that the investments satisfy specified rating standards and concentration limits, and be readily marketable and subject to prompt liquidation.[7]

The Commission further modified Regulation 1.25 in 2004 and 2005. In February 2004, the Commission adopted amendments regarding repurchase agreements using customer-deposited securities and time-to-maturity requirements for securities deposited in connection with certain collateral management programs of derivatives clearing organizations (DCOs).[8] In May 2005, the Commission adopted amendments related to standards for investing in instruments with embedded derivatives, requirements for adjustable rate securities, concentration limits on reverse repurchase agreements, transactions by futures commission merchants (FCMs) that are also registered as securities brokers or dealers (in-house transactions), rating standards and registration requirements for MMMFs, an auditability standard for investment records, and certain technical changes.[9]

The Commission has been, and continues to be, mindful that customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers and DCOs and to enable investments to be quickly converted to cash at a predictable value in order to avoid systemic risk. Toward these ends, Regulation 1.25 establishes a general prudential standard by requiring that all permitted investments be "consistent with the objectives of preserving principal and maintaining liquidity."[10]

In 2007, the Commission's Division of Clearing and Intermediary Oversight (Division) launched a review of the nature and extent of investments of customer segregated funds and 30.7 funds (2007 Review) in order to further its understanding of investment strategies and practices and to assess whether any changes to the Commission's regulations would be appropriate. As part of this review, all registered DCOs and FCMs carrying customer accounts provided responses to a series of questions. As the Division was conducting follow-up interviews with respondents, the market events of September 2008 occurred and changed the financial landscape such that much of the data previously gathered no longer reflected current market conditions. However, much of that data remains useful as an indication of how Regulation 1.25 was implemented in a more stable financial environment, and recent events in the economy have underscored the importance of conducting periodic reassessments and, as necessary, revising regulatory policies to strengthen safeguards designed to minimize risk.

B. Regulation 30.7

Regulation 30.7[11] governs an FCM's treatment of customer money, securities, and property associated with positions in foreign futures and foreign options. Regulation 30.7 was issued pursuant to the Commission's plenary authority under Section 4(b) of the Act.[12] Because Congress did not expressly apply the limitations of Section 4d of the Act to 30.7 funds, the Commission historically has not subjected those funds to the investment limitations applicable to customer segregated funds.

The investment guidelines for 30.7 funds are general in nature.[13] Although Regulation 1.25 investments offer a safe harbor, the Commission does not currently limit investments of 30.7 funds to permitted investments under Regulation 1.25. Appropriate depositories for 30.7 funds currently include certain financial institutions in the United States, financial institutions in a foreign jurisdiction meeting certain capital and credit rating requirements, and any institution not otherwise meeting the foregoing criteria, but which is designated as a depository upon the request of a customer and the approval of the Commission.

C. Advance Notice of Proposed Rulemaking

In May 2009, the Commission issued an advance notice of proposed rulemaking (ANPR)[14] to solicit public comment prior to proposing amendments to Regulations 1.25 and 30.7. The Commission stated that it was considering significantly revising the scope and character of permitted investments for customer segregated funds and 30.7 funds. In this regard, the Commission sought comments, information, research, and data regarding regulatory requirements that might better safeguard customer segregated funds. It also sought comments, information, research, and data regarding the impact of applying the requirements of Regulation 1.25 to investments of 30.7 funds.

The Commission received twelve comment letters in response to the ANPR, and it has considered those comments in formulating its proposal.[15] Eleven of the 12 letters supported maintaining the current list of permitted investments and/or specifically ensuring that MMMFs remain a permitted investment. Five of the letters were dedicated solely to the topic of MMMFs, providing detailed discussions of their usefulness to FCMs. Several letters addressed issues regarding ratings, liquidity, concentration, and portfolio weighted average time to maturity. The alignment of Regulation 30.7 with Regulation 1.25 was viewed as non-controversial.

The FIA's comment letter expressed its view that "all of the permitted investments described in Rule 1.25(a) are compatible with the Commission's objectives of preserving principal and maintaining liquidity." This opinion was echoed by MF Global, Newedge and FC Stone. CME asserted that only "a small subset of the complete list of Regulation 1.25 permitted investments are actually used by the industry. * * *" NFA also wrote that investments in instruments other than U.S. government securities and MMMFs are "negligible" and recommended that the Commission eliminate asset classes not "utilized to any material extent."

D. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[16] Title IX of the

effective date of final rules from February 12, 2001 to December 28, 2000).

[7] *Id.*

[8] 69 FR 6140 (Feb. 10, 2004).

[9] 70 FR 28190.

[10] 17 CFR 1.25(b).

[11] 17 CFR 30.7.

[12] 7 U.S.C. 6(b).

[13] *See* Commission Form 1–FR–FCM Instructions at 12–9 (Mar. 2010) ("In investing funds required to be maintained in separate section 30.7 account(s), FCMs are bound by their fiduciary obligations to customers and the requirement that the secured amount required to be set aside be at all times liquid and sufficient to cover all obligations to such customers. Regulation 1.25 investments would be appropriate, as would investments in any other readily marketable securities.").

[14] 74 FR 23962 (May 22, 2009).

[15] The Commission received comment letters from CME Group Inc. (CME), Crane Data LLC (Crane), The Dreyfus Corporation (Dreyfus), FCStone Group Inc. (FCStone), Federated Investors, Inc. (Federated), Futures Industry Association (FIA), Investment Company Institute (ICI), MF Global Inc. (MF Global), National Futures Association (NFA), Newedge USA, LLC (Newedge), and Treasury Strategies, Inc. (TSI). Two letters were received from Federated: A July 10, 2009 letter (Federated letter I) and an August 24, 2009 letter.

[16] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act

Continued

Dodd-Frank Act [17] was promulgated in order to increase investor protection, promote transparency and improve disclosure.

Section 939A of the Dodd-Frank Act obligates federal agencies to review their respective regulations and make appropriate amendments in order to decrease reliance on credit ratings. The Dodd-Frank Act requires the Commission to conduct this review within one year after the date of enactment.[18] The Commission is proposing amendments to Regulations 1.25 and 30.7 that include removal of provisions setting forth credit rating requirements. Separate rulemakings proposed today address the elimination of credit ratings from Regulations 1.49 and 4.24 and the removal of Appendix A to Part 40 (which contains a reference to credit ratings).

The Commission is now proposing amendments to Regulations 1.25 and 30.7 and requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below. In addition, commenters are welcome to offer their views regarding any other related matters that are raised by the proposed amendments.

II. Discussion of the Proposed Rules

A. Permitted Investments

In proposing amendments to Regulation 1.25, the Commission seeks to simplify the regulation and impose requirements that can better ensure the preservation of principal and maintenance of liquidity. The Commission has endeavored to tailor its proposal to achieve these goals while retaining an appropriate degree of investment flexibility and opportunities for attaining capital efficiency for DCOs and FCMs investing customer segregated funds.

The Commission seeks to simplify Regulation 1.25 by narrowing the scope of investment choices in order to eliminate the potential use of instruments that may pose an unacceptable level of risk. In their July 2009 comment letters, both NFA and CME suggested contracting the scope of permitted investments by eliminating asset classes used negligibly as investment vehicles.

The Commission seeks to increase the safety of Regulation 1.25 investments by promoting diversification. For example, issuer-specific concentration limits control how much exposure an FCM or DCO has to the credit risk of any one investment. The Commission believes that greater diversification can be achieved through instituting two additional types of concentration limits. First, asset-based concentration limits, suggested by the FIA, MF Global and Newedge in their comment letters, reduce market risk by limiting how much of any one class of instrument an FCM or DCO can have in its portfolio at any one time. Second, repurchase agreement counterparty concentration limits serve to cap an FCM or DCO's exposure to the credit risk of a counterparty.

Below, the Commission details its proposal to remove government sponsored enterprise (GSE) securities that are not backed by the full faith and credit of the United States, corporate debt obligations not guaranteed by the United States, general obligations of a sovereign nation (foreign sovereign debt), and in-house transactions from the list of permitted investments. These proposed changes reflect the position of the Commission that the safety of a particular instrument or transaction must be viewed through the lens of its likely performance during a period of market volatility and financial instability.

1. Government Sponsored Enterprise Securities

The Commission proposes to amend paragraph (a)(1)(iii) to expressly add U.S. government corporation obligations [19] to GSE securities (together, U.S. agency obligations) and to add the requirement that the U.S. agency obligations must be fully guaranteed as to principal and interest by the United States. GSEs are chartered by Congress but are privately owned and operated. Securities issued by GSEs do not have an explicit federal guarantee although they are considered by some to have an "implicit" guarantee due to their federal affiliation.[20] Obligations of U.S. government corporations, such as the Government National Mortgage Association (known as Ginnie Mae), are explicitly backed by the full faith and credit of the United States. Although the Commission is not aware of any GSE securities that have an explicit federal guarantee, it believes that GSE securities should remain on the list of permitted investments in the event this status changes in the future.

The failure of two GSEs during the financial crisis has moved the Commission to view the securities of such GSEs as inappropriate for investments of customer funds. In 2008, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) failed due to problems in the subprime mortgage market. While Fannie Mae and Freddie Mac were bailed out in 2008, the U.S. government had no obligation to do so and investors cannot rely on another bailout should a GSE fail in the future.

In consideration of the above, the Commission proposes to amend paragraph (a)(1)(iii) of Regulation 1.25 by permitting investments in only those U.S. agency obligations that are fully guaranteed as to principal and interest by the United States.[21] The Commission requests comment on whether GSE securities should remain as permitted investments under Regulation 1.25, either subject to a Federal guarantee requirement or not.

2. Commercial Paper and Corporate Notes or Bonds

In order to simplify the regulation by eliminating rarely-used instruments, and in light of the credit, liquidity, and market risks posed by corporate debt securities, the Commission proposes to limit investments in "commercial paper" [22] and "corporate notes or bonds" [23] to commercial paper and corporate notes or bonds that are federally guaranteed as to principal and interest under the Temporary Liquidity Guarantee Program (TLGP) and meet certain other prudential standards.[24]

may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[17] Pursuant to Section 901 of the Dodd-Frank Act, Title IX may be cited as the "Investor Protection and Securities Reform Act of 2010."

[18] *See* Section 939A(a) of the Dodd-Frank Act.

[19] *See* 31 U.S.C. 9101 (defining "government corporation").

[20] Frank J. Fabozzi with Steven V. Mann, The Handbook of Fixed Income Securities, 242–245 (McGraw Hill 7th ed. 2005).

[21] Although U.S. Government corporation obligations backed by the full faith and credit of the United States could also be categorized as U.S. Government securities under Regulation 1.25(a)(1)(i), the Commission is distinguishing them from other government securities, such as Treasury securities, because they cannot be expected to have the same liquidity even if they satisfy the "highly liquid" requirement under proposed. Regulation 1.25(b)(1). *See also* discussion of concentration limits in Section II.B.4. of this notice.

[22] Regulation 1.25(a)(1)(v).

[23] Regulation 1.25(a)(1)(vi).

[24] Commercial paper would remain available as a direct investment for MMMFs and corporate notes or bonds would remain available as indirect investments for MMMFs by means of a repurchase agreement. Additionally, it should be noted that two commenters suggested expanding the list of permitted investments to include commercial paper and corporate notes or bonds guaranteed by foreign sovereign governments. However, as the Commission has determined that foreign sovereign debt is itself unsuitable as a permitted investment, going forward (explained in more detail below), it follows that corporate debt guaranteed by a foreign sovereign government would also not be permissible.

Information obtained during the 2007 Review indicated that commercial paper and corporate notes or bonds were not widely used by FCMs or DCOs.[25] Consistent with this, the NFA states in its comment letter that most firms invest about 33 percent of their customer funds in government securities, 10 percent in MMMFs, and the balance maintained in bank accounts or on deposit with a carrying broker.

In the fall of 2008, the Federal Deposit Insurance Corporation (FDIC) created the TLGP, which guarantees principal and interest on certain types of corporate debt. Although the TLGP debt securities are backed by the full faith and credit of the U.S. Government and therefore pose minimal credit risk to the buyer for the period during which the guarantee is effective, initially there was concern as to whether the securities were readily marketable and sufficiently liquid so that the holders of such securities would be able to liquidate them quickly and easily without having to incur a substantial discount.

In February 2010, having evaluated the growing market for TLGP debt securities, the Division issued an interpretative letter concluding that TLGP debt securities are sufficiently liquid, and might therefore qualify as permitted investments under Regulation 1.25 if they meet the following criteria in addition to satisfying the pre-existing requirements imposed by Regulation 1.25: (1) The size of the issuance is greater than $1 billion; (2) the debt security is denominated in U.S. dollars; and (3) the debt security is guaranteed for its entire term.[26]

Although the TLGP expires in 2012, the Commission believes it is useful to include commercial paper and corporate notes or bonds that are fully guaranteed as to principal and interest by the United States as permitted investments because this would permit continuing investment in TLGP debt securities, even though the Commission has proposed to otherwise eliminate commercial paper and corporate notes or bonds. Therefore, the Commission proposes to limit the commercial paper and corporate notes or bonds that can qualify as permitted investments to only those guaranteed as to principal and interest under the TLGP and that meet the criteria set forth in the Division's interpretation. As a result of this limitation, paragraph (b)(3)(iv), which relates to adjustable rate securities, is no longer necessary.[27] The Commission proposes to delete current paragraph (b)(3)(iv) and replace it with language codifying the criteria for federally backed commercial paper and corporate notes or bonds. Accordingly, the Commission proposes to delete paragraph (b)(3)(i)(B) and amend paragraph (b)(3)(iii) to remove references to paragraph (b)(3)(iv). The Commission requests comment on the proscription of commercial paper and corporate notes or bonds that are not federally guaranteed under the TLGP, the liquidity of TLGP debt, and whether the removal of the requirements for adjustable rate securities will have any unintended or detrimental effects on Regulation 1.25 investments.

3. Foreign Sovereign Debt

The Commission proposes to remove foreign sovereign debt as a permitted investment in the interests of both simplifying the regulation and safeguarding customer funds. The 2007 Review revealed negligible investment in foreign sovereign debt[28] and that fact, in combination with recent events undermining confidence in the solvency of a number of foreign countries, supports the Commission's proposed action. Removal of foreign sovereign debt from the list of permitted investments is not expected to significantly impact FCM and DCO investment strategies for customer funds. The Commission notes that, aside from general appeals to maintain the current list of permitted investments, only one commenter specifically addressed foreign sovereign debt.[29]

Currently, an FCM or DCO can invest customer funds in foreign sovereign debt subject to two limitations: (1) The debt must be rated in the highest category by at least one nationally recognized statistical rating organization (NRSRO) and (2) the FCM or DCO may invest in such debt only to the extent it has balances in segregated accounts owed to its customers or its clearing member FCMs, respectively, denominated in that country's currency. The purpose of permitting investments in foreign sovereign debt is to facilitate investments of customer funds in the form of foreign currency without the need to convert that foreign currency to a U.S. dollar denominated asset, which would increase the FCM or DCO's exposure to currency risk. An investment in the sovereign debt of the same country that issues the foreign currency would limit the FCM or DCO's exposure to sovereign risk, *i.e.,* the risk of the sovereign's default.

Both the lack of investment in foreign sovereign debt and the recent global financial volatility have caused the Commission to reevaluate this provision. First, as noted above, it appears that foreign sovereign debt is rarely used as an investment tool by FCMs. Second, the financial crisis has highlighted the fact that certain countries' debt can exceed an acceptable level of risk.

In consideration of the above, the Commission proposes to remove foreign sovereign debt as a permitted investment under Regulation 1.25 and renumber paragraph (a)(1) accordingly. The Commission requests comment on whether foreign sovereign debt should remain, to any extent, as a permitted investment and, if so, what requirements or limitations might be imposed in order to minimize sovereign risk.

4. In-House Transactions

The Commission proposes to eliminate in-house transactions permitted under paragraph (a)(3) and subject to the requirements of paragraph (e) of Regulation 1.25. This proposal is consistent with the Commission's proposed prohibition on an FCM or DCO entering into a repurchase or reverse repurchase agreement with a counterparty that is an affiliate of the FCM or DCO.[30]

In 2005, two commenters recommended that the Commission permit FCMs that are dually registered as securities brokers or dealers to engage

[25] The 2007 Review indicated that out of 87 FCM respondents, only nine held commercial paper and seven held corporate notes/bonds as direct investments during the November 30, 2006–December 1, 2007 period. Further, 26 FCM respondents engaged in reverse repurchase agreements as of December 1, 2007 and none received commercial paper or corporate notes or bonds in those transactions.

[26] Letter from Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, to Debra Kokal, Chairman of the Joint Audit Committee (Jan. 15, 2010) (TLGP Letter).

[27] The original purpose of this paragraph was to set parameters for adjustable rate securities issued by corporations and, to a lesser extent, GSEs. As proposed, Regulation 1.25 would only permit corporate and GSE securities that had explicit U.S. Government guarantees. Therefore, the mechanics of an adjustable rate component for these instruments would no longer require oversight for Regulation 1.25 purposes.

[28] The 2007 Review indicated that out of 87 FCM respondents, only three held an investment in foreign sovereign debt at any time during that year. It should also be noted that only one FCM invested in such debt under Regulation 30.7.

[29] FIA, in its comment letter, recommended expanding investment in foreign sovereign debt beyond the current rule, which limits an FCM's investment in foreign sovereign debt to the amount of its liabilities to its clients in that foreign country's currency (FIA letter at 5). As the Commission is prepared to remove foreign sovereign debt entirely, a more detailed analysis of this recommendation is unnecessary.

[30] *See* discussion *infra* at Section II.D, regarding proposed Regulation 1.25(d)(3).

in in-house transactions.[31] At the time, the Commission concluded that in-house transactions would allow FCMs to realize "greater capital efficiency" and further reasoned that "the substitution of one permitted investment for another in an in-house transaction [would] not present an unacceptable level of risk to the customer segregated account."[32] The Commission therefore amended Regulation 1.25 to allow an FCM/broker-dealer to enter into transactions that are the economic equivalent of a repurchase or reverse repurchase agreement, subject to certain requirements.[33] More specifically, an FCM may exchange customer money for permitted investments held in its capacity as a broker-dealer, it may exchange customer securities for permitted investments held in its capacity as a broker-dealer, and it may exchange customer securities for cash held in its capacity as a broker-dealer.[34]

Recent market events have, however, increased concerns about the concentration of credit risk within the FCM/broker-dealer corporate entity in connection with in-house transactions. Therefore, consistent with the Commission's proposal to prohibit FCMs from entering into repurchase and reverse repurchase agreements with affiliates, the Commission is proposing to eliminate in-house transactions as permitted investments for customer funds under paragraph (a)(3) of Regulation 1.25 and rescind paragraph (e), which sets forth the requirements for in-house transactions. Accordingly, paragraph (f) will be redesignated as new paragraph (e).

The Commission requests comment on the impact of this proposal on the business practices of FCMs and DCOs. Specifically, the Commission requests that commenters present scenarios in which a repurchase or reverse repurchase agreement with a third party could not be satisfactorily substituted for an in-house transaction.

The Commission requests comment on any other aspect of the proposed changes to paragraph (a) of Regulation 1.25. In particular, the Commission solicits comment on whether MMMFs should be eliminated as a permitted investment.[35] In discussing whether MMMF investments satisfy the overall objective of preserving principal and maintaining liquidity, the Commission specifically requests comment on whether changes in the settlement mechanisms for the tri-party repo market might impact a MMMF's ability to meet the requirements of Regulation 1.25.[36]

B. General Terms and Conditions

FCMs and DCOs may invest customer funds only in enumerated permitted investments "consistent with the objectives of preserving principal and maintaining liquidity * * *."[37] In furtherance of this general standard, paragraph (b) of Regulation 1.25 establishes various specific requirements designed to minimize credit, market, and liquidity risk. Among them are a requirement that the investment be "readily marketable," that it meet specified rating requirements, and that it not exceed specified issuer concentration limits. The Commission is proposing to amend these standards to facilitate the preservation of principal and maintenance of liquidity by establishing clear, prudential standards that further investment quality and portfolio diversification. The Commission notes that an investment that meets the technical requirements of Regulation 1.25 but does not meet the overarching prudential standard cannot qualify as a permitted investment.

1. Marketability

Regulation 1.25(b)(1) states that "[e]xcept for interests in money market mutual funds, investments must be 'readily marketable' as defined in § 240.15c3–1 of this title."[38] The Commission proposes to remove the "readily marketable" requirement from paragraph (b)(1) and substitute in its place a "highly liquid" standard.[39] The Commission did not receive any comment letters specifically discussing the meaning and application of the "readily marketable" requirement.[40]

The term "ready market" is borrowed from the Securities and Exchange Commission (SEC) capital rules and is interpreted by the SEC.[41] That standard is used in setting appropriate haircuts for the purpose of calculating capital. Although its inclusion in Regulation 1.25 was intended to be a proxy for the concept of liquidity, it is not a concept that is otherwise easily applied as a prudential standard in determining the appropriateness of a debt instrument for investment of customer funds.

It is the Commission's view that the "readily marketable" language should be eliminated as it creates an overlapping and confusing standard when applied in the context of the express objective of "maintaining liquidity." While "liquidity" and "ready market" appear to be interchangeable concepts, they have distinctly different origins and uses: The objective of "maintaining liquidity" is to ensure that investments can be promptly liquidated in order to meet a margin call, pay variation settlement, or return funds to the customer upon demand. As noted above, the SEC's "ready market" standard is intended for a different purpose and is easier to apply to exchange traded equity securities than debt securities.

Although Regulation 1.25 requires that investments be consistent with the objective of maintaining liquidity, the Commission has not articulated an explanation or a definition of the concept of "liquidity." The Commission therefore proposes to define "highly liquid" functionally, as having the ability to be converted into cash within one business day, without a material discount in value. This approach focuses on outcome rather than process, and the Commission believes it will be easier to apply to debt securities than the current "readily marketable" standard.

An alternative to using a materiality standard in the definition of highly liquid is to employ a more formulaic and measurable approach. An example of a calculable standard would be one that provides that an instrument is

[31] *See* 70 FR at 28193 (FIA and Lehman Brothers supporting in-house transactions).

[32] 70 FR 5577, 5581 (Feb. 3, 2005).

[33] *See* Regulation 1.25(a)(3) and (e).

[34] Regulation 1.25(a)(3)(i)–(iii).

[35] MMMFs are discussed in greater detail *infra,* in Sections II.B.4 and II.C of this notice.

[36] An industry task force recently concluded an extensive review of the tri-party repo market to identify ways in which it could be improved. *See* Payments Risk Committee, Task Force on Tri-Party Repo Infrastructure, *http://www.newyorkfed.org/tripartyrepo/task_force_report.html* (May 17, 2010). In contrast to current practice, under which funds from maturing repos are available early in the day, modifications to the settlement arrangements for tri-party repo transactions may result in payments occurring later in the day. To the extent that MMMFs invest in tri-party repos, this change could impact their ability to pay out large amounts of cash early in the day.

[37] Regulation 1.25(b).

[38] *See* 17 CFR 240.15c3–1(c)(11)(i) (SEC regulation defining "ready market").

[39] Related to this proposed new standard, the provision in paragraph (a)(2)(ii)(A) that requires securities subject to repurchase agreements to be "'readily marketable' as defined in § 240.15c–1 of this title" also would be amended to provide that securities subject to repurchase agreements must be "'highly liquid' as defined in paragraph (b)(2) of this section."

[40] FIA, MF Global and Newedge mentioned marketability in their letters but no significant changes were recommended.

[41] The term "ready market" is defined, in relevant part, to "include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom." 17 CFR 240.15c3–1(c)(11)(i).

highly liquid if there is a reasonable basis to conclude that, under stable financial conditions, the instrument has the ability to be converted into cash within one business day, without greater than a 1 percent haircut off of its book value.

The Commission proposes to amend paragraph (b)(1) to eliminate the marketability standard and in its place establish a requirement that permitted investments be highly liquid. The Commission requests comment on whether the proposed definition of "highly liquid" accurately reflects the industry's understanding of that term, and whether the term "material" might be replaced with a more precise or, perhaps, even calculable standard. The Commission welcomes comment on the ease or difficulty in applying the proposed or alternative "highly liquid" standards.

2. Ratings

The Commission proposes to remove all rating requirements from Regulation 1.25. This proposal is mandated by Section 939A of the Dodd-Frank Act. Further, the proposal reflects the Commission's views that ratings are not sufficiently reliable as currently administered, that there is reduced need for a measure of credit risk given the proposed elimination of certain permitted investments, and that FCMs and DCOs should bear greater responsibility for understanding and evaluating their investments.[42]

The original purpose of imposing rating requirements was to mitigate credit risk associated with permitted investments which included commercial paper and corporate notes. Recent events in the financial markets, however, revealed significant weaknesses in the ratings industry.

Eliminating or restricting rating requirements has been considered by Congress and regulators with some frequency during the past two years. This has been motivated, at least in part, by public sentiment that credit rating agencies did not accurately rate debt in the months and years leading up to the financial crisis, worsening the financial crisis and increasing investors' losses. The SEC, in September 2009, adopted rule amendments that removed references to NRSROs from a variety of SEC rules and forms promulgated under the Securities Exchange Act of 1934 and from certain rules promulgated under the Investment Company Act of 1940 (Investment Company Act).[43] In November 2009, the SEC adopted rules imposing enhanced disclosure and conflict of interest requirements for NRSROs.[44] The SEC also has opened comment periods on other proposed amendments, including one that would remove references to NRSROs from its net capital rule.[45]

The Dodd-Frank Act contains several measures that focus both on decreasing reliance on NRSROs and improving the performance of NRSROs when they must be relied upon. Section 939 of the Dodd-Frank Act mandates the removal of certain references to NRSROs in several statutes,[46] and Section 939A requires all Federal agencies to review references to NRSROs in their regulations, to remove reliance on credit ratings and, if appropriate, to replace such reliance with other standards of credit-worthiness.

The Commission, therefore, intends to remove credit rating requirements from Regulation 1.25.[47] Alternative standards of credit-worthiness are not being proposed. Evidence that rating agencies have not reliably gauged the safety of debt instruments in the past and the fact that other Regulation 1.25 proposed amendments published in this notice obviate much of the need for credit ratings, have helped to shape the Commission's decision.

While some might argue that imperfect information is better than none at all, several factors outweigh the possible risks associated with removing rating requirements. First, eliminating commercial paper and corporate notes or bonds as permitted investments would take away a large class of potentially risky investments for which ratings would be relevant. Second, the issuer concentration limits and proposed asset-based concentration limits should reduce the likelihood that one problem investment would destabilize an entire investment portfolio. Finally, removing rating requirements would not absolve FCMs and DCOs from investing in safe, highly liquid investments; rather it would shift to FCMs and DCOs more of the responsibility to diligently research their investments.

In light of the above analysis, the Commission proposes to eliminate paragraph (b)(2) of Regulation 1.25 and renumber the subsequent provisions of paragraph (b) accordingly.

3. Restrictions on Instrument Features

Currently, both non-negotiable and negotiable CDs are permitted under Regulation 1.25. Paragraph (b)(3)(v) details the required redemption features of both types of CDs.

Non-negotiable CDs represent a direct obligation of the issuing bank to the purchaser. The CD is wholly owned by the purchaser until early redemption or the final maturity of the CD. To be permitted under Regulation 1.25, the terms of the CD must allow the purchaser to redeem the CD at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned. Therefore, other than in the event of a bank default, an investor is assured of the return of its principal.

Negotiable CDs are considerably different than non-negotiable CDs in that they are typically purchased by a broker on behalf of a large number of investors. The large size of the purchase by the broker results in a more favorable interest rate for the purchasers, who essentially own shares of the negotiable CD. Unlike a non-negotiable CD, the purchaser of a negotiable CD cannot redeem its interest from the issuing bank. Rather, an investor seeking redemption prior to a CD's maturity date must liquidate the CD in the secondary market. Depending on the negotiated CD terms (interest rate and duration) and the current economic conditions, the market for a given CD can be illiquid and can result in the inability to redeem within one business day and/or a significant loss of principal.

Therefore, the Commission proposes to amend paragraph (b)(3)(v) by restricting CDs to only those instruments which can be redeemed at the issuing bank within one business day, with any penalty for early withdrawal limited to accrued interest earned according to its written terms.[48]

[42] The Commission received three letters regarding rating requirements, but none focused on the question of whether or not to retain ratings.

[43] *See* 74 FR 52358 (Oct. 9, 2009) (publishing final rules and proposing additional rule amendments).

[44] *See* 74 FR 63832 (Dec. 4, 2009) (publishing final rules and proposing additional rule amendments).

[45] 74 FR at 52377–78 (proposing removal of certain references to NRSROs in the SEC's net capital rules for broker-dealers).

[46] Sections 7(b)(1)(E)(i), 28(d) and 28(e) of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519), Section 6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)), Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a), and Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)).

[47] *See infra* Section II.E.2 regarding the corresponding change in Regulation 30.7.

[48] While it proposes to eliminate negotiable CDs as an interest bearing vehicle for purposes of Regulation 1.25, the Commission notes that Section 627 of the Dodd-Frank Act removes the prohibition on payments of interest on demand deposits. Demand deposits which meet Regulation 1.25 standards of liquidity may, therefore, be a source of interest income to DCOs and FCMs.

4. Concentration Limits

Paragraph (b)(4) of Regulation 1.25 currently sets forth issuer-based concentration limits for direct investments, securities subject to repurchase or reverse repurchase agreements, and in-house transactions. The Commission proposes to adopt asset-based concentration limits for direct investments and a counterparty concentration limit for reverse repurchase agreements in addition to amending its issuer-based concentration limits and rescinding concentration limits applied to in-house transactions.[49]

(a) Asset-based concentration limits. Asset-based concentration limits would dictate the amount of funds an FCM or DCO could hold in any one class of investments, expressed as a percentage of total assets held in segregation. In their comment letters, the FIA, MF Global and Newedge specifically suggested the incorporation of asset-based concentration limits. The Commission agrees that such limits could increase the safety of customer funds by promoting diversification.

Specifically, the Commission proposes the following asset-based limits in light of its evaluation of credit, liquidity, and market risk:

- No concentration limit (100 percent) for U.S. government securities;
- A 50 percent concentration limit for U.S. agency obligations fully guaranteed as to principal and interest by the United States;
- A 25 percent concentration limit for TLGP guaranteed commercial paper and corporate notes or bonds;
- A 25 percent concentration limit for non-negotiable CDs;
- A 10 percent concentration limit for municipal securities; and
- A 10 percent concentration limit for interests in MMMFs.

Asset-based concentration limits are consistent with the Commission's historical view that not all permitted investments have identical risk profiles.[50] In its efforts to increase the safety of permitted investments on a portfolio basis, the Commission has decided to assign to each permitted investment an asset-based concentration limit that correlates to its level of risk and liquidity relative to other permitted investments.[51]

U.S. government securities are backed by the full faith and credit of the U.S. government, are highly liquid, and are the safest of the permitted investments. As such, the Commission proposes a 100 percent concentration limit, allowing an FCM or DCO to invest all of its segregated funds in U.S. government securities.[52]

U.S. agency obligations, as proposed, must be fully guaranteed as to principal and interest by the United States. The Commission views these as sufficiently safe but potentially not as liquid as a Treasury security. Because of this concern, and in the interest of promoting diversification, the Commission proposes a 50 percent concentration limit.[53]

The Commission categorizes TLGP debt securities as corporate securities,[54] which are riskier than U.S. government securities. While TLGP debt securities have an explicit FDIC guarantee, which provides confidence for TLGP debt investors that they will receive the full amount of principal and interest in the event of an issuer default, the timing of such a payment is uncertain. Additionally, while TLGP debt securities that meet the Commission's requirements have a liquid secondary market, that might not always be the case. The Commission therefore proposes to apply a 25 percent concentration limit for TLGP debt securities as well.

CDs are safe for relatively small amounts, but the risk increases for larger sums. The rise in bank failures since 2008 is a cause for concern with regard to CDs because they are FDIC insured to a maximum of only $250,000. As a result, the Commission proposes to apply a 25 percent concentration limit to CDs.

In evaluating possible asset-based concentration limits for TLGP debt securities and CDs, the Commission determined that the same concentration limit should apply to both, even though the risk profiles of the asset classes are different. The Commission recognizes that TLGP debt securities pose no risk to principal, unlike bank CDs which are subject to the possible default of the issuing bank. However, a CD which must be redeemable within one business day under Regulation 1.25(b)(3)(v) could prove to be more liquid than TLGP debt securities during a time of market stress. The Commission requests comment on whether there should be differentiation between asset-based concentration limits for TLGP debt securities and CDs and, if so, what those different concentration limits should be.

Municipal securities are backed by the state or local government that issues them, and they have traditionally been viewed as a safe investment. However, municipal securities have been volatile and, in some cases, increasingly illiquid over the past two years. Therefore, the Commission proposes to apply a 10 percent concentration limit to municipal securities.[55]

MMMFs have been widely used as an investment for customer segregated funds.[56] As discussed in the next section, their portfolio diversification, administrative ease, and heightened prudential standards recently imposed by the SEC, continue to make MMMFs an attractive investment option. However, their volatility during the 2008 financial crisis, which culminated in one fund "breaking the buck" and many more funds requiring infusions of capital, underscores the fact that investments in MMMFs are not without risk.[57] To mitigate these risks, the Commission proposes to assign a 10 percent concentration limit for MMMFs.[58] The Commission believes that this concentration limit is commensurate with the risks posed by MMMFs. The Commission solicits comment regarding whether 10 percent is an appropriate asset-based concentration limit for MMMFs. The Commission welcomes opinions on what alternative asset-based concentration limit might be appropriate for MMMFs and, if such

[49] The Commission is aware that other diversification methods exist or could be devised (such as the diversification requirements for MMMF investments in CME's IEF2 collateral management program) and believes that such methods can coexist with the proposed concentration limits.

[50] *See* 70 FR at 5581 (discussing the relative risk profiles of permitted investments in the context of repurchase agreements).

[51] The Commission notes that paragraphs (b)(4)(ii)–(iii) of Regulation 1.25 would apply to both asset-based and issuer-based concentration limits. Therefore, for the purpose of calculating asset-based concentration limits, instruments purchased by an FCM or DCO as a result of a reverse repurchase agreement under paragraph (b)(4)(iii) would be combined with instruments held by the FCM or DCO as direct investments.

[52] FIA, MF Global and Newedge each assigned a 100 percent concentration limit to U.S. government securities. *See* FIA letter at 3, MF Global letter at 2, and Newedge letter at 5.

[53] FIA, MF Global and Newedge each assigned a 75 percent concentration limit to GSE securities. *See* FIA letter at 3, MF Global letter at 2, and Newedge letter at 5.

[54] *See* TLGP Letter.

[55] FIA, MF Global and Newedge each assigned a 25 percent concentration limit to all assets that were not U.S. government securities, GSE securities or MMMFs. *See* FIA letter at 3, MF Global letter at 2, and Newedge letter at 5.

[56] The 2007 Review indicated that out of 87 FCM respondents, 46 had invested customer funds in MMMFs at some point during the November 30, 2006–December 1, 2007 period.

[57] *See* 75 FR 10060, 10078 n.234 (Mar. 4, 2010).

[58] FIA recommended a 100 percent concentration limit, Newedge recommended a 50 percent concentration limit, and MF Global recommended a 25 percent concentration limit for MMMFs. *See* FIA letter at 3, Newedge letter at 5, and MF Global letter at 2.

asset-based concentration limit is higher than 10 percent, what corresponding issuer-based concentration limit should be adopted.

(b) Issuer-based concentration limits. The Commission has considered the current concentration limits and proposes to amend its issuer-based limits for direct investments to include a 2 percent limit for an MMMF family of funds, expressed as a percentage of total assets held in segregation. Currently, there is no concentration limit applied to MMMFs and the Commission believes that it is prudent to require FCMs and DCOs to diversify their MMMF portfolios. The 25 percent issuer-based limitation for GSEs (now U.S. agency obligations) and the 5 percent issuer-based limitation for municipal securities, commercial paper, corporate notes or bonds, and CDs will remain in place.

(c) Counterparty concentration limits. Finally, the Commission proposes a counterparty concentration limit of 5 percent of total assets held in segregation for securities subject to reverse repurchase agreements. Under Regulation 1.25(b)(4)(iii), concentration limits for reverse repurchase agreements are derived from the concentration limits that would have been assigned to the underlying securities had the FCM or DCO made a direct investment. Therefore, under current rules, an FCM or DCO could have 100 percent of its segregated funds subject to one reverse repurchase agreement. The obvious concern in such a scenario is the credit risk of the counterparty. This credit risk, while concentrated, is significantly mitigated by the fact that in exchange for cash, the FCM or DCO is holding Regulation 1.25-permissible securities of equivalent or greater value. However, a default by the counterparty would put pressure on the FCM or DCO to convert such securities into cash immediately and would exacerbate the market risk to the FCM or DCO, given that a decrease in the value of the security or an increase in interest rates could result in the FCM or DCO realizing a loss. Even though the market risk would be mitigated by asset-based and issuer-based concentration limits, a situation of this type could seriously jeopardize an FCM or DCO's overall ability to preserve principal and maintain liquidity with respect to customer funds.

In accordance with the above discussion, the Commission proposes to amend paragraph (b)(4) to add a new paragraph (i) setting forth asset-based concentration limits for direct investments; amend and renumber as new paragraph (ii) issuer-based concentration limits for direct investments; amend and renumber as new paragraph (iii) concentration limits for reverse repurchase agreements; delete the existing paragraph (iv) due to the Commission's proposed elimination of in-house transactions; renumber as a new paragraph (iv) the provision regarding treatment of customer-owned securities; and add a new paragraph (v) setting forth counterparty concentration limits for reverse repurchase agreements.

The Commission requests comment on any and all aspects of the proposed concentration limits, including whether asset-based concentration limits are an effective means for facilitating investment portfolio diversification and whether there are other methods that should be considered. In addition, the Commission requests comment on whether the proposed concentration levels are appropriate for the categories of investments to which they are assigned and whether there should be different standards for FCMs and DCOs.

C. Money Market Mutual Funds

The continued use of MMMFs was the sole focus of five comment letters,[59] a substantial focus of one,[60] and referenced positively by an additional four.[61] Taken together, the letters conveyed a consensus that MMMFs are both safe and administratively efficient. In their respective comment letters, Federated noted that MMMFs are subject to the overlapping regulatory regimes overseen by the SEC, and ICI highlighted the quality, liquidity and diversity of an MMMF's holdings. Further, TSI noted that out of 700–800 MMMFs, only one failed during the September 2008 financial turmoil, a crisis which Dreyfus likened to a "1,000 year flood."

While the Commission appreciates the benefits of MMMFs, it also is cognizant of their risks. Reserve Primary Fund, the September 2008 failure referenced by TSI, was an MMMF that satisfied the enumerated requirements of Regulation 1.25 and at one point was a $63 billion fund. The Reserve Primary Fund's breaking the buck called attention to the risk to principal and potential lack of sufficient liquidity of any MMMF investment. In the wake of the Reserve Primary Fund problem, the Commission has been forced to consider the possibility that any number of MMMFs that meet the technical requirements of Regulation 1.25(c) might not meet the Regulation 1.25 objective of preserving principal and maintaining liquidity, particularly during volatile market conditions.[62] Lending credence to such concerns, the SEC has estimated that, in order to avoid breaking the buck, nearly 20 percent of all MMMFs received financial support from their money managers or affiliates from mid-2007 through the end of 2008.[63]

In response to the potential risks posed by investments in MMMFs, the Commission is proposing to institute the concentration limits discussed above. However, the Commission has decided to refrain from further restricting investments in MMMFs at this time. The Commission is hopeful that the combination of its asset-based limitations, issuer-based limitations applied to a single family of funds, and the SEC's recent MMMF reforms will adequately address the risks associated with MMMFs.[64]

The Commission requests comment on whether MMMF investments should be limited to Treasury MMMFs,[65] or to those MMMFs that have portfolios consisting only of permitted investments under Regulation 1.25.

The Commission is proposing two technical amendments to paragraph (c) of Regulation 1.25. First, the Commission is proposing to clarify the acknowledgment letter requirement under paragraph (c)(3); and second, the Commission is proposing to revise and clarify the exceptions to the next-day redemption requirement under paragraph (c)(5)(ii).

1. Acknowledgment Letters

The Commission is proposing to amend Regulation 1.25(c)(3) to clarify

[59] *See* Crane letter, Dreyfus letter, Federated letter I, ICI letter, and TSI letter.

[60] *See* CME letter at 5–6.

[61] *See* FCStone letter at 2, MF Global letter at 2, Newedge letter at 5, and NFA letter at 1.

[62] *See* 75 FR at 10078 n.234 (SEC final rulemaking adopting amendments to regulations governing MMMFs, describing the September 2008 run on MMMFs: "On September 17, 2008, approximately 25% of prime institutional money market funds experienced outflows greater than 5% of total assets; on September 18, 2008, approximately 30% of prime institutional money market funds experienced outflows greater than 5%; and on September 19, 2008, approximately 22% of prime institutional money market funds experienced outflows greater than 5%").

[63] *See* 74 FR 32688, 32693 (July 8, 2009).

[64] *See* 75 FR 10060 (SEC final rulemaking decreasing the percentage of second tier securities (which are securities that do not receive the highest rating from an NRSRO or, if unrated, securities that are comparable in quality to securities that do not receive the highest rating from an NRSRO) from 5 percent to 3 percent, reducing the dollar-weighted average portfolio maturity from 90 days to 60 days, introducing a dollar-weighted average life to maturity of 120 days, and imposing new daily and weekly liquidity requirements, among others).

[65] A "Treasuries fund" must have at least 80 percent of its assets invested in U.S. treasuries at all times, as required by 17 CFR 270.35d–1.

the appropriate party to provide an acknowledgment letter where customer funds are invested in MMMFs. Regulation 1.26 requires an FCM or DCO which invests customer funds in instruments permitted under Regulation 1.25 to create a segregated account at a depository for such instruments and to obtain an acknowledgment letter from the depository. Because interests in MMMFs generally are not held at a depository in the first instance, like other permitted investments, Regulation 1.25(c)(3) currently provides an exception to the Regulation 1.26 requirement that an acknowledgment letter be provided by a depository. Regulation 1.25(c)(3) requires the "sponsor of the fund and the fund itself" to provide an acknowledgment letter when the MMMF shares are held by a fund's shareholder servicing agent.

The Commission has received a number of inquiries regarding the meaning of this provision and the definition of "sponsor," a term that is not defined in the Investment Company Act. While the term is not defined, it is nonetheless used throughout the Investment Company Act and is generally understood to refer to the entity that organizes the fund. Such an entity typically provides seed capital to the investment company and may be an affiliated investment adviser or underwriter to the investment company.

The Commission seeks to clarify that the intent of Regulation 1.25(c)(3) is to require an acknowledgment letter from a party that has substantial control over the fund's assets and has the knowledge and authority to facilitate redemption and payment or transfer of the customer segregated funds invested in shares of an MMMF. The Commission has concluded that in many circumstances, the fund sponsor, the investment adviser, or fund manager would satisfy this requirement. To the extent there are circumstances where an entity such as the Administrator would be in this position, proposed Regulation 1.25(c)(3) encompasses such an entity. The Commission requests comment on whether the proposed standard is appropriate and whether there are other entities that could serve as examples.

The Commission is also proposing to remove the current language in Regulation 1.25(c)(3) relating to the issuer of the acknowledgment letter when the shares of the fund are held by the fund's shareholder servicing agent. This revision is designed to eliminate any confusion as to whether the acknowledgment letter requirement is applied differently based on the presence or absence of a shareholder servicing agent. The Commission requests comment on whether removal of this language helps clarify the intent of Regulation 1.25(c)(3).

The Commission is accordingly proposing to amend Regulation 1.25(c)(3) to set forth a functional definition accompanied by specific examples. The proposed amendment would require an FCM or DCO to obtain the acknowledgment letter required by Regulation 1.26[66] from an entity that has substantial control over the fund's assets and has the knowledge and authority to facilitate redemption and payment or transfer of the customer segregated funds. The proposed language would specify that such an entity may include the fund sponsor or investment adviser.[67]

2. Next-Day Redemption Requirement

Regulation 1.25(c) requires that "[a] fund shall be legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request."[68] This "next-day redemption" requirement is a significant feature of Regulation 1.25 and is meant to ensure adequate liquidity.[69] Regulation 1.25(c)(5)(ii) lists four exceptions to the next-day redemption requirement, and incorporates by reference the emergency conditions listed in Section 22(e) of the Investment Company Act (Section 22(e)).[70] The Commission has received questions from FCMs regarding Regulation 1.25(c)(5), particularly because the exceptions listed in paragraph (c)(5)(ii) overlap with some of those appearing in Section 22(e).

Recently, as part of its MMMF reform initiative, the SEC adopted a rule that provides the basis for another exception to the next-day redemption requirement.[71] Promulgated under Section 22(e), Rule 22e–3[72] permits MMMFs to suspend redemptions and postpone payment of redemption proceeds in order to facilitate an orderly liquidation of the fund.[73] Before Rule 22e–3 may be invoked, the fund's board, including a majority of its disinterested directors, must determine that the extent of the deviation between the fund's amortized cost per share and its current net asset value per share may result in material dilution or other unfair results,[74] and the board, including a majority of its disinterested directors, must irrevocably approve the liquidation of the fund.[75] In addition, prior to suspending redemption, the fund must notify the SEC of its decision.[76]

In order to expressly incorporate Rule 22e–3 into the permitted exceptions for purposes of clarity, and to otherwise clarify the existing exceptions to the next-day redemption requirement, the Commission has decided to amend paragraph (c)(5)(ii) of Regulation 1.25 by more closely aligning the language of that paragraph with the language in Section 22(e) and specifically including Rule 22e–3. Section 22(e) will, however, continue to be incorporated by reference so as to provide for any future amendment or regulatory actions by the SEC.

The Commission will include, as Appendix A to the rule text, safe harbor language that can be used by MMMFs to ensure that their prospectuses comply with Regulation 1.25(c)(5). The proposed language tracks the proposed paragraph (c)(5).

The Commission requests comment on all aspects of its proposed amendments to paragraph (c). The Commission seeks comment specifically on any proposed regulatory language that commenters believe requires further clarification. In addition, commenters are invited to submit views on the usefulness and substance of the proposed safe harbor language contained in proposed Appendix A.

D. Repurchase and Reverse Repurchase Agreements

The Commission proposes to eliminate repurchase and reverse repurchase transactions with affiliate counterparties. This amendment forwards the interests of both protecting

[66] In a related proposed rulemaking, the Commission has proposed to add a new paragraph (c) to Regulation 1.26 which would specifically govern acknowledgment letters for MMMFs. The Commission also has proposed a mandatory form of acknowledgment letter in proposed Appendix A to Regulation 1.26. *See* 75 FR 47738 (Aug. 9, 2010).

[67] A fund sponsor or investment adviser would be identified as appropriate entities to provide an acknowledgment letter, because they would typically be expected to satisfy the proposed standard. However, in any circumstance where the fund sponsor or investment adviser does not meet that standard, the acknowledgment letter would have to be obtained from another entity that can meet the regulatory requirement.

[68] Regulation 1.25(c)(5)(i).

[69] *See* 70 FR 5585 (noting that "[t]he Commission believes the one-day liquidity requirement for investments in MMMFs is necessary to ensure that the funding requirements of FCMs will not be impeded by a long liquidity time frame.").

[70] 15 U.S.C. 80a–22(e).

[71] *See* Letter from Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, to Debra Kokal, Chairman of the Joint Audit Committee (June 3, 2010) (stating that Rule 22e–3 falls within the exceptions to the next-day redemption requirement under Regulation 1.25).

[72] 17 CFR 270.22e–3.

[73] *See* 75 FR at 10088.

[74] 17 CFR 270.22e–3(a)(1).

[75] 17 CFR 270.22e–3(a)(2).

[76] 17 CFT 270.22e–3(a)(3).

customer funds as well as establishing consistency within the regulation, which would no longer permit in-house transactions and currently prohibits investments in instruments issued by affiliates.

Repurchase and reverse repurchase transactions were originally included as permitted investments to increase the liquidity in the portfolio of segregated funds.[77] By entering into repurchase agreements with unaffiliated counterparties, FCMs can convert securities holdings into cash or alternatively supply cash to market participants in exchange for liquid securities. In the event that a counterparty receiving cash defaults, the other party is protected due to its holding of the counterparty's securities. Reverse repurchase and repurchase agreements contribute generally to increased market liquidity and are not inconsistent with the required safety of customer funds.

The benefits of such an arrangement are diminished, however, when repurchase agreements are between affiliates. In particular, the concentration of credit risk increases the likelihood that the default of one party could exacerbate financial strains and lead to the default of its affiliate. While such a scenario would be unexpected in calm markets, during periods of financial turbulence such problems are considerably more likely to occur. It should be noted that the actions of market participants suggest that even possession and control of liquid securities may be insufficient to alleviate concerns relating to transactions with financially troubled counterparties.[78]

Further, the interests of consistency of the regulation weigh in favor of disallowing repurchase agreements between affiliates. Currently, a repurchase agreement between affiliates is allowed under Regulation 1.25(d), while investments in debt instruments issued by an affiliate—effectively a collateralized loan between affiliates—is prohibited by paragraph (b)(6). A repurchase agreement is functionally equivalent to a short-term collateralized loan. In both transactions, one party provides cash to another party, secured by assets owned by the other party, and, in return, the other party repays the cash, plus interest, and its assets are returned. The similarity of the two transactions would seem to require similar treatment under Regulation 1.25.

Therefore, the Commission proposes to amend paragraph (d) by adding new paragraph (3) prohibiting repurchase and reverse repurchase agreements with affiliates. Current paragraphs (3) through (12) will be renumbered as (4) through (13), accordingly. The Commission seeks comment on its proposal to eliminate repurchase and reverse repurchase transactions with affiliate counterparties.

E. Regulation 30.7

1. Harmonization

The Commission proposes to harmonize Regulation 30.7 with the investment limitations of Regulation 1.25. As noted above, the Commission has not previously restricted investments of 30.7 funds to the permitted investments under Regulation 1.25, although Regulation 1.25 limitations can be used as a safe harbor for such investments.[79] The Commission now believes that it is appropriate to align the investment standards of Regulation 30.7 with those of Regulation 1.25 because many of the same prudential concerns arise with respect to both segregated customer funds and 30.7 funds. Such a limitation should increase the safety of 30.7 funds and provide clarity for the FCMs, DCOs, and designated self-regulatory organizations.

The Commission anticipates that the impact of this amendment will be slight, as it appears that using Regulation 1.25 standards in 30.7 investments is a common industry practice. For example, Newedge commented that the harmonization of Regulations 1.25 and 30.7 "would reflect current market practice * * *" since, in its opinion, "* * * many if not most FCMs currently invest Part 30.7 funds in the same products and transactions in which they invest Rule 1.25 funds."[80] FIA also noted that its "member firms generally follow the Rule 1.25 investment guidelines" when investing 30.7 funds.[81] In addition to adding new paragraph (g) to Regulation 30.7 to reflect this amendment, the Form 1–FR–FCM instruction manual would be revised accordingly.[82]

The Commission solicits comment on applying the requirements of Regulation 1.25 to 30.7 funds. In this regard, the Commission seeks comment on any differences between customer segregated funds and 30.7 funds that would warrant the continuing application of different standards.

2. Ratings

The Commission proposes to remove all rating requirements from Regulation 30.7. This proposal is required by Section 939A of the Dodd-Frank Act and further reflects the Commission's views on the unreliability of ratings as currently administered and its interest in aligning Regulation 30.7 with Regulation 1.25.[83]

The only reference to credit ratings in Regulation 30.7 is in paragraph (c)(1)(ii)(B). Paragraph (c)(1)(ii) permits 30.7 funds to be kept in an account with a depository outside the United States if the depository meets any of three alternative standards: (1) The depository has in excess of $1 billion of regulatory capital, (2) the depository or its parent's "commercial paper or long-term debt instrument * * * is rated in one of the two highest rating categories by at least one" NRSRO, or (3) if it does not meet either of the first two criteria, the depository has been permitted to hold 30.7 funds upon the request of a customer.

The use of the credit rating of the commercial paper or long-term debt of the depository institution is comparable to the standard used to gauge the safety of an issuer of a CD.[84] The Commission has viewed credit ratings as unreliable to gauge the safety of an issuer of a CD and proposed, in Section II.B.2 of this notice, to remove this requirement from Regulation 1.25. The Commission now proposes to remove paragraph (c)(1)(ii)(B) in Regulation 30.7 as it views an NRSRO rating as similarly unreliable to gauge the safety of a depository institution for 30.7 funds. This proposal also serves to align

[77] 65 FR 39008, 39015 (June 22, 2000).

[78] *See* SEC Press Release No. 2008–46, "Answers to Frequently Asked Investor Questions Regarding the Bear Stearns Companies, Inc." (Mar. 18, 2008), *available at http://www.sec.gov/news/press/2008/2008-46.htm* (noting that rumors of liquidity problems at Bear Stearns caused their counterparties to become concerned, creating a "crisis of confidence" which led to the counterparties' "unwilling[ness] to make secured funding available to Bear Stearns on customary terms.").

[79] *See* Commission Form 1–FR–FCM Instructions at 12–9 (Mar. 2010) ("In investing funds required to be maintained in separate section 30.7 account(s), FCMs are bound by their fiduciary obligations to customers and the requirement that the secured amount required to be set aside be at all times liquid and sufficient to cover all obligations to such customers. Regulation 1.25 investments would be appropriate, as would investments in any other readily marketable securities.").

[80] Newedge letter at 4.

[81] FIA letter at 5.

[82] Pending adoption of final amendments to Regulation 30.7, the Commission will revise the section headed "Permissible Investments of Part 30 Set-Aside Funds" on page 12–9 to align with, and refer back to, the discussion of Regulation 1.25 investments on pages 10–7 and 10–8.

[83] *See* discussion *supra* Section II.B.2 regarding the Commission's policy decision to remove references to credit ratings from Regulation 1.25 and other regulations.

[84] *See* Regulation 1.25(b)(2)(i)(E).

Regulation 30.7 with Regulation 1.25 on the topic of NRSROs.

The Commission requests comment on whether there is a standard or measure of solvency and credit-worthiness that can be used as an additional test of a bank's safety. Specifically, the Commission seeks comment on whether a leverage ratio or a capital adequacy ratio requirement consistent with or similar to those in the Basel III accords [85] would be an appropriate additional safeguard for a bank or trust company located outside the United States.

3. Designation as a Depository for 30.7 Funds

Under Regulation 30.7(c)(1)(ii)(C), a bank or trust company that does not otherwise meet the requirements of paragraph (c)(1)(ii) may still be designated as an acceptable depository by request of its customer and with the approval of the Commission. The Commission proposes to no longer allow a customer to request that a bank or trust company located outside the United States be designated as a depository for 30.7 funds. The Commission has never allowed a bank or trust company located outside the United States to be a depository through these means, and believes that it is appropriate to require that all depositories meet the regulatory capital requirement under paragraph (c)(1)(ii)(A).

Therefore, the Commission proposes to amend Regulation 30.7 by deleting paragraph (c)(1)(ii)(C). The Commission requests comment on whether an exception of any kind to Regulation 30.7(c)(1)(ii) is appropriate.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [86] requires federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rule amendments proposed herein will affect FCMs and DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[87] The Commission has previously determined that registered FCMs [88] and DCOs [89] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these proposed rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the CEA [90] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

Summary of proposed requirements. The proposed rules would facilitate greater protection of customer funds and 30.7 funds and reduction of systemic risk by establishing stricter prudential standards for investment of such funds. The proposed amendments restrict the scope of permitted investments to reflect the current economic environment. During the prior ten-year period, starting with the December 2000 rulemaking, Regulation 1.25 was substantially revised and expanded. The more restrictive proposals contained herein are based on the Commission's experience over the course of the past decade and, in particular, since September 2008, during which certain permitted investments under Regulation 1.25 were shown to present potentially unacceptable levels of risk. In narrowing the scope of Regulation 1.25 (as to both type and characteristics of permitted investments), the Commission's primary purpose is to safeguard the funds of customers and, in so doing, to help ease the chain reaction of negative effects that can come about during a financial crisis in the broader financial marketplace.

Costs. With respect to costs, the Commission has determined that any costs associated with the proposal are outweighed by its benefits. The Commission recognizes that scaling back on the type and form of permitted investments could result in certain FCMs and DCOs earning less income from their investments of customer funds. This, in turn, could reduce an FCM or DCO's overall profits and create an incentive for them to charge higher fees to customers. The Commission believes, however, that the potential loss of income for those FCMs and DCOs whose investment strategies will be materially affected by the proposed amendments will be outweighed by the reduction in potential risk associated with the current regulatory standards for permitted investments. To the extent that customers may bear the cost of the proposed changes, the customers will nonetheless benefit from greater protection of their funds. Eliminating the option of a customer to designate, with the Commission's permission, a foreign depository for 30.7 funds would potentially limit the choices of suitable depositories. However, the presence of alternative depositories would mitigate any adverse impact. The proposed amendments would not affect the efficiency or competitiveness of futures markets, and the proposed amendments will not affect price discovery.

Benefits. With respect to benefits, the Commission has determined that the proposal will result in several benefits. First, the risk-reducing nature of the proposed amendments would facilitate greater financial integrity of FCMs and DCOs and, as a result, futures markets more generally. Essential to the proper functioning of futures markets is the financial integrity of the clearing

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[85] *See* Press Release, Basel Committee on Banking Supervision, Group of Governors and Heads of Supervision Announces Higher Global Minimum Capital Standards (Sept. 12, 2010), *http://bis.org/press/p100912.pdf.*

[86] 5 U.S.C. 601 *et seq.*

[87] 47 FR 18618 (Apr. 30, 1982).

[88] *Id.* at 18619.

[89] 66 FR 45604, 45609 (Aug. 29, 2001).

[90] 7 U.S.C. 19(a).

process, which is dependent upon the immediate availability of sufficient funds for daily pays and collects and default management.

The proposed amendments would also raise the standards for risk management practices of FCMs and DCOs that invest customer funds. They balance the need for investment flexibility and capital efficiency with the need to preserve principal and maintain liquidity. In particular, the proposal both narrows the scope of permitted investments to only those that the Commission considers the safest, and mandates diversification well beyond previous requirements. The Commission believes that these structural safeguards will decrease the credit, market, and liquidity risk exposures of FCMs and DCOs. Moreover, the revised requirements will more closely align with the investment restrictions contained in Section 4d of the Act.

Also, the Commission recognizes that many, if not most, FCMs and DCOs are already engaging in sound risk management practices and are pursuing responsible investment strategies under the existing regulatory regime. However, the Commission believes that in an environment where many of its previous economic assumptions are called into question, it becomes necessary to establish new bright line requirements to better ensure proper risk management in connection with the investment of customer segregated and 30.7 funds.

The proposed amendments retain an appropriate degree of flexibility in making investments with customer segregated and 30.7 funds, while significantly strengthening the rules that protect the safety of such funds. In addition, eliminating the option of a customer to designate, with the Commission's permission, a foreign depository for 30.7 funds that otherwise would not meet the requirements of Regulation 30.7 both closes a loophole that might have allowed for a less financially sound depository to hold 30.7 funds and eliminates the need for the Commission to individually review the safety and soundness of foreign depositories.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters are also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 30

Commodity futures, Consumer protection, Currency, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, in particular, Sections 4d, 4(c), and 8a(5) thereof, 7 U.S.C. 6d, 6(c) and 12a(5), respectively, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Revise § 1.25 to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) Obligations of any United States government corporation or enterprise sponsored by the United States government and fully guaranteed as to principal and interest by the United States (U.S. agency obligations);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (commercial paper);

(vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (corporate notes or bonds); and

(vii) Interests in money market mutual funds.

(2)(i) In addition, a futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(ii) A futures commission merchant or a derivatives clearing organization may sell securities deposited by customers as margin pursuant to agreements to repurchase subject to the following:

(A) Securities subject to such repurchase agreements must be "highly liquid" as defined in paragraph (b)(1) of this section.

(B) Securities subject to such repurchase agreements must not be "specifically identifiable property" as defined in § 190.01(kk) of this chapter.

(C) The terms and conditions of such an agreement to repurchase must be in accordance with the provisions of paragraph (d) of this section.

(D) Upon the default by a counterparty to a repurchase agreement, the futures commission merchant or derivatives clearing organization shall act promptly to ensure that the default does not result in any direct or indirect cost or expense to the customer.

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

(1) *Liquidity.* Investments must be "highly liquid" such that they have the ability to be converted into cash within one business day without material discount in value.

(2) *Restrictions on instrument features.* (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, except that the issuer of an instrument otherwise permitted by this section may have an option to call, in whole or in part, at par, the principal amount of the instrument before its stated maturity date; *provided, however,* that the terms of such instrument obligate the issuer to

repay the principal amount of the instrument at not less than par value upon maturity.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark, and it may not otherwise constitute a derivative instrument.

(iv) Commercial paper and corporate notes or bonds must meet the following criteria:

(A) The size of the issuance must be greater than $1 billion;

(B) The instrument must be denominated in U.S. dollars; and

(C) The instrument must be fully guaranteed as to principal and interest by the United States for its entire term.

(v) Certificates of deposit must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(3) *Concentration.* (i) *Asset-based concentration limits for direct investments.* (A) Investments in U.S. government securities shall not be subject to a concentration limit.

(B) Investments in U.S. agency obligations may not exceed 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Investments in each of commercial paper, corporate notes or bonds and certificates of deposit may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Investments in each of municipal securities and money market mutual funds may not exceed 10 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(ii) *Issuer-based concentration limits for direct investments.* (A) Securities of any single issuer of U.S. agency obligations held by a futures commission merchant of derivatives clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(B) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes or bonds held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Interests in any single family of money market mutual funds may not exceed 2 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) For purposes of determining compliance with the issuer-based concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(5) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(iii) *Concentration limits for agreements to repurchase.* (A) *Repurchase agreements.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities sold by a futures commission merchant or derivatives clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(B) *Reverse repurchase agreements.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities purchased by a futures commission merchant or derivatives clearing organization subject to agreements to resell shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iv) *Treatment of customer-owned securities.* For purposes of determining compliance with the asset-based and issuer-based concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a derivatives clearing organization are not included in total assets held in segregation by the derivatives clearing organization.

(v) *Counterparty concentration limits.* Securities purchased by a futures commission merchant or derivatives clearing organization from a single counterparty, subject to an agreement to resell to that counterparty, shall not exceed 5 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(4) *Time-to-maturity.* (i) Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(ii) For purposes of determining the time-to-maturity of the portfolio, an instrument that is set forth in paragraphs (a)(1)(i) through (vii) of this section may be treated as having a one-day time-to-maturity if the following terms and conditions are satisfied:

(A) The instrument is deposited solely on an overnight basis with a derivatives clearing organization pursuant to the terms and conditions of a collateral management program that has become effective in accordance with § 39.4 of this chapter;

(B) The instrument is one that the futures commission merchant owns or has an unqualified right to pledge, is not subject to any lien, and is deposited by the futures commission merchant into a segregated account at a derivatives clearing organization;

(C) The derivatives clearing organization prices the instrument each day based on the current mark-to-market value; and

(D) The derivatives clearing organization reduces the assigned value of the instrument each day by a haircut of at least 2 percent.

(5) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a derivatives clearing organization shall not invest customer funds in obligations of an entity affiliated with the derivatives clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or derivatives clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or derivatives clearing organization.

(6) *Recordkeeping.* A futures commission merchant and a derivatives clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with § 270.2a–7 of this title.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation.

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with § 1.26(c). The futures commission merchant or the derivatives clearing organization shall obtain the acknowledgment letter required by § 1.26(c) from an entity that has substantial control over the fund's assets and has the knowledge and authority to facilitate redemption and payment or transfer of the customer segregated funds. Such entity may include the fund sponsor or investment adviser.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or derivatives clearing organization by that time.

(5)(i) General requirement for redemption of interests. A fund shall be legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request, and the futures commission merchant or derivatives clearing organization shall retain documentation demonstrating compliance with this requirement.

(ii) Exception. A fund may provide for the postponement of redemption and payment due to any of the following circumstances:

(A) For any period during which there is a non-routine closure of the Fedwire or applicable Federal Reserve Banks;

(B) For any period:

(1) During which the New York Stock Exchange is closed other than customary week-end and holiday closings; or

(2) During which trading on the New York Stock Exchange is restricted;

(C) For any period during which an emergency exists as a result of which:

(1) Disposal by the company of securities owned by it is not reasonably practicable; or

(2) It is not reasonably practicable for such company fairly to determine the value of its net assets;

(D) For any period as the Securities and Exchange Commission may by order permit for the protection of security holders of the company;

(E) For any period during which the Securities and Exchange Commission has, by rule or regulation, deemed that:

(1) Trading shall be restricted; or

(2) An emergency exists; or

(F) For any period during which each of the conditions of § 270.22e–3(a)(1) through (3) of this title are met.

(6) The agreement pursuant to which the futures commission merchant or derivatives clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(7) Appendix A to this section sets forth language that will satisfy the requirements of paragraph (c)(5) of this section.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Permitted counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) A futures commission merchant or derivatives clearing organization shall not enter into an agreement to repurchase or resell with a counterparty that is an affiliate of the futures commission merchant or derivatives clearing organization, respectively. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(4) The transaction is executed in compliance with the concentration limit requirements applicable to the securities transferred to the customer segregated custodial account in connection with the agreements to repurchase referred to in paragraphs (b)(3)(iii)(A) and (B) of this section.

(5) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (13) of this section and which states that the parties thereto intend the transaction to be treated as a purchase and sale of securities.

(6) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(8) The futures commission merchant or the derivatives clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a "delivery versus delivery" basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(9) The transfer of securities to the customer segregated custodial account is made on a delivery versus payment basis in immediately available funds. The transfer of funds to the customer segregated cash account is made on a payment versus delivery basis. The transfer is not recognized as accomplished until the funds and/or

securities are actually received by the custodian of the futures commission merchant's or derivatives clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or derivatives clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(10) A written confirmation to the futures commission merchant or derivatives clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or derivatives clearing organization is issued once the transaction is reversed.

(11) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(12) An actual transfer of securities to the customer segregated custodial account by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as "customer property."

(13) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or derivatives clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or derivatives clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; *provided, however,* that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

Appendix to § 1.25—Money Market Mutual Fund Prospectus Provisions Acceptable for Compliance With Paragraph (c)(5)

Upon receipt of a proper redemption request submitted in a timely manner and otherwise in accordance with the redemption procedures set forth in this prospectus, the [Name of Fund] will redeem the requested shares and make a payment to you in satisfaction thereof no later than the business day following the redemption request. The [Name of Fund] may postpone and/or suspend redemption and payment beyond one business day only as follows:

a. For any period during which there is a non-routine closure of the Fedwire or applicable Federal Reserve Banks;

b. For any period (1) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (2) during which trading on the New York Stock Exchange is restricted;

c. For any period during which an emergency exists as a result of which (1) disposal of securities owned by the [Name of Fund] is not reasonably practicable or (2) it is not reasonably practicable for the [Name of Fund] to fairly determine the net asset value of shares of the [Name of Fund];

d. For any period during which the Securities and Exchange Commission has, by rule or regulation, deemed that (1) trading shall be restricted or (2) an emergency exists;

e. For any period that the Securities and Exchange Commission, may by order permit for your protection; or

f. For any period during which the [Name of Fund,] as part of a necessary liquidation of the fund, has properly postponed and/or suspended redemption of shares and payment in accordance with federal securities laws.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

3. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

4. In § 30.7, revise paragraph (c) and add paragraph (g) to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(c)(1) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States;

(ii) A bank or trust company located outside the United States that has in excess of $1 billion of regulatory capital;

(iii) A futures commission merchant registered as such with the Commission;

(iv) A derivates clearing organization;

(v) A member of any foreign board of trade; or

(vi) Such member or clearing organization's designated depositories.

(2) Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

* * * * *

(g) Each futures commission merchant that invests customer funds held in the account or accounts referred to in paragraph (a) of this section must invest such funds pursuant to the requirements of § 1.25 of this chapter.

Issued in Washington, DC, on October 26, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following statement will not appear in the Code of Federal Regulations.

Statement of Chairman Gary Gensler

Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions

October 26, 2010

I support today's Commission vote on the proposed rulemaking regarding the investment of customer segregated and secured amount funds. This rulemaking fulfills part of the Dodd-Frank Act's requirement that the Commission remove all reliance on credit ratings from its regulations. In addition, the rule enhances protections regarding where derivatives clearing organizations (DCOs) and futures commission merchants (FCMs) can invest customer funds. The market events of the last two years have underscored the importance of prudent investment standards to ensure the financial integrity of DCOs and FCMs and of maximizing protection of customer funds.

[FR Doc. 2010–27657 Filed 11–2–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

RIN Number 3038–AD27

Prohibition of Market Manipulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing rules to implement new anti-manipulation authority in section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rules expand and codify the Commission's authority to prohibit manipulation.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by RIN number AD27, by any of the following methods:

- *Agency Web Site, via its Comments Online process:* Comments may be submitted to: *http://comments.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert Pease, Counsel to the Director of Enforcement, 202–418–5863, *rpease@cftc.gov* or Mark D. Higgins, Counsel to the Director of Enforcement, 202–418–5864, *mhiggins@cftc.gov,* Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act [3] amended the Commodity Exchange Act ("CEA") [4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

In addition, Title VII of the Dodd-Frank Act contains expanded and clarified authority to prohibit manipulative behavior.

Section 753 of the Dodd-Frank Act amends section 6(c) of the CEA to expand the authority of the Commission to prohibit fraudulent and manipulative behavior. New CEA section 6(c)(1), which prohibits the use or employment of any manipulative or deceptive device or contrivance, requires the Commission to promulgate implementing rules within one year of enactment of the Dodd-Frank Act. The Commission also proposes to implement regulations pursuant to section 6(c)(3) of the CEA under its general rulemaking authority in section 8(a)(5) of the CEA.[5]

Accordingly, the Commission is proposing rules to address manipulative behavior. The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Manipulation Under Section 753

A. Section 753's Amendments to the CEA

Section 753 of the Dodd-Frank Act gives the Commission enhanced "anti-manipulation authority" as part of its expanded enforcement powers. It does so by amending section 6(c) of the CEA in a number of respects.

First, section 753 adds a new subsection (c)(1). Subsection (c)(1) broadly prohibits fraud-based manipulative schemes as follows:

> It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Act, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.* (2006).

[5] 7 U.S.C. 12a(5).

In addition, section 753 adds subsections (c)(1)(A), (B), and (C). Subsection (c)(1)(A) is a "Special Provision for Manipulation by False Reporting." This subsection provides that:

> Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

Section 6(c)(1)(C) provides that "Good Faith Mistakes" in the transmission of "false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A)."

Subsection (c)(1)(B), captioned: "Effect on Other Law," provides that nothing in Dodd-Frank shall affect, or be construed to affect, the applicability of CEA section 9(a)(2). Section 9(a)(2) is a provision in the CEA prohibiting, among other things, market manipulation and false reporting.[6]

Dodd-Frank Act section 753 also adds a new CEA section 6(c)(2), which is a "Prohibition Regarding False Information." A prohibition regarding false information was previously in section 6(c) of the CEA,[7] but Dodd-Frank Act section 753 revises it to include not only false statements made in registration applications or reports filed with the Commission but now also any statement of material fact made to the Commission in any context. New section 6(c)(2) reads as follows:

> It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

Finally, section 753 creates a new CEA section 6(c)(3), entitled "other manipulation."[8] This provision provides that "[i]n addition to" the prohibition in section 6(c)(1):

> it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

B. Overview of the Commission's Proposed Rules Under Section 753

The Commission proposes two rules under section 753. The first rule would be promulgated pursuant to new CEA section 6(c)(1), under which rulemaking is mandatory and must be completed within one year after the date of enactment of the Dodd-Frank Act (July 21, 2010). The second rule would be promulgated pursuant to new section 6(c)(3), and is proposed pursuant to the Commission's general rulemaking authority under section 8(a)(5) of the CEA.

The remaining provisions of section 753, including provisions prohibiting false reporting and information, are self-actuating; no rulemakings are needed to implement them. These new provisions will be automatically effective one year from the date of enactment of the Dodd-Frank Act. The Commission's authority under CEA section 9(a)(2) is not affected by new sections 6(c)(1) or (3).

1. Section 6(c)(1)

The text of CEA section (c)(1) is patterned after section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act").[9] Exchange Act section 10(b) has been interpreted as a broad, "catch-all" prohibition on fraud and manipulation.[10] Likewise, the Commission proposes to interpret CEA section 6(c)(1) as a broad, catch-all provision reaching fraud in all its forms—that is, intentional or reckless conduct that deceives or defrauds market participants. Subsection (c)(1) is also similar to the anti-manipulation authority granted to the Federal Energy Regulatory Commission ("FERC") in sections 315 and 1283 of the Energy Policy Act of 2005, amending the Natural Gas Act and the Federal Power Act, respectively,[11] and the Federal Trade Commission ("FTC") in sections 811 and 812 of the Energy Independence and Security Act of 2007.[12]

The SEC promulgated Rule 10b–5 to implement section 10(b) of the Exchange Act.[13] The FERC and the FTC have promulgated rules based on SEC Rule 10b–5 to implement their respective statutory anti-manipulation authority, but have modified SEC Rule 10b–5 as appropriate to reflect their distinct regulatory missions and responsibilities.[14]

Guided by section 6(c)(1)'s similarity to Exchange Act section 10(b), the Commission proposes an implementing rule that is also modeled on SEC Rule 10b–5, with modification to reflect the CFTC's distinct regulatory mission and responsibilities.

2. Section 6(c)(3)

Before enactment of the Dodd-Frank Act, the Commission charged manipulation and attempted manipulation under CEA sections 6(c), 6(d), and 9(a)(2).[15] In Dodd-Frank, Congress provided a direct statutory prohibition on manipulation of prices of swaps, futures contracts, and commodities. The Commission proposes a rule under its general rulemaking authority, section 8(a)(5) of the CEA that mirrors the text of new CEA section 6(c)(3). The Commission proposes to continue interpreting the prohibition on price manipulation and attempted price manipulation to encompass every effort to improperly influence the price of a swap, commodity, or commodity futures contract.

C. The Proposed Rule Under CEA Section 6(c)(1)

Pursuant to section 6(c)(1) of the CEA, as added by section 753(a) of Dodd-Frank, the Commission proposes to add a new Part 180.

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[6] 7 U.S.C. 13(a)(2) states that it shall be a felony punishable by a fine of not more than $1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for [a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (e) of subsection 4c, section 4h, section 4o(1) or section 19.

[7] 7 U.S.C. 9, 15; *see also* Section 9(a) of the CEA, 7 U.S.C. 13(a)(2).

[8] While this is a new statutory provision, the conduct prohibited is generally prohibited by CEA section 9(a)(2).

[9] 15 U.S.C. 78j(b).

[10] *Chiarella* v. *United States,* 445 U.S. 222, 226 (1980) ("Section 10(b) was designed as a catch-all clause to prevent fraudulent practices").

[11] Energy Policy Act of 2005, Public Law 109–58, §§ 315, 1283, 119 Stat. 594 (2005) (amending 15 U.S.C. 717c–1; 16 U.S.C. 824v).

[12] Energy Independence and Security Act of 2007, Public Law 110–140, §§ 811, 812, 121 Stat. 1492 (2007) (amending 42 U.S.C. 17301, 17302).

[13] 17 CFR 240.10b–5.

[14] 18 CFR Part 1c (FERC Rules prohibiting energy market manipulation); 16 CFR Part 317 (FTC Rule prohibiting energy market manipulation).

[15] As stated above, the amendments to CEA section 6 do not affect the Commission's authority under section 9(a)(2).

As stated in proposed § 180.1 (as set forth in the regulatory text of this proposed rule), the proposed rule is modeled, in part, on SEC Rule 10b–5, with modification to account for the unique regulatory mission of the CFTC. The discussion below is intended to give notice of how the Commission intends to interpret the elements of the Commission's proposed rule.

1. Manipulative or Deceptive Device or Contrivance

One purpose of the Commodity Exchange Act is to "deter and prevent price manipulation or any other disruptions to market integrity." [16] The Commission has historically relied upon multiple provisions of the CEA, including section 9(a)(2) and old section 6(c), to prevent and deter price manipulation of commodities in interstate commerce or for future delivery through administrative and civil enforcement actions.[17] Section 9(a)(2) makes it unlawful for any person "to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery * * *" [18] The Dodd-Frank Act preserves this purpose and the Commission's authority to pursue instances of price manipulation and attempted price manipulation by making clear in new section 6(c)(1)(B) that nothing in section 6(c)(1) affects the applicability of section 9(a)(2), and by adding new section 6(c)(3), both of which are classified as anti-manipulation provisions.

The scope of new section 6(c)(1) differs from that of sections 9(a)(2) and 6(c)(3) in that it prohibits the use or employment of "any manipulative or deceptive device or contrivance" in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery. For example, this provision has been interpreted in the SEC Rule 10b–5 context as prohibiting all practices "that are intended to mislead investors by artificially affecting market activity." [19] Consistent with judicial interpretations of the scope of SEC Rule 10b–5, the Commission proposes that subsection (c)(1) be given a broad, remedial reading, embracing the use or employment, or attempted use or employment, of any manipulative or deceptive contrivance for the purpose of impairing, obstructing, or defeating the integrity of the markets subject to the jurisdiction of the Commission.[20]

2. Scienter

The Commission proposes that, consistent with the Supreme Court's interpretation of Exchange Act section 10(b) and SEC Rule 10b–5, a person must act with "scienter" in order to violate subsection 6(c)(1) of the CEA and the Commission's implementing rule.[21] "Scienter" in this context refers to a mental state embracing intent to deceive, manipulate or defraud, and it includes recklessness.[22] Just as negligent conduct, even gross negligence, will not satisfy the scienter requirement under Exchange Act section 10(b) and SEC Rule 10b–5 (nor under the anti-fraud provision in CEA section 4b),[23] the Commission similarly proposes that only intentional or reckless conduct may violate CEA subsection 6(c)(1) and the Commission's implementing rule. Moreover, the Commission proposes that judicial precedent interpreting and applying Exchange Act section 10(b) and SEC Rule 10b–5 in the context of the securities markets should guide, but not control, application of the scienter standard under subsection 6(c)(1) and the Commission's implementing rule. The Commission believes that sufficient leeway must be given to permit application of the scienter standard under subsection 6(c)(1) and the Commission's implementing rule in a manner that comports with the purposes of the CEA and the functioning of the markets regulated by the CFTC. Therefore, application of the proposed scienter standard under subsection 6(c)(1) and the Commission's implementing rule will be tailored to the facts and circumstances of each case.

3. In Connection With

Consistent with Supreme Court precedent interpreting the words "in connection with" in the context of section 10(b) of the Exchange Act and SEC Rule 10b–5, the Commission proposes that "in connection with" under (c)(1) be given the same meaning—that is, where the scheme to defraud and the transactions subject to the jurisdiction of the Commission "coincide." [24] Guided by securities law precedent, the Commission proposes this requirement would be satisfied whenever misstatements or other relevant conduct are made in a manner

[16] 7 U.S.C. 5(b) (2006).

[17] In case law, "[t]he Commission has long recognized that the intent to create an artificial price is the *sine qua non* of manipulation." *In re Sumitomo Corporation,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,327 at 46,499 (CFTC May 11, 1998), citing *In re Indiana Farm Bureau Cooperative Assoc., Inc.,* [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,282 (CFTC Dec. 17, 1982).

[18] 7 U.S.C. 13(a)(2).

[19] *Santa Fe Industries, Inc.* v. *Green,* 430 U.S. 462, 494 (1977).

[20] *See, e.g., Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 202–03 (1976) (holding section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and SEC Rule 10b–5 thereunder [17 CFR 240.10b–5], on which section 753(c)(1) and the proposed rule are modeled, contain "catch-all" clauses that prohibit all fraudulent securities trading schemes, whether typical or novel); *SEC* v. *Zandford,* 535 U.S. 813, 819 (2002) (stating section 10(b) of the Exchange Act, "should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes") (internal citations and quotations omitted); *Superintendent of Ins. of N.Y.* v. *Bankers Life & Casualty Co.,* 404 U.S. 6, 12 (1971) (noting that section 10(b) of the Exchange Act "must be read flexibly, not technically and restrictively"); *Dennis* v. *United States,* 384 U.S. 855, 861 (1966) (noting that fraud within the meaning of a statute prohibiting conspiracy to defraud the United States, 18 U.S.C.A. § 371, need not be confined to the common law definition of fraud: Any false statement, misrepresentation or deceit. Instead, fraud "reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government") (internal quotations and citations omitted); *United States* v. *Richter,* 610 F.Supp. 480 (N.D. Ill. 1985), *affirmed, United States* v. *Mangovski,* 785 F.2d 312 (7th Cir. 1986), *affirmed, United States* v. *Konstantinov,* 793 F.2d 1296 (7th Cir. 1986). *See also* FERC, Prohibition of Energy Market Manipulation, 71 FR 4244, 4253 (Jan. 26, 2006) ("[f]inal rule prohibits the use or employment of any device, scheme, or artifice to defraud. The Commission defines fraud generally, that is, to include any action, transaction, or conspiracy for the purpose of impairing, obstructing or defeating a well-functioning market") (citations omitted).

[21] *Ernst,* 425 U.S. at 192–93 (holding that scienter is required for private actions for damages under Section 10(b) and SEC Rule 10b–5); *Aaron* v. *SEC,* 446 U.S. 680, 691 (1980) (applying *Ernst* to SEC action for injunctive relief under same provisions, and holding that its rationale "ineluctably leads to the conclusion that scienter is an element of a violation of § 10(b) and SEC Rule 10b–5, regardless of the identity of the plaintiff or the nature of the relief sought"); *See also Drexel Burnham Lambert, Inc.* v. *CFTC,* 850 F.2d 742, 748 (DC Cir. 1988) (applying same requirement to the general fraud provision in section 4(b) of the CEA, 7 U.S.C. 6(b)).

[22] *See, e.g., Ernst,* 425 U.S. at 193; *Hoffman* v. *Estabrook & Co.,* 587 F.2d 509, 516–17 (1st Cir. 1978); *Grebel* v. *FTP Software, Inc.,* 194 F.3d 185 (1st Cir. 1999); *Novak* v. *Kasaks,* 216 F.3d 300, 308 (2d Cir. 2000); *In re Advanta,* 180 F.3d 525, 535 (3d Cir. 1999); *Ottman* v. *Hangar,* 353 F.3d 338, 343–44 (4th Cir. 2003); *Nathenson* v. *Zonagen Inc.,* 267 F.3d 400, 408 (5th Cir. 2001); *In re Comshare, Inc. Securities Litig.,* 183 F.3d 543, 550 (6th Cir. 1999); *Sundstrand Corp.* v. *Sun Chemical Corp.,* 553 F.2d 1033, 1045 (7th Cir. 1977); *Fla. State Bd. of Admin.* v. *Green Tree Fin. Corp.,* 270 F.3d 645, 654 (8th Cir. 2001); *In Re Silicon Graphics Sec. Litig.,* 183 F.3d 970, 977 (9th Cir. 1999); *Howard* v. *Everex,* 228 F.3d 1057, 1064 (9th Cir. 2000); *City of Philadelphia* v. *Fleming Cos.,* 264 F.3d 1245, 1258, 1260 (10th Cir. 2001); *Bryant* v. *Avardo Brands, Inc.,* 187 F.3d 1271, 1282 (11th Cir. 1999); *Rockies Fund* v. *SEC,* 428 F.3d 1088, 1093 (DC Cir. 2005).

[23] *See, e.g., Ernst,* 425 U.S. at 214; *see also, Drexel Burnham Lambert, Inc.* v. *CFTC,* 850 F.2d at 742, 748 (DC Cir. 1988) ("mere negligence, mistake, or inadvertence fails to meet [CEA] section 4b's scienter requirement * * * a degree of intent beyond carelessness or negligence" is necessary to violate CEA section 4b.) (citations omitted).

[24] *SEC* v. *Zandford,* 535 U.S. at 822 ("It is enough that the scheme to defraud and the sale of securities coincide.").

reasonably calculated to influence market participants.[25]

4. Reliance, Loss Causation and Damages

Like precedent under both SEC Rule 10b–5 and CEA section 4b, the Commission proposes that the common law elements of fraud, reliance, loss causation, and damages, are not needed to establish a violation of subsection 6(c)(1) and the Commission's implementing rule in the context of an enforcement action.[26]

Reliance, loss causation and damages are elements of private claims, but not enforcement actions brought by the CFTC or SEC.[27] This is so because the government's duty is to enforce the remedial and preventative terms of the statute in the public interest, and not merely to police those whose plain violations have already caused demonstrable loss or injury.[28] However, reliance, loss causation, and damages may be relevant in any Commission determination of the appropriate penalty or remedy for a violation.

5. Attempt

The Commission's proposed rule under (c)(1) explicitly prohibits attempted fraud. The Commission proposes that an "attempt" here, as elsewhere in the CEA, requires: (1) the requisite intent and (2) an overt act in furtherance of that intent.[29]

6. Materiality

Sections (1)(b) and (2) of the Commission's proposed rule incorporate the concept of materiality. In the securities context, the Supreme Court has rejected the adoption of a bright-line rule to determine materiality.[30] Instead, the Supreme Court directed lower courts to engage in a "fact-specific inquiry" in assessing materiality in securities cases.[31] The Commission proposes that the determination of whether a fact is "material" be fact and circumstance dependent.[32] The Commission proposes that the standard for materiality should be objective rather than subjective.[33] That is, the test is whether a reasonable person would have considered the fact material. Further, as a general proposition, statements of optimism alone (*i.e.,* "puffery") are not material.[34] Finally, with respect to omissions, the Commission proposes that an omission be considered material if there is a substantial likelihood that the omitted fact would have been viewed by a reasonable person as having significantly altered the total mix of information available.[35]

D. The Proposed Rule Under CEA Section 6(c)(3)

The Commission proposes a rule under new CEA section 6(c)(3) that mirrors the statute, making it:

> unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

The Commission proposes to continue interpreting the prohibition on price manipulation and attempted price manipulation to encompass every effort to influence the price of a swap, commodity, or commodity futures contract that is intended to interfere with the legitimate forces of supply and demand in the marketplace.[36] The Commission reaffirms this broad reading of the term "manipulation" with respect to new CEA section 6(c)(3), while also recognizing that manipulation cases are fact-intensive and that the law in this area will continue to evolve largely on a case-by-case basis.

Early manipulation cases involving "corners" and "squeezes" produced an analytical framework that has since been applied in a wide variety of other factual situations not involving "market power."[37] That framework requires that the Commission establish: "(1) That the accused had the ability to influence market prices; (2) that they specifically intended to do so; (3) that artificial prices existed; and (4) that the accused caused the artificial prices."[38] The Commission reaffirms this four-part test and, in the section to follow, discusses the element of artificial price.

1. Price Affected by Factors Outside of the Forces of Supply and Demand

The traditional framework for price manipulation has required demonstrating the existence of an "artificial price." In various circumstances, extensive economic analysis may not be necessary to demonstrate that this element has been met. The conclusion that prices were affected by a factor not consistent with normal forces of supply and demand will often follow inescapably from proof of the actions of the alleged manipulator. For example, in one of the landmark manipulation cases,[39] the respondent placed an order well above the price he needed to pay for egg futures so that the closing price would influence the market to place a higher than expected value on futures contracts for November 1968 eggs. The

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[25] *See United States SEC* v. *Pirate Investor LLC,* 580 F.3d 233, 249 (4th Cir. 2009) citing *SEC* v. *Rana Research, Inc.,* 8 F.3d 1358, 1362 (9th Cir. 1993) (affirming the Second Circuit's holding in *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 862 (2d Cir. 1968) that SEC Rule 10b–5 is violated whenever assertions are made in a manner reasonably calculated to influence the investing public).

[26] *Berko* v. *SEC,* 316 F.2d 137, 143 (2d Cir. 1963) (reliance, loss causation and damages not relevant because "the Commission's duty is to enforce the remedial and preventive terms of the statute in the public interest, and not merely to police those whose plain violations have already caused demonstrable loss or injury"); *accord United States* v. *Davis,* 226 F.3d 346, 358 (5th Cir. 2000); *United States* v. *Haddy,* 134 F.3d 542 (3d Cir. 1998); *Slusser* v. *CFTC,* 210 F.3d 783, 785–87 (7th Cir. 2000).

[27] *Id.*

[28] *Berko,* 316 F.2d at 143.

[29] *See, e.g., In re Hohenberg Bros. Co.,* [1975–1977 Transfer Binder] No. 75–4, Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477. (CFTC Feb. 18, 1977).

[30] *Basic Inc.* v. *Levinson,* 485 U.S. 224, 236 & n.14 (1988) ("A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the Securities Acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive").

[31] *Id.* at 240. *See also SEC* v. *Talbot,* 530 F.3d 1085, 1097 (9th Cir. 2008) (quoting *Arrington* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 651 F.2d 615, 619 (9th Cir. 1981) ("Questions of materiality [under the securities laws] * * * involv[e] assessments peculiarly within the province of the trier of fact").

[32] Dodd-Frank section 6(c)(1) makes clear that "no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect."

[33] *Cf. TSC Indus., Inc.* v. *Northway, Inc.,* 426 U.S. 438, 445 (1976).

[34] *Cf. Raab* v. *General Physics Corp.,* 4 F.3d 286, 289–90 (4th Cir. 1993).

[35] *Cf. TSC Indus.,* 426 U.S. at 449; *Basic,* 485 U.S. at 231–32.

[36] *See Cargill, Inc.* v. *Hardin, Secretary of Agriculture,* 452 F.2d 1154, 1163 (8th Cir. 1971) ("The methods and techniques of manipulation are limited only by the ingenuity of man. The aim must be therefore to discover whether conduct has been intentionally engaged in which has resulted in a price that does not reflect basic forces of supply and demand").

[37] *See, e.g., In re DiPlacido,* 2008 WL 4831204 (CFTC 2008), *aff'd in pertinent part, DiPlacido* v. *Commodity Futures Trading Comm'n,* 364 Fed.Appx. 657, 2009 WL 3326624 (2d Cir. 2009), Comm. Fut. L. Rep. ¶ 31,434 (noting evolution of analytical framework and applying it to scheme affecting settlement price); *In re Henner,* 30 Agric. Dec. 1151 (1971) (applying traditional framework *sub silentio* to scheme involving uneconomic behavior); *In re Soybean Futures Litig.,* 892 F. Supp. 1025, 1047 (N.D. Ill. 1995) (While the traditional framework derived from "market power" cases such as corners and squeezes, market power is not a necessary element of manipulation cases.).

[38] *In re Cox,* [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,786 at 34,061 (CFTC July 15, 1987).

[39] *In re Henner,* 30 Agric. Dec. 1151.

Commission's predecessor agency sustained the finding of the judicial officer that:

> [t]he inference is inescapable that the respondent paid more than he had to * * * for the purpose of causing the closing price to be at that high level. No further proof is needed to show that the settlement price was artificial.[40]

The Commission recently cited this "conclusive presumption" with approval in *In re DiPlacido.*[41] In that case, DiPlacido placed proportionately large orders, in an illiquid market, while ignoring more favorable bids and offers, so that closing prices for electricity futures would be inflated. These actions convinced the Commission and the Second Circuit Court of Appeals that the resulting closing prices were *de facto* illegitimate.[42] Cases of this nature, where distorted prices foreseeably follow from the device employed by the manipulator, do not require detailed economic analysis of the effect on prices.[43] As the Commission explained in *In re Hohenberg Bros:*[44]

> [T]o determine whether an artificial price has occurred one must look at the aggregate forces of supply and demand and search for those factors which are extraneous to the pricing system, are not a legitimate part of the economic pricing system, are not a legitimate part of the economic pricing of the commodity, or are extrinsic to that commodity market. When the aggregate forces of supply and demand bearing on a particular market are all legitimate, it follows that the price will not be artificial. On the other hand, *when a price is affected by a factor which is not legitimate, the resulting price is necessarily artificial. Thus, the focus should not be as much on the ultimate price, as on the nature of the factors causing it.* (emphasis added).

In keeping with the fact-intensive nature of manipulation cases, the Commission recognizes that economic analysis may in some cases be appropriate to determine whether the conduct in question actually caused an artificial price. The Commission stresses, however, that an illegal effect on price can often be conclusively presumed from the nature of the conduct in question and other factual circumstances not requiring expert economic analysis.

The Commission also emphasizes, consistent with the weight of existing precedent, that the conduct giving rise to a manipulation charge need not itself be fraudulent or otherwise illegal.[45] The actions of the respondents in *Zenith-Godley,*[46] *Henner,*[47] and *DiPlacido,*[48] for instance, were not intrinsically fraudulent or otherwise illegal apart from violating the CEA, and the manipulation charges were sustained in each of those cases.

2. Attempt

The Commission's proposed anti-manipulation rule under (c)(3) explicitly prohibits attempted price manipulation. The Commission proposes that attempt here, as elsewhere in the CEA, requires: (1) The requisite intent and (2) an overt act in furtherance of that intent.[49]

III. Request for Comment

The Commission requests comment on all aspects of the proposed rules.

IV. Administrative Compliance

A. Cost-Benefit Analysis

Section 15(a) of the CEA[50] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the regulation outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

With respect to benefits, the proposed rules would enhance the authority of the Commission to ensure fair and equitable markets. The Commission has determined that market participants and the public will benefit substantially from prevention and deterrence of manipulation. Markets that are free of market manipulation will function better as venues for price discovery and hedging.

With respect to costs, the Commission has determined that participants in the markets should already have mechanisms in place to ensure that their employees and agents will refrain from attempting to manipulate the markets.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed rules with their comment letters.

B. Anti-Trust Considerations

Section 15(b) of the CEA, 7 U.S.C. 19(b), requires the Commission to consider the public interests protected by the antitrust laws and to take actions involving the least anti-competitive means of achieving the objectives of the CEA. The Commission believes that the proposed rules will have a positive effect on competition by improving the fairness and efficiency of the markets through reducing the adverse effects of manipulation and disruptive practices.

C. Paperwork Reduction Act

The provisions of the proposed Commission Regulation [17 CFR Part 180] would not result in new recordkeeping requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").

D. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[51] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[52] The rules proposed by the

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[40] 30 Agric. Dec. 1151, 1194.

[41] *In re DiPlacido,* 2008 WL 4831204 (CFTC 2008), *aff'd in pertinent part, DiPlacido* v. *Commodity Futures Trading Comm'n,* 364 Fed.Appx. 657, 2009 WL 3326624 (2d Cir. 2009), Comm. Fut. L. Rep. ¶ 31,434, *cert. denied,* 130 S. Ct. 1883 (2010).

[42] *Id.*

[43] *See, e.g., In re Eisler and First West Trading, Inc.,* [2003–2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,664 at 55,837, 2004 WL 77924 (CFTC Jan. 20, 2004) (involving direct falsification of data input to calculation of settlement prices).

[44] [1975–1977 Transfer Binder] No. 75–4, Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (emphasis added); *see also, United States* v. *Reliant Energy Services, Inc.,* 420 F. Supp. 2d 1043 (N.D. Cal. 2006).

[45] *See, e.g., Cargill, Inc.* v. *Hardin,* 452 F.2d 1154 (8th Cir. 1971); *G.H. Miller & Co.* v. *United States,* 260 F.2d 286 (7th Cir. 1958).

[46] *In re Zenith-Godley Co., Inc. and John McClay, Jr.,* 6 Agric. Dec. 900 (1947) (extravagant purchases of butter for the purpose of supporting milk prices).

[47] *In re Henner,* 30 Agric. Dec. 1155.

[48] *In re DiPlacido,* 2008 WL 4831204 (CFTC 2008), *aff'd in pertinent part, DiPlacido* v. *Commodity Futures Trading Comm'n,* 364 Fed.Appx. 657, 2009 WL 3326624 (2d Cir. 2009), Comm. Fut. L. Rep. ¶ 31,434.

[49] *See, e.g., In re Hohenberg Bros.,* [1975–1977 Transfer Binder] No. 75–4, Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477.

[50] 7 U.S.C. 19(a).

[51] 5 U.S.C. 601.

[52] *Id.*

Commission will not have a significant economic impact on a substantial number of small entities. As explained above, legitimate market participants should already have procedures in place to prevent their employees and agents from manipulating the markets. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rules will not have a significant impact on a substantial number of small entities.

E. Congressional Review Act

The Congressional Review Act establishes certain procedures for major rules, defined as those rules that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. These proposed rules are not subject to any of those requirements because they would not have any of these substantial impacts; rather, they should result in significant economic benefits.

List of Subjects in 17 CFR Part 180

Commodity futures.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to add a new 17 CFR Part 180 as set forth below:

PART 180—PROHIBITIONS AGAINST MANIPULATION

Sec.

Authority: 7 U.S.C. 6c(a), 9, 12(a)(5) and 15, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (June 16, 2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

§ 180.1 Prohibition against manipulation.

(a) It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;

(2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;

(3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; or,

(4) Deliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate. Notwithstanding the foregoing, no violation of this section shall exist where the person mistakenly transmits, in good faith, false or misleading information to a price reporting service.

(b) Nothing in this section shall be construed to require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Nothing in this section shall affect, or be construed to affect, the applicability of Commodity Exchange Act section 9(a)(2).

§ 180.2 Other manipulation.

It shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

Issued in Washington, DC, on October 26, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Prohibition of Market Manipulation

October 26, 2010

I support the proposed rulemaking to enhance the Commission's ability to protect against manipulation. Today's rule builds upon important new authorities that Congress granted the Commission to protect market participants in the commodities, futures and swaps markets. Together with the authority granted by Congress to prohibit disruptive trading, this proposed rule gives the Commission the broad new ability to effectively combat fraud and manipulation. The proposed rulemaking promotes fair and efficient markets, for the first time allowing the Commission to protect against fraud-based manipulation. I thank Senator Cantwell for her leadership in bringing this important new authority to the Commission.

[FR Doc. 2010–27541 Filed 11–2–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Extension of the Comment Period

AGENCIES: Employment and Training Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 5, 2010, the Employment and Training Administration (ETA) issued a Notice of Proposed Rulemaking (NPRM) to amend its regulations governing the certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. The proposed rule provided a comment period for the regulatory text through November 4, 2010. The agency has received several requests to extend the comment period and has decided to extend the comment period for an additional 8 days, to November 12, 2010.

DATES: The comment period for the notice of proposed rulemaking published October 5, 2010, 75 FR 61578 is extended through November 12, 2010. Interested persons are invited to submit written comments on the proposed rule on or before November 12, 2010.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB61, by any one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.
- *Hand Delivery/Courier:* Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. The Department of Labor (Department) will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the ETA Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information contact William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 5, 2010 the Employment and Training Administration issued an NPRM to amend its regulations governing the certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. 75 FR 61578, Oct. 5, 2010. The NPRM provided a comment period for the regulatory text through November 4, 2010. The agency has received several requests to extend the comment period and have decided to extend the comment period for an additional 8 days, to November 12, 2010. Given the complexity of the NPRM and the level of interest, as well as the Department's interest in receiving comments, the comment period is being extended until November 12, 2010.

Signed in Washington, DC, this 27th day of October 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–27602 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2010–0007; Notice No. 110]

RIN 1513–AB58

Labeling Imported Wines With Multistate Appellations (2008R–265P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to amend the wine labeling regulations to allow the labeling of imported wines with multistate appellations of origin. This amendment would provide treatment for imported wines similar to that currently available to domestic wines bearing multistate appellations. It would also provide consumers with additional information regarding the origin of these wines.

DATES: We must receive written comments on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2010–0007 at "Regulations.gov," the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal within Docket No. TTB–2010–0007 at *http://www.regulations.gov.* A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 110. You also may view copies of this notice, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA, 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Use of Appellations of Origin on Wine Labels

Part 4 of the TTB regulations (27 CFR part 4) sets forth standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.25 of the TTB regulations (27 CFR 4.25) sets forth rules regarding the use of appellations of origin. An appellation of origin for an American wine is defined in § 4.25(a)(1) as:

- The United States;
- A State;
- Two or no more than three States which are all contiguous;
- A county;
- Two or no more than three counties in the same States; or
- A viticultural area as defined in § 4.25(e)(1)(i).

Section 4.25(b)(1) provides that an American wine is entitled to an appellation of origin other than a multicounty or multistate appellation, or a viticultural area, if, among other requirements, at least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated. Use of an appellation of origin comprising two or no more than three contiguous States is allowed under § 4.25(d) if:

- All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;
- The wine has been fully finished (except for cellar treatment pursuant to 27 CFR 4.22(c) and blending that does not result in an alteration of class or type under 27 CFR 4.22(b)) in one of the labeled appellation States; and
- The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

An appellation of origin for imported wine is defined in § 4.25(a)(2) as:

- A country;
- A state, province, territory, or similar political subdivision of a country equivalent to a state or county; or
- A viticultural area (which is defined in § 4.25(e)(1)(ii) in the case of imported wine).

Section 4.25(b)(2) provides that an imported wine is entitled to an appellation of origin other than a viticultural area if: "(1) At least 75 percent of the wine is derived from fruit or agricultural products grown in the area indicated by the appellation of origin; and (2) the wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin." There is no provision in the current TTB regulations for the use of multistate appellations on imported wines.

The existing regulations regarding appellations of origin, including the provisions permitting multistate appellations for American wines, were promulgated by our predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), in T.D. ATF–53 (43 FR 37675), published August 23, 1978. The preamble of T.D. ATF–53 noted that the regulations provided "a comprehensive scheme for appellation of origin labeling" resulting in "more accurate information being provided to consumers about wine origin." According to T.D. ATF–53, multistate appellations were suggested by domestic wine industry members. ATF decided to allow multistate appellations "in order to permit greater flexibility in appellation of origin labeling," provided that all the grapes come from the named States, that the percentage of grapes from each State be shown on the label, and that the wine conform to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation. There was no discussion in T.D. ATF–53 regarding multistate appellations for foreign wines, including why multistate appellations were limited to American wines.

Australian Petition

The Australian Wine and Brandy Corporation (AWBC), a quasi-governmental authority responsible for, among other activities, regulating the exportation of Australian wine, submitted a petition to TTB to amend § 4.25(a)(2) to permit the labeling of Australian wines with multistate appellations. This proposal would allow an Australian wine imported into the United States to bear an appellation comprised of two or three Australian States, such as "Victoria-New South Wales-South Australia." According to the AWBC petition, Australian regulations allow wines to be labeled with up to three Geographical Indications (officially defined wine regions) provided that 95 percent of the product is from the listed regions, the regions are listed in descending order of their proportions in the blend, and a minimum of 5 percent of the wine is from each listed region. Australian Geographical Indications include the Australian States, which are roughly equivalent to American States.

TTB Analysis

TTB believes that the considerations that led to the adoption of multistate appellations for American wines expressed in T.D ATF–53, namely greater information for the consumer and greater flexibility to the winemaker, also apply to the use of multistate appellations for imported wines. Further, as noted above, § 4.25(a)(2) already recognizes political subdivisions of a country equivalent to a State as qualifying as appellations of origin.

TTB therefore proposes to amend § 4.25 to permit the use of multistate appellations for imported wines. The proposed amendments reflect the following considerations:

- TTB notes that other wine-producing countries do not necessarily have political subdivisions that are called "states" and § 4.25(a)(2) already recognizes that there are "similar" political subdivisions equivalent to a State that qualify as appellations of origin for imported wine. Consistent with the current regulatory approach, TTB believes it is appropriate to refer to similar political subdivisions of a country that are equivalent to a State in the new texts covering multistate appellations. As a practical matter, before approving any certificate of label approval (COLA) for imported wine that contains a multistate appellation, TTB must be able to conclude that: (1) The entities named in the appellation are states, provinces, territories, or political subdivisions of the country equivalent to a State; and (2) the entities named in the appellation are contiguous. To assist TTB in reaching these conclusions, TTB may request, under the authority of 27 CFR 4.38(h), that COLA applicants provide documentation that supports these necessary conclusions. Such documentation may take the form of maps which delineate the entities named and are highlighted to show the entities' contiguity, or statements from officials within the country of origin which provide factual information in support of these conclusions.
- TTB is proposing to require that all (100 percent) of the wine be derived from fruit or other agricultural products grown in the political subdivisions shown on the label and that the percentage of the wine derived from fruit or other agricultural products grown in each political subdivision be shown on the label. This amendment would mirror the current requirement for multistate appellations on American wines, which we believe provides the

consumer with useful information regarding the identity and quality of the wine.

• TTB is also proposing to specify that imported wine labeled with a multistate appellation must conform to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin. This amendment would parallel the requirement applicable to imported wine with a single state (or similar political subdivision) appellation under § 4.25(b)(2)(ii).

The amendments to § 4.25 proposed in this document entail revisions of paragraph (a)(2), the introductory text of paragraph (b)(2), and paragraph (d), as well as a conforming change in paragraph (e)(1)(ii). The revision of paragraph (a)(2) involves the addition of a subparagraph covering multistate appellations; the entire paragraph (a)(2) appears in the proposed regulatory text for clarity. The change to paragraph (b)(2) involves the addition of the words "other than a multistate appellation" similar to the wording of the introductory text of paragraph (b)(1) in regard to American wine. The revisions of paragraph (d) involve redesignation of the existing text as subparagraph (1) and adding a new subparagraph (2) to cover multistate appellations for imported wine. Finally, a number of nonsubstantive editorial-type organizational and wording changes have been made to the revised texts for clarity and readability purposes.

Public Participation

Comments Sought

We request comments from interested members of the public. We are particularly interested in whether the proposed changes will result in treatment for imported wines comparable to that currently available to domestic wines bearing a multistate appellation of origin. We are interested in comments regarding subdivisions of foreign political systems, including the various political subdivisions that might be considered equivalents of U.S. States. In addition, we are interested in comments concerning the requirements for the use of multistate appellations for imported wine. We also are interested in receiving comments on whether this additional information is helpful to the consumer. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this notice in Docket No. TTB–2010–0007 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov.* A link to the docket is available under Notice No. 110 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 110 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 110. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.* All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely provide optional, additional flexibility in wine labeling decisions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling,

Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4, Labeling and Advertising of Wine, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.25 is amended:

a. By revising paragraph (a)(2), the introductory text of paragraph (b)(2), and paragraph (d); and

b. In paragraph (e)(1)(ii), by removing the words "(other than an appellation defined in paragraph (a)(2)(i) or (a)(2)(ii))" and adding, in their place, the words "(other than an appellation defined in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii))".

The revisions read as follows:

§ 4.25 Appellations of origin.

(a) * * *

(2) *Imported wine.* An appellation of origin for imported wine is:

(i) A country;

(ii) A state, province, territory, or similar political subdivision of a country equivalent to a State or county;

(iii) Two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous; or

(iv) A viticultural area (as defined in paragraph (e) of this section).

(b) * * *

(2) *Imported wine.* An imported wine is entitled to an appellation of origin other than a multistate appellation, or a viticultural area, if:

* * * * *

(d) *Multistate appellations.* (1) *American wine.* An appellation of origin comprising two or no more than three States which are all contiguous may be used, if:

(i) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;

(ii) The wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and

(iii) The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(2) *Imported wine.* An appellation of origin comprising two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous may be used if:

(i) All of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a State indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or political subdivision equivalent to a State is shown on the label with a tolerance of plus or minus 2 percent; and

(ii) The wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

* * * * *

Signed: June 2, 2010.

John J. Manfreda,

Administrator.

Approved: June 30, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010–27736 Filed 11–2–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2010–0006; Notice No. 109]

RIN 1513–AB24

Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is considering amending the regulations concerning various winemaking terms commonly used on labels and in advertisements to provide consumers with information about the growing or bottling conditions of wine. We invite comments from industry members, consumers, and other interested parties as to whether and to what extent we should propose specific regulatory amendments for further public comment.

DATES: We must receive written comments on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2010–0006 at "Regulations.gov," the Federal e-rulemaking portal);
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB–2010–0006 at *http://www.regulations.gov*. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 109. You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; (301) 290–1460.

SUPPLEMENTARY INFORMATION:

I. Authority To Prescribe Labeling and Advertising Regulations for Wine

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of alcohol beverage products, including wine, as that term is defined in 27 U.S.C. 211. These provisions give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer with respect to such products, to provide the consumer with "adequate information" as to the identity and quality of the product, and to prohibit false or misleading statements. Additionally, these FAA Act provisions give the Secretary the authority to

prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the FAA Act and the regulations promulgated under it. The labeling and advertising regulations for wine are codified in title 27 of the Code of Federal Regulations (CFR), parts 4, 9, 12, 13, and 16.

II. The Current Regulations, the Use of Various Winemaking Terms on Labels and in Advertisements, and Request for Comments

A. Background

The TTB wine labeling and advertising regulations provide, among other things, definitions of various winemaking terms or usages that are indicative of specific processes used in the production of wine. When used on labels and in advertisements, these terms help consumers better identify the products they purchase by providing meaningful information about those products.

One of the terms defined by the regulations for use on wine labels is "Estate bottled." Section 4.26(a) of the TTB regulations (27 CFR 4.26(a)) provides that the term "Estate bottled" may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

- Is located in the labeled viticultural area;
- Grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; and
- Crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

In addition to prescribing mandatory label information and permitting bottlers to label their products with specifically defined terms, such as "Estate bottled," the TTB regulations in § 4.38(f) (27 CFR 4.38(f)) permit bottlers to label their wine with additional information, provided that the information is truthful, accurate, specific, not disparaging, and not misleading, and does not conflict with, nor in any manner qualify, statements required by the regulations. When bottlers provide such additional information on their labels, TTB relies on the general meaning of any terms used and approves their use if TTB finds that the information is unlikely to mislead the consumer with respect to the products in question. Further, when a producer, bottler, or importer applies for a Certificate of Label Approval (COLA) on TTB Form 5100.31, that person signs a certification, under penalties of perjury, that "the representations on the labels * * * truly and correctly represent the content of the containers to which these labels will be applied." A wine that does not match the label description is not entitled to bear that label.

This advance notice addresses several winemaking terms for which the current regulations provide no definition. TTB has approved these terms for use on wine labels when they met the requirements of § 4.38(f). If TTB were to adopt new regulations governing the use of these terms, any previously approved non-compliant labels may be revoked by operation of the TTB regulations under 27 CFR part 13, subpart E.

Accordingly, as explained below, TTB is soliciting preliminary comments from industry members, consumers, and other interested parties on a number of issues involving the use of specific terms on labels and in advertisements, including the possible effect that any regulatory changes might have on approved labels, in order to assist TTB in determining whether to propose specific regulatory amendments for further public comment procedures. Any regulatory changes concerning wine labeling would similarly affect wine advertising pursuant to the provisions of 27 CFR 4.64, which prohibits statements that are false or untrue in any material particular or that are likely to mislead the consumer, and which provides certain other links to various labeling regulations through 27 CFR 4.64. Therefore, TTB is also soliciting preliminary comments on the use of such terms in advertisements.

B. Estate(s), Estate Grown, and Other Similar Terms

The terms "Estate" and "Estates" without any reference to "Estate bottled" have been used on labels of wine for many years. While the TTB regulations specifically address the use of the designation "Estate bottled" as indicated above, the regulations do not address or define the word "Estate" or "Estates" when used alone or with additional words other than "Estate bottled." In conjunction with the requirements in § 4.26(a), § 4.26(d) provides that no term other than "Estate bottled" may be used on a label to indicate combined growing and bottling conditions. Additionally, § 4.39(a)(8) of the TTB regulations (27 CFR 4.39(a)(8)) prohibits a label from containing:

> Any *coined word* or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, *or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation* and is in fact so designated on its labels. [Emphasis added.]

It has been TTB's long-standing position that the appearance of the word "Estate" or "Estates" on labels of wine does not, in and of itself, create an "Estate bottled" representation and does not violate the prohibition in § 4.39(a)(8). Therefore, TTB has permitted, in certain circumstances, the use of the words "Estate" or "Estates" on labels as additional information under § 4.38(f).

Notwithstanding § 4.26(d) of the TTB regulations as referenced above, for over twenty years TTB and its predecessor agency have allowed the term "Estate grown" to be used as a synonym for the term "Estate bottled." Thus, if a product is labeled "Estate grown" it must meet the standard for use of "Estate bottled" as provided in § 4.26(a). TTB has not codified this position in the regulations. Recently, some industry members requested that TTB permit the use of the words "Estate grown" on labels of wines that do not meet the "Estate bottled" standards in § 4.26. One industry member contended that the term "Estate grown" does not convey information about the bottling conditions of the wine and that, therefore, wine labeled with that designation should not have to meet the "Estate bottled" requirements.

TTB is considering the possibility of amending the regulations to set forth a TTB position concerning the use of the terms "Estate," "Estates," "Estate Grown," and other similar terms on wine labels. Accordingly, TTB invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Does the use of the term "estate" or "estates" as part of a name or otherwise on wine labels convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the term "Estate" in the regulations when not used in the expression "Estate bottled"? If so, what should that definition be?

3. Do wine labels with the term "estate" or "estates" lead consumers to believe that the product is "Estate bottled" within the meaning of § 4.26?

4. Do wine labels that use the term "estate" or "estates," in the brand name, when not referencing "Estate bottled," lead consumers to believe that the product was produced primarily from winemaking material grown on the named estate? Should these products conform to the requirements outlined for use of a vineyard, orchard, farm or ranch name outlined in § 4.39(m)?

5. Should TTB consider proposing a separate standard for the use of the term "estate" or "estates" on wine labels and, if so, what should that standard be?

6. Should TTB propose to amend the regulations to reflect its current policy that "Estate grown" may be used on a label only if the wine meets the requirements for products labeled "Estate bottled" under § 4.26?

7. Should TTB propose a usage standard for "Estate grown" in the regulations that differs from that specified for "Estate bottled" and if so, what should that standard be?

8. Should TTB continue to permit the use of "Estate(s) vineyard(s)," "Vineyard estate(s)," or "Estate(s) wines" or other similar terms, whether or not preceded by the winery name, on product labels when the wine does not meet the "Estate bottled" standards in § 4.26? Why or why not?

9. Would the use of the terms described in paragraph 8 above lead consumers to believe that the product was "Estate bottled" in accordance with § 4.26? Should TTB set specific regulatory standards for the use of these terms and, if so, what should they be?

C. Proprietor Grown and Vintner Grown

Since 1982, TTB and its predecessor agency have had a policy regarding the use of the terms "Proprietor grown" and "Vintner grown" on wine labels and in advertisements. Under this policy, TTB considers the words "Proprietor grown" and "Vintner grown" to be acceptable on wine labels and in advertisements, provided that 100 percent of the grapes are grown on vineyards owned or controlled by the bottling winery. TTB believes that adherence to this standard is necessary in order for the label to meet the truthful, accurate, and not-misleading standards of § 4.38(f), and so that any advertisements conform to the prohibitions in § 4.64 concerning false and misleading statements. TTB is considering the possibility of amending the regulations to reflect this position and invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Should TTB continue to permit, without amending the regulations, the use of the terms "Proprietor grown" and "Vintner grown" on wine labels and in advertisements only if 100 percent of the grapes used to make the product are grown on vineyards owned or controlled by the bottling winery?

2. Should TTB propose to amend the regulations to reflect the "Proprietor grown" and "Vintner grown" standard as stated above?

3. Should TTB consider another standard for the use of these terms and, if so, what should it be?

D. Vineyard, Orchard, Farm, or Ranch and Other Similar Terms

Section 4.39(m) of the TTB regulations provides that the name of a vineyard, orchard, farm, or ranch shall not be used on a wine label unless 95 percent of the wine in the container was produced from "primary winemaking material grown on the named vineyard, orchard, farm or ranch." The TTB regulations, do not, however, define these terms.

TTB has received and approved applications for COLAs for labels using the designation "Single vineyard." TTB considers the term "single," when used in conjunction with the term "vineyard" to be additional information covered by § 4.38(f) and therefore subject to the requirements of that section. It has been the position of TTB that the use of the designation "Single vineyard" on labels and in advertisements is appropriate only if 100 percent of the grapes used to make the wine come from one vineyard. Accordingly, TTB is considering the possibility of amending the regulations to define the terms "vineyard," "orchard," "farm," and "ranch" and to incorporate the position concerning use of the designation "Single vineyard" described above. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Does the use of a vineyard, orchard, farm or ranch name on wine labels and in advertisements convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the terms "vineyard," "orchard," "farm," or "ranch" in the regulations? If so, what should the definitions be?

3. Should TTB propose to amend the regulations to provide a standard for use of the designation "Single vineyard" and, if so, should that standard be the 100 percent standard described above or some other standard? Should TTB propose to use the same standard for the designations "Single orchard," "Single farm," and "Single ranch"? Why or why not?

E. Other Terms Used on Wine Labels and in Advertisements

TTB understands that there are a variety of other terms not listed above which are commonly used on wine labels and in advertisements to provide some meaningful information to consumers about the content of the particular product. These terms are not currently defined in the TTB regulations. These terms include but are not limited to "Proprietors Blend," "Old Vine," "Barrel Fermented," "Old Clone," "Reserve," "Select Harvest," "Bottle Aged," and "Barrel Select." TTB is seeking input from all interested persons regarding which of these terms, or additional terms not listed, if any, TTB should consider defining for the purposes of ensuring consumers are provided with truthful and non-misleading information about the wine. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Which terms currently used in wine labeling and advertising should TTB consider defining, if any, and what should those definitions be?

2. Why or why not should TTB consider defining such terms?

III. Public Participation

A. Comments Invited

We invite comments from industry members, consumers, and other interested parties on the questions outlined above concerning the use of various winemaking terms commonly used on wine labels and in wine advertisements.

B. Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form associated with this notice in Docket No. TTB–2010–0006 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A link to that docket is available under Notice No. 109 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division,

Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 109 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice and any electronic or mailed comments we receive about it. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 109. You may also reach the docket containing this notice and its related comments through the Regulations.gov search page at *http://www.regulations.gov*.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice and any electronic or mailed comments we receive on it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

IV. Drafting Information

Lisa M. Gesser and Joanne C. Brady of the Regulations and Rulings Division drafted this notice.

Signed: May 13, 2010.

John J. Manfreda,

Administrator.

Approved: June 22, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Docket No. TTB–2010–0008; Notice No. 111]

RIN 1513–AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is proposing to revise its regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. This proposed rule responds to a recent final rule issued by the Food and Drug Administration as well as reports of severe allergic reaction, including anaphylaxis, to cochineal extract and carmine-containing foods. This proposal would allow consumers who are allergic to cochineal extract or carmine to identify and thus avoid alcohol beverage products that contain these color additives.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

• *http://www.regulations.gov:* Use the online comment form for this notice as posted within Docket No. TTB–2010–0008 at "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

• *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or

• *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB–2010–0008 at *http://www.regulations.gov.* A direct link to this docket is posted under Notice No. 111 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION:

I. TTB's Authority To Prescribe Alcohol Beverage Labeling Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), sets forth standards for regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages, generally referred to as "alcohol beverage products" throughout this notice. This section gives the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with "adequate information" as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product. Section 105(e) of the FAA Act also

requires that a person obtain a certificate of label approval for all distilled spirits, wine, or malt beverages introduced into interstate or foreign commerce before bottling the product or removing the product from customs custody, in accordance with regulations prescribed by the Secretary.

The labeling provisions of the FAA Act also give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. In the case of malt beverages, the labeling provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. TTB is responsible for the administration of the FAA Act and the regulations promulgated under it.

II. Background on Cochineal Extract and Carmine

Cochineal extract is an insect-derived color additive that is permitted for use in foods, including alcohol beverage products, and drugs in the United States. The related color additive carmine is permitted for use in foods, including alcohol beverage products, drugs, and cosmetics. The Food and Drug Administration (FDA) has listed these color additives, and conditions for their safe use in foods, in § 73.100 of title 21 of the Code of Federal Regulations (21 CFR 73.100).

On January 30, 2006, FDA published a proposed rule in the **Federal Register** (71 FR 4839) to amend its requirements for cochineal extract and carmine by requiring their declaration on the labels of all food and cosmetic products that contain these color additives. More specifically, for food products, FDA proposed to amend the color additive regulations that permit the use of cochineal extract or carmine in foods (21 CFR 73.100) by adding a new requirement that all foods which contain cochineal extract or carmine specifically declare that fact in the ingredient statement of the food label by using its respective common or usual name, "cochineal extract" or "carmine."

FDA explained that the proposal was issued in response to reports of severe allergic reactions, including anaphylaxis, to cochineal extract and carmine-containing foods and cosmetics. The proposal was also in response to a 1998 citizen petition from the Center for Science in the Public Interest, which asked the FDA to take action to protect consumers who are allergic to cochineal extract and carmine.

The preamble to FDA's proposed rule describes, in detail, several instances and studies in which allergic reactions occurred. One of the referenced articles described allergic reactions (including anaphylaxis) experienced by five patients after ingesting the alcohol beverage product Campari, which, according to FDA's preamble, contained carmine. All five patients were women; three had a history of allergic respiratory disease, one had only non-clinical sensitivity to mugwort, and one was nonatopic (had no history of allergy). The time period between ingestion and onset of allergic reaction was given for four patients and varied from 15 minutes to 30 minutes. Two of the five patients reportedly experienced "severe" anaphylactic reactions. Of these two, one required hospitalization while the other was treated with inhalers and intravenous antihistamine. The remaining three experienced angioedema (tissue swelling). *See* 71 FR 4842.

The preamble to FDA's proposed rule further explains as follows: "Allergic reactions to cochineal extract and/or carmine in a variety of foods (grapefruit juice, the alcohol beverage Campari, a popsicle, candy, yogurt, and artificial crabmeat) and [certain] cosmetics * * * have been reported in scientific and medical literature since 1961." 71 FR 4839–4840. Since 1994, FDA has received 11 adverse event reports of allergic reactions, including anaphylaxis, experienced by individuals after eating food or drinking a beverage containing cochineal extract or carmine, or using cosmetics colored with carmine.

FDA solicited comments from all interested parties in response to their proposal to require the listing of these color additives. As a result, FDA received a total of 159 responses.

On January 5, 2009, FDA published a final rule in the **Federal Register** (74 FR 207) which addressed the comments submitted and finalized the regulatory changes as proposed by adding a new requirement that all foods containing cochineal extract or carmine specifically declare that fact in the ingredient statement of the food label by using its respective common or usual name, "cochineal extract" or "carmine." The final rule takes effect on January 5, 2011.

In light of FDA's official recognition of evidence linking the presence of cochineal extract and carmine in foods and beverages to a health risk for a small percentage of consumers, TTB believes that it is appropriate to require the disclosure of cochineal extract and carmine on the labels of the alcohol beverage products that it regulates. While TTB believes that the use of these color additives in the manufacture of alcohol beverage products is relatively rare, at least one such alcohol product contained the color additive carmine, as evidenced by the FDA's rulemaking record.

We also note that similar action has been taken in the past. On October 6, 1983, TTB's predecessor agency, the Bureau of Alcohol Tobacco and Firearms (ATF) published a final rule (T.D. ATF–150, 48 FR 45549), rescinding the ingredient labeling regulations for alcohol beverage products. However, mandatory label disclosure was required for alcoholic beverages containing the color additive FD&C Yellow No. 5. The Bureau found, as a result of its rulemaking effort, that there was evidence establishing that consumers of the few alcohol beverage products containing that color additive could have adverse reactions to the ingredient. Pursuant to T.D. ATF–150, the Bureau specifically stated that it "will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c)."

In that regard, ATF published a final rule in the **Federal Register** requiring mandatory label disclosure of saccharin for alcoholic beverages containing that artificial sweetener (T.D. ATF–220; December 20, 1985, 50 FR 51851), which was subsequently removed as a requirement by TTB in 2004 (T.D. TTB–12; June 16, 2004, 69 FR 33572). ATF also published a final rule requiring label disclosure of sulfites when present in alcoholic beverages at a level of ten or more parts per million (T.D. ATF–236; September 30, 1986, 51 FR 34706).

In determining whether there is a need to require label disclosure of specific ingredients in alcoholic beverages, ATF traditionally utilized the expertise of the Food and Drug Administration (FDA). In 1987, FDA and ATF entered into a memorandum of understanding (52 FR 45502, November 30, 1987), to clarify the enforcement responsibilities of each agency with respect to alcohol beverages. ATF agreed that "when FDA has determined that the presence of an ingredient in food products, including alcoholic beverages, poses a recognized public health problem, and that the ingredient or substance must be identified on a food product label, ATF would initiate rulemaking proceedings to promulgate labeling regulations for alcoholic beverages consistent with ATF's health policy with respect to alcoholic

beverages." TTB operates under the same memorandum of understanding with FDA.

Accordingly, TTB proposes to amend the TTB regulations to require that each alcohol beverage product containing the color additive cochineal extract or carmine disclose that information on the product's label.

III. Format and Placement of Disclosure

TTB proposes that all alcohol beverage products that contain the color additive cochineal extract or carmine must declare the presence of the additive on the brand label or on a back label, prominently and conspicuously, using its respective common or usual name "cochineal extract" or "carmine". (For example: "Contains: Cochineal Extract" or "Contains carmine as a color additive.").

IV. Implementation Date

TTB believes that this proposed new regulatory requirement will require revisions to the labels of very few alcohol beverage products. Accordingly, TTB proposes an implementation date of 90 days after the date the final rule is published in the **Federal Register**. Upon implementation of the final rule, the label of an alcohol beverage product subject to the requirement for disclosure of cochineal extract and carmine would have to bear the mandatory statement at the time of its removal from bond or from customs custody in bottles. TTB seeks comments from affected industry members as to whether 90 days is a sufficient amount of time to incorporate these changes.

V. Public Participation

A. Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

B. Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this notice in Docket No. TTB–2010–0008 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov.* Direct links to the comment form and docket are available under Notice No. 111 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 111 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 111. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

VI. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. We believe that the proposed rule, if adopted, will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities as very few alcohol beverages are made using cochineal extract or carmine as color additives. We specifically solicit comments on the number of small producers, bottlers, and importers of alcohol beverages that may be affected by this proposed rule and the impact of this rule on those small businesses. We ask any small business that believes that it would be significantly affected by this proposed rule to submit a comment and explain how the rule would affect it.

B. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

C. Paperwork Reduction Act

The revisions to collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information may be sent by e-mail to *Shagufta_Ahmed@omb.eop.gov* or by postal mail to Shagufta Ahmed, Office of Management and Budget, Attention: Desk Officer for the Department of the

Treasury, Office of Information and Regulatory Affairs, Room 10235, Washington, DC 20503. A copy should also be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Because OMB must complete its review of the collection of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than December 3, 2010. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed revision of the collection of information (see below);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revision of the collection of information, including 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 services to provide information.

The collection of information in this proposed regulation is in 27 CFR Sections 4.32, 5.32, and 7.22, and involves mandatory disclosures of information on labels. This information is required to prevent deception of the consumer and to provide the consumer with adequate information as to the identity and quality of the alcohol beverage product. The likely respondents are businesses or other for-profit institutions, including partnerships, associations, and corporations.

This information constitutes only a portion of the labeling information on alcohol beverages required under authority of the Federal Alcohol Administration Act (FAA Act). OMB has previously approved a collection of information for Labeling and Advertising Requirements Under the FAA Act, under control number 1513–0087. The current burdens of this existing collection are:

- *Estimated Number of Respondents:* 7,071.
- *Estimated Total Annual Burden Hours:* 7,071.

Because the proposed disclosure required under this regulation would affect an extremely small number of respondents, the burden estimate associated with this collection of information, in light of the collective burden, is minimal and is expected to contribute only a negligible additional burden beyond that already accounted for under control number 1513–0087.

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 OMB.

VII. Drafting Information

The principal authors of this document are Lisa M. Gesser and Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt beverages, Reporting and recordkeeping requirements, Trade practices.

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter 1, parts 4, 5, and 7, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.32, paragraph (d) is added to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(d) *Declaration of cochineal extract or carmine.* There shall be stated on the brand label or on a back label a statement that the product contains the color additive cochineal extract or carmine, prominently and conspicuously, using its respective common or usual name "cochineal extract" or "carmine," where that coloring material is used in a product removed on or after February 1, 2011. (For example: "Contains: Cochineal Extract" or "Contains carmine as a color additive" or, if applicable, "Contains: Cochineal Extract and Carmine.").

* * * * *

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

4. In § 5.32, paragraph (b)(6) is added to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(6) A statement that the product contains the color additive cochineal extract or carmine, prominently and conspicuously, using its respective common or usual name "cochineal extract" or "carmine," where that coloring material is used in a product removed on or after February 1, 2011. (For example: "Contains: Cochineal Extract" or "Contains carmine as a color additive" or, if applicable, "Contains: Cochineal Extract and Carmine.").

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

6. In § 7.22, paragraph (b)(8) is added to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(8) A statement that the product contains the color additive cochineal extract or carmine, prominently and conspicuously, using its respective common or usual name "cochineal extract" or "carmine," where that coloring material is used in a product removed on or after February 1, 2011. (For example: "Contains: Cochineal Extract" or "Contains carmine as a color additive" or, if applicable, "Contains: Cochineal Extract and Carmine.").

Signed: August 24, 2010.

John J. Manfreda,

Administrator.

Approved: August 30, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010–27733 Filed 11–2–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1004]

RIN 1625–AA87

Security Zone; Increase of Security Zones From 100 to 500 Yards; San Francisco Bay, Delta Ports, Monterey Bay, and Humboldt Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a permanent increase in security zone size from 100 yards (91 meters) to 500 yards (457 meters) on the navigable waters of San Francisco Bay, Delta Ports, Monterey Bay, and Humboldt Bay, CA. Security zones are necessary to effectively protect high value assets (HVAs) such as cruise ships, high interest vessels (HIV), or tankers, as defined in 33 CFR 165.1183. A security zone is only enforceable within the limits of that zone. The limitation of the 100 yard (91 meters) security zone hinders reaction time and the ability of the coxswains to determine the target of interest's (TOI) intent, properly assess the situation, and execute protective measures for HVAs. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the temporary security zones unless authorized by the Captain of the Port or her designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before December 3, 2010. Requests for public meetings must be received by the Coast Guard on or before November 22, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1004 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Junior Grade Allison A. Natcher, U.S. Coast Guard Sector San Francisco; telephone 415–399–7442 e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1004), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–1004" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1004" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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

Experiences during security zone enforcement operations, observations during boat tactics training, and discussions with Commanding Officers/Officers in Charge and tactical coxswains from Sector San Francisco's Level I Ports, Waterways and Coastal Security (PWCS) stations, has led Enforcement staff and field units to determine that the current 100-yard (91 meters) security zones are not adequate enough to protect a high value asset from sabotage, subversive acts,

accidents, criminal actions, or other causes of a similar nature. While enforcing a security zone, screening or reaction vessels are required to wait until a target of interest (TOI) enters the zone prior to taking preventative measures against the TOI from approaching a high value asset.

The increase of the security zones to 500 yards (457 meters) would allow reaction time to a vessel closing in at 20 knots to increase from 9 seconds (for 100 yards/91 meters) to 36 seconds (for 500 yards/457 meters). A 500 yard (457 meters) security zone would increase reaction time, allow proper assessment of the situation, and would improve the ability of the tactical coxswains to properly execute protective measures.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent increase in security zone size from 100 yards (91 meters) to 500 yards (457 meters) of any cruise ship, tanker or HIV that is underway, anchored, or moored within the navigable waters of San Francisco Bay, Delta Ports, Monterey Bay, and Humboldt Bay, CA.

"Cruise ship," "tanker" and "HIV" are defined under 33 CFR 165.1183 (b). Security zones are necessary to effectively protect these high value assets from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the temporary safety zones unless authorized by the Captain of the Port, or her designated representative.

Security zones will be enforced by Coast Guard patrol craft and San Francisco Harbor Police as authorized by the Captain of the Port. *See* 33 CFR 6.04–11, Assistance of other agencies.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

These regulations exist for a limited period of time on a limited portion of the waterways. Further, individuals and vessels desiring to use the affected portion of the waterways may seek permission from the Patrol Commander to use the affected areas.

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. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of these security zones via public notice to mariners or notice of implementation published in the **Federal Register**.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would 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 can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Allison A. Natcher, U.S. Coast Guard Sector San Francisco; telephone 415–399–7442 e-mail *D11-PF-MarineEvents@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships, Tankers and High Interest Vessels, San Francisco Bay and Delta Ports, Monterey Bay and Humboldt Bay, California.

(a) *Locations.* (1) *San Francisco Bay.* All waters, extending from the surface to the sea floor, within 500 yards (457 meters) ahead, astern, and extending 500 yards (457 meters) along either side of any cruise ship, tanker, or HIV that is underway, anchored, or moored within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(2) *Monterey Bay.* All waters, extending from the surface to the sea floor, within 500 yards (457 meters) ahead, astern, and extending 500 yards (457 meters) along either side of any cruise ship, tanker, or HIV that is underway, anchored, or moored within the Monterey Bay area shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′ N, 122°01.60′ W, and Cypress Point, Monterey to the south, in position 36°34.90′ N, 121°58.70′ W.

(3) *Humboldt Bay.* All waters, extending from the surface to the sea floor, within 500 yards (457 meters) ahead, astern, and extending 500 yards (457 meters) along either side of any cruise ship, tanker, or HIV that is underway, anchored, or moored within the Humboldt Bay area shoreward of a 4 nautical mile radius line drawn to the west of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130) in position 40°46.25′ N, 124°16.13′ W.

(b) *Definitions.* As used in this section—

Cruise ship means any vessel over 100 gross register tons, carrying more than 12 passengers for hire which makes voyages lasting more than 24 hours, of which any part is on the high seas. Passengers from cruise ships are embarked or disembarked in the U.S. or its territories. Cruise ships do not include ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays and Sounds" that transit international waters for only short periods of time on frequent schedules.

Designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

High Interest Vessel or *HIV* means any vessel deemed by the Captain of the Port, or higher authority, as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

Tanker means any self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in the zones described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or her designated representative.

(2) Mariners seeking permission to transit through a security zone described in paragraph (a) of this section may request authorization to do so from the Patrol Commander (PATCOM), a designated representative. The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels granted permission to enter a security zone must comply with the instructions of the Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the

operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: October 19, 2010.

C.L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–27707 Filed 11–2–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0814; FRL–9219–6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Clark County Department of Air Quality and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act as amended in 1990, EPA is proposing to grant delegation of specific national emission standards for hazardous air pollutants (NESHAP) to Clark County, Nevada.

DATES: Any comments on this proposal must arrive by December 3, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0814, by one of the following methods:

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

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or Deliver:* Andrew Steckel (AIR–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal concerns the delegation of unchanged NESHAP to Clark County, Nevada. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAP in Nevada. EPA is taking direct final action without prior proposal because the Agency believes this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: October 5, 2010.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 2010–27804 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0078; MO 92210–0–0009–B4]

RIN 1018–AW53

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Astragalus jaegerianus* (Lane Mountain Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our April 1, 2010, proposed revised designation of critical habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for *Astragalus jaegerianus* and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on the items listed above. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments we receive on or before December 3, 2010. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2009–0078.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R8–ES–2009–0078; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644–1766; facsimile (805) 644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party during this reopened comment period on the proposed revised designation of critical habitat for *Astragalus jaegerianus* published in the **Federal Register** on April 1, 2010 (75 FR 16404), including the draft economic analysis of the proposed revised designation of critical habitat for A. *jaegerianus* and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- The amount and distribution of *Astragalus jaegerianus* habitat,
- What areas within the geographical area occupied by the species at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas outside the geographical area occupied at the time of listing are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on proposed revised critical habitat for *Astragalus jaegerianus.*

(4) Any foreseeable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(5) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(6) Comments or information that may assist us in identifying or clarifying the primary constituent elements and the resulting physical and biological features essential to the conservation of *Astragalus jaegerianus.*

(7) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential.

(8) Information on the potential effects of climate change on *Astragalus jaegerianus* and its habitat.

(9) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed revised designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate proposed revised critical habitat for *Astragalus jaegerianus.*

(12) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(13) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the proposed revised designation of critical habitat for *Astragalus jaegerianus.*

(14) Information on whether the proposed revised designation of critical habitat will result in disproportionate economic impacts to specific areas or small businesses, including small businesses in the land development sector in San Bernardino County.

(15) Information on whether the DEA identifies all costs that could result from the proposed revised designation of critical habitat for *Astragalus jaegerianus.*

(16) Economic data on the incremental costs of designating a particular area as revised critical habitat.

If you submitted comments or information on the proposed revised rule (75 FR 16404) during the initial comment period from April 1, 2010, to June 1, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov.*

Comments and materials we receive (and have received), as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* (Docket Number FWS–R8–ES–2009–0078), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov* (Docket Number FWS–R8–ES–2009–0078), or on our Web site at *http://www.fws.gov/ventura.*

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Astragalus jaegerianus* in this document. For more information on previous Federal actions concerning *A. jaegerianus,* refer to the proposed revised designation of critical habitat published in the **Federal Register** on April 1, 2010 (75 FR 16404). Additional information on *A. jaegerianus* may also be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the proposed designation of critical habitat for *A. jaegerianus* in the **Federal Register** on April 6, 2004 (69 FR 18018). These documents are available on the Ventura Fish and Wildlife Office Web site at *http://www.fws.gov/ventura.*

On April 8, 2005 (70 FR 18220), we published our final designation of critical habitat for *Astragalus jaegerianus.* Because we excluded all proposed acreage from the designation, the final designation included zero (0) acres (0 hectares). On December 19, 2007, the 2005 critical habitat determination was challenged by the Center for Biological Diversity (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.,* Case No. CV–07–08221–JFW–JCRx). In a settlement agreement accepted by the court on June 27, 2008, we agreed to reconsider the critical habitat designation for *A. jaegerianus.* The settlement stipulated that we submit a proposed revised critical habitat rule for *A. jaegerianus* to the **Federal Register** for publication on or before April 1, 2010, and submit a final revised determination on the proposed critical habitat rule to the **Federal Register** for publication on or before April 1, 2011.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact, including but not limited to the value and contribution of continued, expanded, or newly forged conservation partnerships.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies); the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species; and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Astragalus jaegerianus,* the benefits of critical habitat include public awareness of the presence of *A. jaegerianus* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *A. jaegerianus* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We prepared a DEA of our April 1, 2010 (75 FR 16404), proposed revised designation of critical habitat for *Astragalus jaegerianus.*

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised designation of critical habitat for *Astragalus jaegerianus.* The DEA quantifies the economic impacts of all potential conservation efforts for *A. jaegerianus;* some of these costs will likely be incurred regardless of whether we designate revised critical habitat. The economic impact of the proposed revised designation of critical habitat for *A. jaegerianus* is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated and may include costs incurred in the future. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since we listed the species, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised designation of critical habitat for the *A. jaegerianus.* For a further description of the methodology of the analysis, *see* Chapter 2, "Framework for the Analysis," of the DEA.

The current DEA estimates the foreseeable economic impacts of the proposed revised designation of critical habitat for *Astragalus jaegerianus* by identifying the potential resulting incremental costs. The DEA analyzed economic impacts of *A. jaegerianus* conservation efforts on the following activities: Recreational OHV use, recreational surface mining, and wind energy development. It also assessed possible indirect impacts to economic activities as the result of possible applications of the California Environmental Quality Act (CEQA), and regulatory uncertainty or delay. The DEA considers future baseline and incremental impacts over the next 20 years (2011 to 2030), which was determined to be the appropriate period for analysis because limited planning information is available for most

activities to forecast activity levels for projects beyond a 20-year timeframe.

The DEA estimates that no economic impacts are likely to result from the designation of critical habitat. The main reason for this conclusion is that approximately 79 percent of the designated area is Federal land that is either being managed for *Astragalus jaegerianus* conservation by the Bureau of Land Management (BLM) under the guidance of the California Desert Conservation Area Plan, as modified by the West Mojave Plan, or is being held by the Department of Defense (DOD). Because the DOD acquired these lands as mitigation for the expansion of Fort Irwin, it will not permit any ground-disturbing activities on them. Ultimately, the DOD will transfer the lands to the BLM, and BLM will manage them as part of the Coolgardie Mesa and West Paradise Areas of Critical Environmental Concern. The Service, DOD, and BLM do anticipate consultation on the land transfer, but expect that the consultation would be informal and not require a formal biological opinion under section 7 of the Act. An additional reason that no economic impacts are likely to result from the designation of critical habitat is that the private lands (remaining 21 percent of designation interspersed in a checkerboard fashion among the BLM ACECs lands) occur in a remote region where access, development, and construction are limited. Also land use activities specifically within ACECs are limited. These private lands are being targeted through the WMP for acquisition by Federal agencies from willing sellers to eventually become part of one of the two ACECs. No section 7 consultations have occurred regarding activities on private lands within the area since the listing of the desert tortoise (*Gopherus agassizii*) in 1990. The federally threatened desert tortoise occurs throughout the area that we have proposed as critical habitat; critical habitat for the desert tortoise also completely overlaps the areas proposed as critical habitat for *A. jaegerianus.* Consequently, based on discussions with land managers and the lack of consultations on private lands in this area since the listing of the desert tortoise, we do not anticipate any land use changes that will result in future consultations.

The DEA also discusses the potential benefits associated with the designation of critical habitat. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as *Astragalus jaegerianus.* However, economic benefits are not quantified or monetized in the DEA. As described in the DEA, modifications to future projects are unlikely given the extensive baseline protections already provided to *A. jaegerianus* habitat, the anticipated lack of economic activity, and lack of a Federal nexus on privately owned, unprotected parcels.

The DEA considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, small entities, and the energy industry. We can use this information to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed revised designation of critical habitat, and our amended required determinations. We may revise the proposed rule or the economic analysis to incorporate or address information we receive during this public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our proposed rule dated April 1, 2010 (75 FR 16404), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the DEA data, we are also affirming our required determinations made in the proposed rule concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for *Astragalus jaegerianus* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *A. jaegerianus.* If the proposed critical habitat designation is finalized, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA of the proposed revised designation of critical habitat, we evaluated the potential economic effects resulting from implementation of conservation actions related to the proposed revised designation of critical habitat. The DEA estimates that no economic impacts are likely to result from the designation of critical habitat for *Astragalus jaegerianus.* This determination is based on the fact that approximately 79 percent of the proposed critical habitat is already subject to conservation measures that benefit the plant. Economic impacts are unlikely in the remaining 21 percent, given the limited potential for future economic activity and the low probability of a Federal nexus that would require consultation with the Service. Based on that analysis, no impacts to small entities are expected as a result of the proposed critical habitat designation. Please refer to chapter 3 of the DEA for a more detailed discussion of our analysis.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires an agency to prepare a Statement of Energy Effects when undertaking certain actions. We implement this executive order using the Office of Management and Budget's guidance which outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in chapter 3, the DEA finds that this proposed revised critical habitat designation is expected not to have any impacts on the energy industry. As a result, a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local or Tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) as a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action that may affect designated critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for *Astragalus jaegerianus,* we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that critical habitat designation for *A. jaegerianus* is not likely to result in incremental direct or indirect impacts to economic activities. Because no incremental costs are anticipated, no small entities are expected to be affected by the designation. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the internet at *http://www.regulations.gov* or from the Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 25, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish & Wildlife and Parks.

[FR Doc. 2010–27773 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 75, No. 212
Wednesday, November 3, 2010

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

Sequoia National Forest, California; Sequoia National Forest Plan Amendment, Giant Sequoia National Monument Draft Environmental Impact Statement, Comprehensive Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public comment period.

DATES: Comments must be received no later than December 3, 2010.

SUMMARY: The Sequoia National Forest hereby gives notice that it is extending the public comment period for the Giant Sequoia National Monument Draft Environmental Impact Statement (Draft EIS) and Draft Management Plan, which was published in the **Federal Register** on August 6, 2010, (Volume 75, No. 151) originally for a 90-day comment period. Please see the Notice of Availability of the Draft EIS (75 FR 47592) for more detailed information related to the Giant Sequoia National Monument Draft EIS and Draft Management Plan. In response to requests for additional time, the Forest Service will extend the comment period from November 3, 2010, to December 3, 2010.

Federal, State, tribal, and local governments and other interested parties are requested to comment on the Draft EIS. Comments will be accepted by e-mail to *comments-pacificsouthwest-sequoia@fs.fed.us,* or *http://gsnm-consult.limehouse.com/portal/* or by mail to Anne Thomas, Giant Sequoia National Monument, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257, or by facsimile to 559–781–4744.

FOR FURTHER INFORMATION CONTACT: Anne Thomas at the address listed above or by telephone 559–784–1500.

Dated: October 27, 2010.

Barbara Johnston,

Acting Forest Supervisor, Sequoia National Forest.

[FR Doc. 2010–27599 Filed 11–2–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

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

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise the GIPSA Administrator on the programs and services that GIPSA delivers under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: November 17, 2010, 8 a.m. to 4:30 p.m.; and November 18, 2010, 8 a.m. to 4:30 p.m.

ADDRESSES: The Advisory Committee meeting will take place at the Chateau Bourbon, 800 Iberville Street, New Orleans, Louisiana 70112.

Requests to orally address the Advisory Committee during the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 690–2173.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry by phone at (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the GIPSA Administrator with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the GIPSA Web site at *http://www.gipsa.usda.gov.* Under the section, "I Want To * * *," select "Learn about the Grain Inspection Advisory Committee."

The agenda will include updates on international affairs, the quality management program, the National Grain Center, and an overview of Federal Grain Inspection Service 2010 operations.

For a copy of the agenda please contact Terri L. Henry by phone at (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

Public participation will be limited to written statements unless permission is received from the Committee Chairperson to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri L. Henry at the telephone number listed above.

Randall D. Jones,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–27795 Filed 11–2–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA013

Endangered Species; File No. 15566

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the South Carolina Department of Natural Resources, Marine Resources Division, Charleston, S.C. 29422–2559, has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 3, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15566 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division:

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the above address.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the above address. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of this research is to assess temporal change in catch rates, size distributions, sex and genetic ratios, and health of sea turtles. Up to 345 loggerhead, 29 Kemp's ridley, 9 green, 1 leatherback, and 1 hawksbill sea turtle would be captured annually by trawl in coastal waters between Winyah Bay, SC and St. Augustine, FL. Turtles would be handled, blood sampled, measured, flipper and passive integrated transponder (PIT) tagged, photographed, and released. A subsample of animals would be authorized for barnacle, keratin, and fecal sampling, cloacal swabs, laproscopy, ultrasound, and attachment of satellite and/or VHF transmitters. Up to five loggerhead, one Kemp's ridley, one green, one leatherback, and one hawksbill sea turtle could be accidentally killed over the life of the permit. The permit would be valid for 5 years.

Dated: October 28, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–27776 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 100630282–0522–04]

RIN 0648–ZC18

Availability of Grants Funds for Fiscal Year 2011

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to provide the correct funding opportunity number for the NOAA Regional Ocean Partnership Funding Program—FY2011 Funding Competition. The original solicitation, which was announced in the **Federal Register** on September 13, 2010, gave an incorrect funding opportunity number—NOAA–NOS–CSC–2011–2002718. This notice corrects that error by providing the correct funding opportunity number—NOAA–NOS–CSC–2011–2002721.

DATES: Full proposals must be received no later than 11:59 p.m. ET, December 10, 2010. For proposals submitted through Grants.gov, a date and time receipt indication by Grants.gov will be the basis of determining timeliness. Hard copy applications will be date and time stamped when they are received. Full proposals received after the submission deadline will not be reviewed or considered.

ADDRESSES: Full proposal application packages, including any letters of support, should be submitted through the apply function on Grants.gov. The standard NOAA funding application package is available at *http://www.grants.gov.* If an applicant does not have Internet access, one set of originals (signed) and two copies of the proposals and related forms should be mailed to the attention of James Lewis Free, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413. No e-mail or fax copies will be accepted. Full proposal application packages, including any letters of support, should be submitted together in one package.

FOR FURTHER INFORMATION CONTACT: For administrative questions, contact James Lewis Free, NOAA CSC; 2234 South Hobson Avenue, Room B–119; Charleston, South Carolina 29405–2413, phone 843–740–1185, fax 843–740–1224, e-mail *James.L.Free@noaa.gov.* For technical questions regarding this announcement, contact Rebecca Smyth, phone 510–251–8324, e-mail *Rebecca.Smyth@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to correct the funding opportunity number referenced in the NOAA Regional Ocean Partnership Funding Program—FY2011 Funding Competition announced in the **Federal Register** on September 13, 2010 (75 FR 55541). The correct funding opportunity number is NOAA–NOS–CSC–2011–2002721. All other requirements published in the September 13, 2010 **Federal Register** notice for this program remain the same.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2011 program is contingent upon the availability of Fiscal Year 2011 appropriations.

Universal Identifier

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com.*

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following

NOAA NEPA Web site: *http://www.nepa.noaa.gov/* including our NOAA Administrative Order 216–6 for NEPA *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf* and the Council on Environmental Quality implementation regulations *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on: October 30, 2002 (67 FR 66109); December 30, 2004 (69 FR 78389); and February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The application requirements specific to the NOAA Regional Ocean Partnership Funding Program have been approved by the Office of Management and Budget under Control Number 0648–0538. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Ms. Cristi Reid, NOAA Office of Program Planning and Integration, SSMC 3, Room 15700, 1315 East West Highway, Silver Spring, MD 20910. The information collection does not request any proprietary or confidential information. No confidentiality is provided.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected 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.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 27, 2010.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. 2010–27700 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 100630282–0522–03]

RIN 0648–ZC18

Availability of Grants Funds for Fiscal Year 2011

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to extend the final application solicitation period for the Fiscal Year 2011 CRCP International Coral Reef Conservation Cooperative Agreements. The original solicitation, which was announced in the **Federal Register** on July 16, 2010, gave an incorrect final application due date of February 21, 2011. This notice corrects that error by extending the final application period for this program until February 22, 2011. As the original announcement states, final applications will be accepted ONLY from those pre-applicants who are invited to submit a final application.

DATES: Final applications must be submitted no later than 5 p.m., Eastern Standard Time, Tuesday, February 22, 2011.

ADDRESSES: Final applications will be accepted only from those applicants who are invited to submit a final application. The applicant may submit the final application (narratives, federal forms, and supporting documentation) in one of two ways: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have internet access. In that case, hard copies with original signatures and scanned copies on a CD must be postmarked by 5 p.m., U.S. Eastern Standard Time, on February 22, 2011 and sent to: Scot Frew, NOAA/NOS International Program Office, 1315 East West Highway, 5th Floor, N/IP, Room 5826, Silver Spring, MD 20910. Late final applications by any method cannot be accepted under any circumstances.

FOR FURTHER INFORMATION CONTACT: For administrative or technical issues, contact Scot Frew at 301–713–3078 x220 or by e-mail at *Scot.Frew@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to extend the final application solicitation period for the Fiscal Year 2011 CRCP International Coral Reef Conservation Cooperative

Agreements Program announced in the **Federal Register** on July 16, 2010 (75 FR 41662). The new deadline for final applications is February 22, 2011. The program extends the solicitation period due to a typo made in the deadline date published in the original announcement.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2011 program is contingent upon the availability of Fiscal Year 2011 appropriations.

Universal Identifier

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com.*

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on: October 30, 2002 (67 FR 66109); December 30, 2004 (69 FR 78389); and February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 27, 2010.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. 2010–27702 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico

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

ACTION: Notice of Initiation of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Mexico.

SUMMARY: In response to a request from ArcelorMittal las Truchas, S.A. de C.V. (AMLT), an exporter of carbon and certain alloy steel wire rod from Mexico, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping order on carbon and certain alloy steel wire rod from Mexico. Based on the information received, we preliminarily determine that AMLT is the successor-in-interest to Siderurgica Lazaro Cardenas las Truchas S.A. de C.V. (Sicartsa) for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* November 3, 2010.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, Program Manager, Office of AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482–6071.

Background

Sicartsa, as an exporter of carbon and certain steel alloy wire rod from Mexico to the United States, participated in the Department's administrative reviews with respect to wire rod from Mexico for the periods April 10, 2002, to September 30, 2003, and October 1, 2003, to September 30, 2004; the Department issued the final results of the reviews, giving Sicartsa a 1.06 percent margin, and a 1.26 percent margin, respectively. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico,* 70 FR 25809 (May 16, 2005); *see also Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico,* 71 FR 27989 (May 15, 2006).

On September 10, 2010, AMLT filed a request for a changed circumstances review claiming that Sicartsa changed its name to AMLT. AMLT requested that it receive the same antidumping duty treatment accorded to Sicartsa and submitted documentation in support of its claim. AMLT requested that the Department combine the notice of initiation of the review and the preliminary results of review in a single notice as this review essentially involves only corporate name changes.

On October 6, 2010, petitioners submitted comments regarding AMLT's September 10, 2010, request for a changed circumstances review.[1] On October 6, 2010, the Department issued a questionnaire to AMLT regarding its September 10, 2010, submission. On October 18, 2010, AMLT submitted its questionnaire response.

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm. in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[1] Petitioners are Georgetown Steel, Gerdau USA Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., Rocky Mountain Steel Mills, and Mittal Steel USA.

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

During 2007, Mittal Steel merged with Arcelor S.A. to form ArcelorMittal. The merger was finalized on November 13, 2007. As part of the merger process, but prior to its formal completion, ArcelorMittal acquired 100 percent of Sicartsa. The acquisition was completed in April 2007. On February 25, 2008, Sicarsta changed its name to AMLT. On September 10, 2010, AMLT filed its changed circumstances review request in which it claimed that it is the successor-in-interest to Sicartsa.

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. On September 10, 2010, AMLT submitted its request for a changed circumstances review. With its request, AMLT submitted certain information related to its claim that Sicartsa changed its name to AMLT, and that this name change has not affected the company's management, sales operations, supplier relationships or customer base in any meaningful way. In accordance with section 751(b) of the Act and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate a changed circumstances review to determine whether AMLT is the successor-in-interest to Sicartsa.

In making a successor-in-interest determination in antidumping proceedings, the Department typically examines several factors including, but not limited to: (1) Management; (2) production facilities; (3) supplier relationships, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut-To-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 22847 (May 3, 2005) (*Plate from Romania*), unchanged in the *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania,* 70 FR 35624 (June 21, 2005). 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 Antidumping Duty Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania,* 70 FR 22847. 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., Final Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway,* 75 FR 32370, 32371 (June 8, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that AMLT is the successor-in-interest to Sicartsa. AMLT claims that the name change has not affected the company's management, sales operations, supplier relationships, or customer base in a meaningful way. In its September 10, 2010, submission AMLT provided evidence supporting its claim. This documentation consists of: (1) An excerpt of the ArcelorMittal 2007 Annual Report indicating that ArcelorMittal acquired 100 percent interest of Sicartsa prior to Sicartsa's name change; (2) Sicartsa's Stock Register indicating the completion of ArcelorMittal's acquisition of Sicartsa; (3) Notary Public Office No.18 Federal District, Mexico certifying that Sicartsa changed its name to AMLT; (4) the articles of amendment that reflect the name change; and (5) a copy of an extraordinary shareholders' meeting approving the name change. In its October 18, 2010, submission AMLT provided additional evidence supporting its claim that management structure, sales operations, supplier relationships, and customer base have not changed significantly. While there has been turnover with respect to several senior management positions over the course of the period corresponding to 2007, 2008, and 2010, the board members remained the same. *See* AMLT's October 18, 2010, questionnaire response at Exhibit 1. The production operations also remained the same during the 2007, 2008, and 2010 time period, which is evident through business licenses, utility bills and invoices. *See* AMLT's October 18, 2010, questionnaire response at Exhibits 2, 3, and 4. Additionally, the suppliers for Sicartsa and AMLT, while not identical, overlap during the relevant time period to a degree that provides support for consistency in supplier base. *See* AMLT's October 18, 2010, questionnaire response at Exhibits 8, 9, and 10 and the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Analysis of Supplier and Customer Data" (October 25, 2010) (Supplier and Customer Data Memorandum), a business proprietary document of which the public version is on file in the Central Records Unit (CRU). The customers for Sicartsa and AMLT overlap to an even greater degree than the suppliers, which again provides consistency in the customer base. *See* AMLT's October 18, 2010, questionnaire response at Exhibits 5, 6, and 7 and the Supplier and Customer Data Memorandum.

The documentation described above demonstrates that there was little to no change in management structure, sales operations, supplier relationships, or customer base. For these reasons, we preliminarily find that AMLT is the successor-in-interest to Sicartsa and, thus, should receive the same antidumping duty treatment with respect to carbon and certain alloy steel wire rod from Mexico.

When "expedited action is warranted," the Department may publish the notice of initiation and preliminary determination concurrently. *See* 19 CFR 351.221(c)(3)(ii); *see also Granular Polytetrafluoroethylene Resin from Italy: Initiation and Preliminary Results of Antidumping Changed Circumstances Review,* 68 FR 13672 (March 20, 2003), unchanged in *Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review,* 68 FR 25327 (May 12, 2003). The Department has determined that such action is warranted because AMLT has provided *prima facie* evidence that AMLT is the successor-in-interest, and we have the information necessary to make a preliminary finding already on the record.

Based on the record evidence, we find that AMLT operates as the same business entity as Sicartsa. Thus, we preliminarily determine that AMLT is the successor-in-interest to Sicartsa.

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in

accordance with 19 CFR 351.303. Any interested party may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first workday thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. In accordance with 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, or within 45 days if all parties agree to our preliminary results.

During the course of this antidumping duty changed circumstances review, cash deposit requirements for the subject merchandise exported by AMLT will continue to be the all others rate established in the investigation. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002). The cash deposit rate will be altered, if warranted, pursuant only to the final results of this review.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: October 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–27783 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA014

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council's) Ad Hoc Groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a work session, which is open to the public, to plan the periodic 5-year review of groundfish Essential Fish Habitat (EFH).

DATES: The work session will be held Monday, December 20, 2010 from 9 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Hyatt Place Hotel Portland Airport, 9750 NE Cascades Parkway, Portland, OR 97220, (503) 288–2808.

Council Address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to develop recommendations for the process and scope of the groundfish EFH periodic 5-year review, and for the role of the EFHRC in that review. Recommendations are tentatively scheduled to be presented to the Council at the April 2011 Council meeting in San Mateo, CA.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 29, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–27744 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA007

New England Fishery Management Council (NEFMC); Public Meeting; Correction

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

ACTION: Notice of correction to a public meeting; addition to agenda.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day meeting on Tuesday through Thursday, November 16–18, 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday and Thursday, November 16–18, starting at 8:30 a.m. each day.

ADDRESSES: The meeting will be held at the Ocean Edge Resort, 2907 Main Street, Brewster, MA 02631–1946; telephone (508) 896–9000; fax: (508) 896–9123.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on October 28, 2010 at 75 FR 66357.

Thursday, November 18, 2010

The New England Fishery Management Council's November 16–18 agenda will occur as previously published in the **Federal Register** on October 28, 2010. On Thursday, November 18, 2010, however, the final day of the meeting, there will be an addition to the items the Council will address. Just prior to adjournment, the Council will receive a report from the Joint Spiny Dogfish Committee, during which the NEFMC is scheduled to approve management measures for this fishery for the 2011 fishing year.

The spiny dogfish resource is managed jointly by the Mid-Atlantic Fishery Management Council, which recently set the annual quota and trip limits for the fishery for May 1, 2011–April 30, 2012. The New England Council will vote on the same issues and adjourn following discussion of any other outstanding Council business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 29, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–27735 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/12/2010 through 10/28/2010]

Firm name	Address	Date accepted for investigation	Products
A.J. Rose Manufacturing Company	38000 Chester Road, Avon, OH 44011 ..	10/14/2010	The firm is a manufacturer of precision metal stamped, welded, spun, over molded and machined components.
Berkline/BenchCraft, LLC	1 Berkline Dr., Morristown, TN 37813	10/14/2010	The firm produces upholstered household furniture. The primary manufacturing material is wood, fabric, metal & leather.
Lake Country Woodworkers Ltd	P.O. Box 400, 12 Clark St., Naples, NY 14512.	10/28/2010	The firm produces hardwood furniture for office and bathrooms including conference tables, occasional tables, reception stations, vanities and credenzas.
Lloyd & McKenzie Ltd. Co	619 Pine Ridge Road, P.O. Box 1338, Chester, SC 29706.	10/21/2010	The firm produces laminated fabric; primary materials include fabric and water-based polymeric compounds.
Stainless Fabrication, Inc	4455 W. Kearney Street, Springfield, MO 65801.	10/13/2010	The firm performs in-house and field fabrications of stainless steel single and double wall tanks and processing equipment including: Mixers, reactors, pressure and storage vessels, with up to 600K gallon capacity.
The Rose Corporation	401 North 8th Street, Reading, PA 19601.	10/12/2010	The firm is a custom manufacturer of warm air heating and air conditions equipment and supplies and industrial equipment.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: October 28, 2010.

Miriam J. Kearse,

Program Team Lead.

[FR Doc. 2010–27798 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel bar from Brazil. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA). The period of review (POR) is February 1, 2009, through January 31, 2010.

The Department has preliminarily determined that VMSA made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of

review. We intend to issue the final results of review no later than 120 days from the publication date of this notice.

DATES: *Effective Date:* November 3, 2010.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–0768 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department published in the **Federal Register** an antidumping duty order on certain stainless steel bar from Brazil. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995). On February 1, 2010, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 5037 (February 1, 2010).

In accordance with 19 CFR 351.213(b)(1), on February 26, 2010, the petitioners [1] requested that the Department conduct an administrative review of VMSA's sales and entries of subject merchandise into the United States during the POR. In accordance with 19 CFR 351.213(b)(2), on March 1, 2010, VMSA also requested that the Department conduct an administrative review of its sales. On March 30, 2010, the Department published a notice of initiation of the administrative review of the antidumping duty order on stainless steel bar from Brazil for the period February 1, 2009, through January 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 15679 (March 30, 2010).

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.,* cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 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 the order is dispositive.

Fair-Value Comparison

To determine whether VMSA's sales of the subject merchandise from Brazil to the United States were at prices below normal value, we compared the export price (EP) to the normal value as described in the "Export Price" and "Normal Value" sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the EP of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section, above, produced and sold by VMSA in the comparison market during the POR to be foreign like product for the purposes of determining appropriate products to use in comparison to U.S. sales of subject merchandise. Specifically, in making our comparisons, we used the following methodology. If an identical comparison-market model was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month. We calculated the weighted-average comparison-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: general type of finish, grade, remelting process, type of final finishing operation, shape, and size.

Export Price

The Department based the price of all U.S. sales of subject merchandise by VMSA on EP as defined in section 772(a) of the Act because the merchandise was sold before importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States. We calculated EP based on the packed price to unaffiliated purchasers in the United States, as appropriate. *See* section 772(c) of the Act. We made adjustments to price for billing adjustments, where applicable. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home-Market Viability

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales of SSB in the home market to serve as a viable basis for calculating the normal value, we compared the volume of the respondent's home-market sales of the foreign like product to its volume of the U.S. sales of the subject merchandise. VMSA's quantity of sales in the home market was greater than five percent of its sales to the U.S. market. Based on this comparison of the aggregate quantities sold in Brazil and to the United States and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we preliminarily determine that the quantity of the foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the

[1] Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., Universal Stainless & Alloy Products, Inc., and Outokumpu Stainless Bar, Inc.

subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determine that VMSA's home market was viable during the POR. *Id.* Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales.

B. Cost-of-Production Analysis

In accordance with section 773(b) of the Act, in the 2007–2008 antidumping duty administrative review, the most recently completed review as of the date of the initiation of this review, we found that VMSA made sales below the COP and we disregarded VMSA's below-cost sales for the calculation of normal value. *See Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 10022 (March 9, 2009).[2] Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department found reasonable grounds to believe or suspect that sales by VMSA of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the COP. Pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales by VMSA in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and labor employed in producing the foreign like product, the selling, general, and administrative expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by VMSA in its questionnaire responses. Based on the review of record evidence, VMSA did not appear to experience significant changes in cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. *See* section 773(b)(2) of the Act. We compared the COPs of the models represented by control numbers to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of VMSA's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of VMSA's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we only disregarded below-cost sales that amounted to 20 percent or more of VMSA's sales of a given product. All other sales that were below cost but did not meet the 20-percent threshold were included in our calculation of normal value.

D. Price-to-Price Comparisons

We based normal value for VMSA on home-market sales to unaffiliated purchasers. VMSA's home-market prices were based on the packed, ex-factory, or delivered prices. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP sales, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. We also made adjustments, if applicable, for home-market indirect selling expenses to offset U.S. commissions in EP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP. Consistent with section 773(a)(7)(A) of the Act, for these preliminary results, we did not make a level-of-trade adjustment in instances when normal value was calculated at a different level of trade. *See* "Level of Trade" section below.

Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as EP sales. *See* section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412. When there are no sales at the same level of trade, we compare EP sales to comparison-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the comparison market.

To determine whether home-market sales were at a different level of trade than VMSA's U.S. sales during the POR, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Based on our analysis, we have preliminarily determined that there is one level of trade in the United States and two levels of trades in the home market; we also find that the single U.S. level of trade is at the same level as one of the levels of trade in the home market and at a less advanced stage than the second home-market level of trade. Therefore, we have compared U.S. sales to home-market sales at the same level of trade and, where there was no home-market sale at the same level of trade, at a different level of trade.

Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to normal value for level of trade if the difference in level of trade involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. Here, because we have preliminarily determined that a pattern of consistent price differences is not supported by record evidence showing higher prices at one level of trade for a preponderance of models and for a preponderance of quantities sold, we did not calculate a level-of-trade adjustment based on VMSA's home-market sales of the foreign like product. For a detailed description of our level-of-trade analysis for VMSA for these preliminary results, *see* VMSA Preliminary Results Analysis Memorandum, dated October 27, 2010, on file in the Department's Central Records Unit.

[2] These results were unchanged in the final results of review (*Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review,* 74 FR 33995 (July 14, 2009)).

Currency Conversion

Pursuant to section 773(A) of the Act and 19 CFR 351.415, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the weighted-average dumping margin for merchandise produced and exported by Villares Metals S.A. is 4.07 percent for the period February 1, 2009, through January 31, 2010.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. *See* 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer/customer-specific assessment rates for these preliminary results of review. For sales where VMSA reported entered value, we divided the total dumping margins (calculated as the difference between normal value and EP) for the reviewed sales by the total entered value of those reviewed sales for each reported importer or customer. For sales where entered value was not reported, we divided the total dumping margins for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will instruct CBP to assess the resulting importer/customer-specific ad-valorem rate or per-unit dollar amount, as appropriate, on all entries of subject merchandise made by the relevant importer or customer during the POR. *See* 19 CFR 351.212(b).

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by VMSA for which VMSA did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of VMSA-produced merchandise at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue liquidation instructions to CBP 15 days after the publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for VMSA will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be the all-others rate for this proceeding, 19.43 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil,* 59 FR 66914 (December 28, 1994). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–27800 Filed 11–2–10; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Teleconference of the Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing a teleconference of the Chronic Hazard Advisory Panel (CHAP) on phthalates and phthalate substitutes. The Commission appointed this CHAP to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314). The CHAP will discuss possible risk assessment approaches for phthalates and phthalate substitutes.

DATES: The teleconference will take place at 5 p.m. GMT (12 p.m. EST) on Wednesday, November 15, 2010. Interested members of the public may listen to the CHAP's discussion. Members of the public will not have the opportunity to ask questions, comment, or otherwise participate in the teleconference. Interested parties should contact the CPSC project manager,

Michael Babich, by e-mail (*mbabich@cpsc.gov*) for call-in instructions no later than November 4, 2010.

FOR FURTHER INFORMATION CONTACT: To request access to the teleconference, contact the project manager by e-mail at *mbabich@cpsc.gov*, no later than Thursday, November 4, 2010. For all other questions, contact: Michael Babich, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–7253; e-mail *mbabich@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Section 108 of the CPSIA permanently prohibits the sale of any "children's toy or child care article" containing more than 0.1 percent of each of three specified phthalates: Di- (2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any "children's toy that can be placed in a child's mouth" or "child care article" containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-*n*-octyl phthalate (DnOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP "to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles." The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and:

- Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;
- Consider the potential health effects of each of these phthalates, both in isolation and in combination with other phthalates;
- Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;
- Consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;
- Review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;
- Consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;
- Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CHAP's examination must be conducted de novo, and the CPSIA contemplates completion of the CHAP's examination within 18 months of the CHAP's appointment. The CHAP must review prior work on phthalates by the Commission, but it is not to be considered determinative.

The CHAP must make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in section 108 of the CPSIA or phthalate alternatives that the panel determines should be prohibited from use in children's toys or child care articles or otherwise restricted. The CHAP members were selected by the Commission from scientists nominated by the National Academy of Sciences. *See* 15 U.S.C. 2077, 2030(b).

The CHAP previously met April 14 and 15, 2010, and July 26 and 28, 2010, at the Commission's offices in Bethesda, MD. The CHAP is holding a teleconference on November 15, 2010, in preparation for its next meeting December 2 through 3, 2010. The November teleconference and December meeting will include discussions of possible risk assessment approaches.

Dated: October 29, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–27751 Filed 11–2–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0163]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Public Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Public Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 3, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Public Affairs, ATTN: CR&PL (Mr. David Nokes), 1400 Defense, The Pentagon, Washington, DC 20301–1400, or call the Directorate for Community Relations and Public Liaison at (703) 695–2113.

Title; Associated Form; and OMB Number: Request for Department of Defense Participation in Public Events (Non-Aviation), DD Form 2536 and Request for Department of Defense Aircraft Participation in Public Events, DD Form 2535; OMB Number 0704–0290.

Needs and Uses: This information collection requirement is necessary to evaluate the eligibility of events to receive Department of Defense community relations support and to determine whether requested military assets are available.

Affected Public: Individuals or households; State or local governments; Federal agencies or employees; non-profit institutions.

Annual Burden Hours: 17,850.
Number of Respondents: 51,000.
Responses per Respondent: 1.
Average Burden per Response: 21 minutes.
Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are representatives of Federal and non-Federal government agencies, community groups, non-profit organizations, and civic organizations requesting Department of Defense support for patriotic events conducted in the civilian domain. DD Forms 2535 and 2536 record the type of military support requested event data, and sponsoring organization information. The completed forms provide the Department of Defense the minimum information necessary to determine whether an event is eligible for military participation and whether the desired support is permissible and/or available. If the forms are not provided, the review process is greatly increased because the Department of Defense must make additional written and telephonic inquiries with the event sponsor. In addition, use of the forms reduces the event sponsor's preparation time because the forms provide a detailed outline of information required, eliminate the need for a detailed letter, and contain concise information necessary for determining appropriateness of military support. DD–2535 responses (requests for aerial participation) will be submitted via an Internet web portal, reducing the time for the Department of Defense to process requests and providing the respondents the ability to monitor the status and disposition of their requests. DD–2536 responses requesting Department of Defense musical Units and musicians will also be submitted and processed using the Internet web portal. Use of the forms is essential to reduce preparation and processing time, increase productivity, and maximize responsiveness to the public.

Dated: October 21, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27772 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of Section 905 of Title IX, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Missouri River (South Dakota) Task Force (hereafter referred to as the Task Force).

The Task Force is a non-discretionary federal advisory committee established to provide independent advice and recommendations to the Secretary of the Army on plans and projects to reduce siltation of the Missouri River in the State of South Dakota and to meet the objectives of the Pick-Sloan Program. Specifically, the Task Force's duties, set out in Public Law 106–541, Section 905, paragraphs (c)–(e) and include the following tasks:

a. Prepare and approve, by a majority of the members, a plan for the use of the funds made available under Public Law 106–541, to promote conservation practices in the Missouri River watershed, control and remove the sediment from the Missouri River, protect recreation on the Missouri River from sedimentation, and protect Indian and non-Indian historical and cultural sites along the Missouri River from erosion;

b. Develop and recommend to the Secretary of the Army for implementation, critical restoration projects meeting the goals of the plan; and

c. Determine if these projects primarily benefit the Federal Government.

The Secretary of the Army may act upon the Task Force's advice and recommendations.

As prescribed by Public Law 106–541, the Task Force shall be composed of not more than twenty nine members. Specifically, the Task Force membership shall be composed of:

a. Secretary of the Army or designee, who shall serve as the Chairperson;

b. Secretary of Agriculture or designee;

c. Secretary of Energy or designee;

d. Secretary of the Interior or designee; and

e. The Trust. The Trust is composed of twenty five members to be appointed by the Secretary of the Army, including;

i. Fifteen members recommended by the Governor of South Dakota that represent equally the various interests of the public. Included in those fifteen individuals recommended by the Governor of South Dakota, there shall be recommendations of representatives of the South Dakota Department of Environment and Natural Resources; the South Dakota Department of Game, Fish, and Parks; environmental groups; the hydroelectric power industry, local governments; recreation user groups; agricultural groups; and other appropriate interests.

ii. The Trust also shall include one member recommended by each of the nine Indian Tribes in the State of South Dakota, and one member recommended by the organization known as the "Three Affiliated Tribes of North Dakota."

The individuals described in (e) above, shall be appointed by the Secretary of the Army as representative members to the Task Force.

All Task Force members shall be appointed for two-year terms and generally will serve no more than four years total on the Task Force, or as determined by the Secretary of the Army or designee. However, each member appointed to a term appointment must have his or her appointment renewed annually by the Secretary of Defense.

Task Force members shall, with the exception of travel and per diem for official travel, serve without compensation.

With DoD approval, the Task Force is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Task Force, and shall report all their recommendations and advice to the Task Force for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Task Force, nor can they report directly to the Department of Defense or any Federal officers or employees who are not Task Force members.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Task Force shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson. The estimated number of Task Force meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-

time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Task Force and subcommittee meetings, for the full duration of the meeting; however, in the absence of the Designated Federal Officer, an Alternate Designated Federal Officer shall attend the entire Task Force or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Missouri River (South Dakota) Task Force membership about the Task Force's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Missouri River (South Dakota) Task Force.

All written statements shall be submitted to the Designated Federal Officer for the Missouri River (South Dakota) Task Force, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Missouri River (South Dakota) Task Force Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Missouri River (South Dakota) Task Force. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2010–27714 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Expand Implementation of the TRICARE Program in Alaska

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary of Defense for Health Affairs announces the intent to expand implementation of the TRICARE Program in Alaska. The expansion will require the Managed Care Support contractor to develop and operate a TRICARE civilian preferred provider network under 32 CFR 199.17(p) in two Prime Service Areas in the state of Alaska. Eligible TRICARE beneficiaries will be permitted to enroll in Prime with assignment to Military Treatment Facility (MTF) Primary Care Managers (PCMs) consistent with the established priorities provided in 32 CFR 199.17(c) or assignment to a PCM within the TRICARE civilian preferred provider network. The program will be offered to the Prime Service Areas around the MTFs located on Fort Wainwright and Eielson Air Force Base.

FOR FURTHER INFORMATION CONTACT: LTC Stephen Oates, TRICARE Policy and Operations Directorate, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041, (703) 681–0039.

Dated: October 21, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27771 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

U.S. Strategic Command Strategic Advisory Group Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2, Section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces a closed meeting notice of the U.S. Strategic Command Strategic Advisory Group.

DATES: December 9, 2010: 8 a.m. to 5 p.m.

December 10, 2010: 8 a.m. to 11:30 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd, Suite 1F7, Offutt AFB, NE 68113–6030.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Floyd March, Joint Staff, (703) 697–0610.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Kevin P. Chilton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, U.S.C.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public of interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*. Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: October 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27708 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting Cancellation for Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463, a notice published on August 24, 2010, (FR Doc. 2010–15985), announcing the meetings of the Advisory Council on Dependents' Education (ACDE) scheduled to be held on November 12, 2010, from 8 a.m. to 11 a.m. and on November 19, 2010, from 9 a.m. to 2 p.m.; those meetings have been cancelled. A new meeting date will be announced.

FOR FURTHER INFORMATION CONTACT: Ms. Leesa Rompre at (703) 588–3128 or *Leesa.Rompre@hq.dodea.edu.*

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2010–27711 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is for the Committee to receive Service specific briefings pertaining to recommendations contained in the 2009 annual report. Also, to review and discuss Service responses relating to assignments and well-being, concerns on units and assignments still closed to women, and challenges of the post-deployment/reintegration of women. Finally, to receive a briefing from the Defense Task Force on Sexual Assault in the Military. The meeting is open to the public, subject to the availability of space.

DATES: December 2–3, 2010, 8:30 a.m.–5 p.m.

ADDRESSES: Residence Inn Marriott, 550 Army Navy Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, or DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Thursday, December 2, 2010 8:30 a.m.–5 p.m.

—Welcome, introductions, and announcements
—Service briefs on DACOWITS 2009 Report
—Briefings from DoD Task Force on Sexual Assault in the Military Services
—Services SME briefs on assignment and well-being inquiries
—Public Forum

Friday, December 3, 2010 8:30 a.m.–5 p.m.

—Welcome, introductions, and announcements
—Discussion and decisions regarding recommendations on assignments and well-being
—Executive session with Military Reps to discuss, craft, and vote on recommendations for the 2010 Report

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed above under the **FOR FURTHER INFORMATION CONTACT** section NLT 5 p.m., Tuesday, November 30, 2010. If a written statement is not received by Tuesday, November 30, 2010, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services.

If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Wednesday, December 2, 2010 from 4 p.m. to 4:30 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27713 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service (DFAS). The publication of PRB membership is required by 5 U.S.C. 4314(C)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, DFAS.

DATES: *Effective Date:* November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Denise Thornburg, DFAS SES Program Manager, Defense Finance and Accounting Service, Arlington, Virginia, (303) 337–3288.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(C)(4), the following executives are appointed to the DFAS PRB:

Richard Gustafson, Steve Turner, and Nancy Zmyslinski:

Executives listed will serve a one-year renewable term, effective November 15, 2010.

Dated: October 28, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27717 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the Office of the Secretary of Defense, Performance Review Board (PRB) members, to include the Joint Staff, the U.S. Mission to the North Atlantic Treaty Organization, Defense Field Activities, the U.S Court of Appeals for the Armed Forces and the following Defense Agencies: Defense Advance Research Projects Agency, Defense Contract Management Agency, Defense Commissary Agency, Defense Security Cooperation Agency, Defense Business Transformation Agency, Defense Legal Services Agency, and Pentagon Force Protection Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: *Effective Date:* September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Michael L. Watson, Assistant Director for Executive and Political Personnel, Washington Headquarters Services, Office of the Secretary of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, effective September 21, 2010.

Office of the Secretary of Defense

CHAIRPERSON CHRISTINE CONDON

PRB panel members	
John Pennett	Joseph Angello
Ronald Pontius	Leigh Bradley
Susan Yarwood	David Fisher
Joseph Bonnet III	Dennis Savage
Richard Sayre	Louis Cabrera
Allen Middleton	Charles Gunnels
Jonathan Cofer	John Shea
Elaine Simmons	Steven Austin
Timothy Harp	Richard Ginman

CHAIRPERSON CHRISTINE CONDON—Continued

PRB panel members	
Paul Koffsky	Michael Knollmann
Robert Salesses	James McMichael
Lydia Moschkin	Linda Oliver
Thomas Milks	Matice Wright
Alan Shaffer	Mark Easton
Craig Glassner	Richard Genaille
Paul Kozemchak	Dan Haendel
Timothy Morgan	James Roberts
James Russell	John James Jr.
Matthew Schaffer	Maureen Viall

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27716 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0151]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Security Agency/Central Security Service (NSA/CSS) proposes to add a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 3, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number/Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 19, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FT 6427).

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 27

SYSTEM NAME:

Information Assurance Scholarship Program.

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and institutions who apply for recruitment scholarships, retention scholarships or grants under the DoD Information Assurance Scholarship Program (IASP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual information to include: Title, full name, Social Security Number (SSN), current address, permanent address, phone number, cell phone number, e-mail address, office address, office phone number, office fax number, office e-mail address; self-certification of U.S. citizenship; security clearance information; résumé (to include activities such as community outreach, volunteerism, athletics, *etc.*); veterans status; letters of reference/

recommendations; personal goal statement; list of awards and honors.

Educational information to include: Official transcripts from all schools attended; Scholastic Assessment Test (SAT) and Graduate Record Examination (GRE) test scores; list of previous schools attended and degree/certification; self-certification of enrollment status at a Center for Academic Excellence (CAE) to include anticipated date of graduation, proposed university(ies) and proposed degree to include start date, student status and anticipated date of graduation.

Work related information to include: Current supervisor's name, office title, office address, office phone number, office fax number, office e-mail address; office of primary responsibility, name, position title, office address, e-mail, and phone number; application for the position the individual will fill on completion of the program and the desired DoD Agency; and Continued Service Agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2200, Programs; purpose; 10 U.S.C. 7045, Officers of the other armed forces; enlisted members: admission; DoDI 8500.2, Information Assurance (IA) Implementation and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To maintain records relating to the processing and awarding of recruitment scholarships, retention scholarships or grants under the DoD Information Assurance Scholarship Program (IASP) to qualified applicants and institutions. This system is also used by management for tracking and reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To authorized DoD hiring officials to facilitate the recruiting of DoD IASP award recipients into Federal service for the purpose of fulfilling the DoD IASP mission.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12), Records maintained on individuals, may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD "Blanket Routine Uses" set forth at the beginning of the NSA/CSS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by the individual's name, Social Security Number (SSN), institution's name and/or year of application.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the disposition of these records, treat these records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

DoD IASP Executive Administrator, National Security Agency/Central Security Service, 9800 Savage Road, Fort George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether records about themselves is contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written requests should contain the individuals name, address, scholarship award year and type, and the institution attended. All requests must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Requests should include individuals name, address, scholarship award year and type, and the institution(s) attended. All requests must be signed.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial agency determinations may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act (FOIA)/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Individuals, via the DoD IASP recruitment or retention application process; Center for Academic Excellence (CAE)/Institutions via the grants application process.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–27715 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0022]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 3, 2010.

Title, Form, and OMB Number: Leading Edge Supply Chain Survey; OMB Number 0701–TBD.

Type of Request: New.

Number of Respondents: 818.
Responses per Respondent: 1.
Annual Responses: 818.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 614 hours.
Needs and Uses: This study seeks to uncover the emerging trends in supply chain management (SCM) practices, processes and metrics that could be beneficial to the Department of Defense, with particular emphasis on the U.S. Air Force.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: October 22, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27770 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0022]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on December 3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 20, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–270a TRADOC DoD

SYSTEM NAME:

Reception Battalion Automated Support System (RECBASS).

SYSTEM LOCATION:

The Army Training Support Center (ATSC) (test and development only) at Army Training Support Center (ATSC), Commander, Building 2114, Pershing Avenue, Fort Eustis, VA 23604–5166 and five production sites listed below.

Commander, 46th Adjutant General Battalion (Reception) (ATZJ–RSZ), 3576 Wilson Road, Building 6559, Fort Knox, KY 40121–5728;

30th Adjutant General Battalion (Reception) (ATSH–BCR), 5469 187th Infantry Regiment Street, Building 3020, Fort Benning, GA 31905–4158;

95th Adjutant General Battalion (Reception) (ATSF–KR), 2843 Davidson Road, Building B–2843, Fort Sill, OK 73503–4443;

120th Adjutant General Battalion (Reception) (ATZJ–RB), 1895 Washington Road, Fort Jackson, SC 29207–6704;

43rd Adjutant General Battalion (Reception) (ATZT–AG), 200 Oklahoma Avenue, Building 2108, Fort Leonard Wood, MO 65473–8930.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Navy, Marine, Air Force recruits being managed during the initial Army in-processing of new inductees and prior service personnel. These include Active, Reserve, and Guard components; and Individual Ready Reserve during mobilization. The system is used prior to assignment to an Initial Military Training Unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name; Social Security Number (SSN); military occupational specialty (MOS); roster number; service computation date; mental and physical category; term and end of term service (ETS); number of dependents; gender; religious code; race; company code; enlistment bonus; training phase; mandatory release date; citizenship; basic active service date (BASD); marital status; rank; basic pay entry date (BPED); date of rank; (yes/no) if person has a driver's license; ethnicity; date of birth; education; pulmonary, upper/lower extremity, hearing and eye, and psychological(PULHES) test results; date of arrival; estimated arrival date (EAD); current mailing address and

telephone number; if involved in an accident, when and where the accident occurred, type of equipment involved in the accident, and signature; unit identification code (UIC); aptitude area scores; hair color; eye color; school; place of birth; blood type; financial and educational related information; third party referring agent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C 5013, Secretary of the Navy, DoD Directive 1145.2, United States Military Entrance Processing Command; Army Regulation 601–270, Military Entrance Processing Station (MEPS); MEPCOM Regulation 680–3, U.S. Military Processing Command Integrated Resources System (USMIRS); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Used by the five Army Reception Battalions (Forts Knox, Benning, Sill, Jackson, and Leonard Wood) to manage the initial Army in-processing of new inductees and prior service personnel preceding assignment to an initial military training unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name or Social Security Number (SSN) of the prospective enlistee, inquirer, recruiter, or third party referring agent.

SAFEGUARDS:

RECBASS is hosted in a secure environment on an Army installation. The network teams fully comply with Army requirements for physical security and security processes. System Administrators have access to PII and their access is monitored. All personnel with access to PII are Security Plus certified. Data in transit is encrypted. REBCASS exists in development, test and production environments in a secure U.S. Army computing environment that complies with DoD information assurance and certification.

RETENTION AND DISPOSAL:

Keep in the master file until the individual is reassigned or transition from the Reception Battalion, then destroy after 6 years by shredding or erasing from electronic storage media.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Accessions Command, G–3 (ATAL–O), 90 Ingalls Road, Fort Monroe, VA 23651–1065.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Accessions Command, G–3 (ATAL–O), 90 Ingalls Road, Fort Monroe, VA 23651–1065.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number; and military status or other information verifiable from the record itself; if involved in an accident, when and where the accident occurred and type of equipment involved, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Accessions Command, G–3 (ATAL–O), 90 Ingalls Road, Fort Monroe, VA 23651–1065.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number; and military status or other information verifiable from the record itself; if involved in an accident, when and where the accident occurred and type of equipment involved, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, Initial Receiving Branch (IRB), Public Affairs Branch (PAB) and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–27709 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0023]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is altering a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and

docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 20, 2010 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–270 USMEPCOM DoD

SYSTEM NAME:

U.S. Military Processing Command Integrated Resources System (USMIRS) (February 25, 2005, 70 FR 9284).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Various personal data, such as individual's name, Social Security Number (SSN) and unique record identifier, Alien Registration number, date and place of birth, home address and telephone number, results of aptitude tests, physical examination, background screening through the use of biometric modalities (iris, fingerprints, voice, palm, or facial) images/templates for identification, and relevant documentation concerning individual's acceptance/rejection for military service."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Directive 1145.2, United States Military Entrance Processing Command; Army Regulation 601–270/Air Force Regulation 33–7/Marine Corps Order P1100.75A, Military Entrance Processing Station (MEPS); USMEPCOM Regulation 680–3, U.S. Military Processing Command Integrated Resources System (USMIRS); and E.O. 9397 (SSN), as amended."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Each MEPS retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each MEPS retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years. For qualification records, enlistment, commission, and induction quotas upon completion of initial military service obligation, for a period of 7 years (Keep in CFA until no longer needed for conducting business, then retire to RHA/AEA. The RHA/AEA will destroy record when the record is 7 years old). Medical and conduct disqualification records are maintained for 25 years or up to the individual's age of 42, whichever occurs first, after which they are destroyed. For acceptable applicants, originals or copies of documents are filed permanently in their official personnel file; the file is then transferred to the gaining Armed Forces. During medical examination written information prepared by the examining physician relating to the individual who becomes seriously ill or injured while at a MEPS, or were found disqualified for a condition considered dangerous to the individual's health if left untreated are kept for 2 years."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this system of records should address written inquiries to the Commander, U.S. Military Entrance Processing Command, FOIA/PA Officer (J–1/MHR–MS–SS), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide their full name, Social Security Number (SSN), and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, U.S. Military Entrance Processing Command, FOIA/PA Officer (J–1/MHR–MS–SS), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide their full name, Social Security Number (SSN), and military status or other information verifiable from the record itself.

On personal visits, individual should provide acceptable identification such as valid driver's license, employer identification card, building pass, etc.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager."

* * * * *

A0601–270 USMEPCOM DoD

SYSTEM NAME:

U.S. Military Processing Command Integrated Resources System (USMIRS).

SYSTEM LOCATION:

Primary location: United States Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094. Segments exist at 65 military entrance processing stations (MEPS) in the continental United States, Alaska, Puerto Rico, and Hawaii. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who report to a military entrance test site or MEPS to be aptitudinally tested and/or medically examined to determine their fitness for entry into one of the Armed Services (i.e., Army, Air Force, Coast Guard, Marine Corps, and Navy).

CATEGORIES OF RECORDS IN THE SYSTEM:

Various personal data, such as individual's name, Social Security Number (SSN) and unique record identifier, Alien Registration number, date and place of birth, home address and telephone number, results of aptitude tests, physical examination, background screening through the use of biometric modalities (iris, fingerprints, voice, palm, or facial) images/templates for identification, and relevant documentation concerning individual's acceptance/rejection for military service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Directive 1145.2, United States Military Entrance Processing Command; Army Regulation 601–270/ Air Force Regulation 33–7/Marine Corps Order P1100.75A, Military Entrance Processing Station (MEPS); USMEPCOM Regulation 680–3, U.S. Military Processing Command Integrated Resources System (USMIRS); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To determine qualifications of applicants for the Armed Forces through aptitude testing, medical examination, identity verification, background screening, and administrative processing. Records will also be used to determine patterns and trends in the military population, and for statistical analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is disclosed to the Selective Service System (SSS) to update the SSS registrant database.

Information may also be disclosed to local and state Government agencies for compliance with laws and regulations governing control of communicable diseases.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN) or unique record identifier, and/or biometric images.

SAFEGUARDS:

All data is retained in locked rooms/ compartments with access limited to personnel designated as having an official need therefore. Access to computerized data is by use of a valid user ID and password code assigned to the individual video display terminal operator.

RETENTION AND DISPOSAL:

Each MEPS retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each MEPS retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years. For qualification records, enlistment, commission, and induction quotas upon completion of initial military service obligation, for a period of 7 years (Keep in CFA until no longer needed for conducting business, then retire to RHA/AEA. The RHA/AEA will destroy record when the record is 7 years old). Medical and conduct disqualification records are maintained for 25 years or up to the individual's age of 42, whichever occurs first, after which they are destroyed. For acceptable applicants, originals or copies of documents are filed permanently in their official personnel file; the file is then transferred to the gaining Armed Forces. During medical examination written information prepared by the examining physician relating to the individual who becomes seriously ill or injured while at a MEPS, or were found disqualified for a condition considered dangerous to the individual's health if left untreated are kept for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system of records should address written inquiries to the Commander, U.S. Military Entrance Processing Command, FOIA/PA Officer (J–1/MHR–MS–SS), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide their full name, Social Security Number (SSN), and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, U.S. Military Entrance Processing Command, FOIA/PA Officer (J–1/MHR–MS–SS), 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide their full name, Social Security Number (SSN), and military status or other information verifiable from the record itself.

On personal visits, individual should provide acceptable identification such as valid driver's license, employer identification card, building pass, etc.

In addition, the requester must provide a notarized statement or an unsworn declaration made in

accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, physicians, results of tests, federal/state/local law enforcement activities/agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–27710 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0024]

Privacy Act of 1974; System of Records

AGENCY: The Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 26, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

A0608–10 CFSC

Child Development Services (CDS) (February 22, 1993, 58 FR 10002).

REASON:

The Child Development Services (CDS) is covered under system of records notice A0215 FMWRC, General Morale, Welfare, Recreation and Entertainment Records (July 7, 2008, 73 FR 38420); therefore the notice can be deleted.

[FR Doc. 2010–27712 Filed 11–2–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 3, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

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. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 29, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title of Collection: State Fiscal Stabilization Fund Annual Report Forms.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 52.

Total Estimated Annual Burden Hours: 7,696.

Abstract: The State Fiscal Stabilization Fund (SFSF) program is authorized in Title XIV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), which President Barack Obama signed into law on February 17, 2009.

Under the SFSF program, the U.S. Department of Education awards funds to Governors to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in four areas: (1) Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need; (2) establishing pre-K-to-college-and-career data systems that track progress and foster continuous improvement; (3) making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and (4) providing targeted, intensive support and effective interventions for the lowest-performing schools.

Section 14008 of ARRA requires each State receiving funds to submit an annual report to the Secretary, at such time and in such manner as the Secretary may require, that describes:

(1) The uses of funds provided under this title within the State;

(2) How the State distributed the funds it received under this title;

(3) The number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) Tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) The State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) The tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) The extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) A description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

Each State will submit to the Department two SFSF annual reports. The initial report will be due to the Department by February 18, 2011. This report will cover the period from the State's receipt of SFSF funds through September 30, 2010. Each State must submit its final SFSF report by February 18, 2012. The final report will provide data for the period extending through September 30, 2011, the deadline for obligation of SFSF funds.

The Department will, with the assistance of a contractor, evaluate the information in each report and use the data to prepare for the Congress the Secretary's Report required under Section 14110 of the ARRA. In addition, the data will inform the Department's administration and oversight of the program. In particular, it will provide useful information on the uses and impact of SFSF funds.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4315. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2010–27749 Filed 11–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 3, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

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. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 29, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Special Education—Institutional Reporting on

Regulatory Compliance Related to the Personnel Preparation Program's Service Obligation.

OMB Control Number: 1820–0622.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 4,650.

Total Estimated Annual Burden Hours: 6,750.

Abstract: The data collection under this request are governed by 34 CFR 304.1–304.32 of the The data collection under this request are governed by 34 CFR 304.1–304.32 of the December 9, 1999 regulations that implement section 673(h) of the Individuals with Disabilities Education Act, Amendments of 1997 which requires that individuals who receive a scholarship through the Personnel Preparation Program funded under the Act subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy the requirements of the regulations must repay all or part of the cost of assistance in accordance with regulations issued by the Secretary. These regulations implement requirements governing among other things, the service obligation for scholars, oversight by grantees, and repayment of scholarship. In order for the Federal government to ensure the goals of the program are achieved, certain data collection, record keeping, and documentation are necessary.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4381. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2010–27750 Filed 11–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Talent Search (TS) Program; Notice Inviting Applications For New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.044A.

Dates: Applications Available: November 3, 2010.

Deadline for Transmittal of Applications: December 28, 2010.

Deadline for Intergovernmental Review: February 28, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the TS Program is to identify qualified individuals with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education. TS projects publicize the availability of, and facilitate the application for, student financial assistance for persons who seek to pursue postsecondary education and encourage persons who have not completed programs at the secondary or postsecondary level to enter or reenter and complete these programs.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2011 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: The Secretary encourages applicants to propose projects that provide services to students enrolled in schools that are not currently being served by a Talent Search project, especially schools that the State has identified as the persistently lowest-achieving schools.

Invitational Priority 2: The Secretary encourages applicants to work with appropriate State agencies to use data from State longitudinal data systems or to obtain data from reliable third-party sources when providing information on the implementation of their Talent Search projects and their participants' outcomes.

Invitational Priority 3: The Secretary encourages applicants to coordinate project services with school-level partners and other community resources in order to carry out projects that are cost-effective and best meet students' needs.

Program Authority: 20 U.S.C. 1070a–11–1070a–12.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99.

(b) The regulations for this program in 34 CFR part 643.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $853.1 million for the Federal TRIO Programs for FY 2011, of which we intend to use an estimated $142.1 million for the TS Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $230,000–$702,000.

Estimated Average Size of Awards: $306,168.

Maximum Award:

- An applicant not currently receiving a TS Program grant: For an applicant who is not currently receiving a TS Program grant, the maximum award amount is $230,000 and the project must serve a minimum of 500 participants, based upon a per participant cost of no more than (or not to exceed) $460.
- An applicant currently receiving a TS Program grant: For an applicant who is currently receiving a TS Program grant, the maximum award amount is the greater of (a) $230,000 or (b) an amount equal to 103 percent of the applicant's grant award amount for FY 2009 or FY 2010, whichever is greater. The applicant must propose to serve a minimum of 500 participants and, regardless of the size of the award, the per participant cost may not exceed $460. If an applicant who is currently receiving a TS Program grant is serving

more than 500 participants, the applicant is encouraged to continue to serve the same number of participants. However, if the applicant proposes to reduce the number of participants to be served, the applicant must propose to serve at least 500 participants *and* the per participant cost may not exceed $460 per participant. For example, if an applicant is eligible for a $460,000 grant (103 percent of the current funding level) the applicant must propose to serve at least 1,000 participants.

The Department may choose to fund successful applicants who are currently receiving a TS Program grant at a level equal to the greater of the award amount FY 2009 or FY 2010 instead of an amount equal to 103 percent of the current award amount. However, in that situation, the Department will adjust the number of participants that the applicant will be required to serve accordingly. For example, an applicant with a current grant of $446,602 would be required to serve at least 971 participants ($446,602 ÷ $460 = 971).

We will reject any application that proposes a budget exceeding the maximum amount listed in this section for a single budget period of 12 months. We will also reject any application that proposes a budget to serve less than 500 participants, and will reject any application that proposes a budget that exceeds the maximum per participant cost of $460.

Estimated Number of Awards: 464.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education, public and private agencies and organizations including community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools, for planning, developing, or carrying out one or more of the services identified under this program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An applicant may submit more than one application for a TS grant so long as each application describes a project that serves a different target area or target schools (34 CFR 643.10(a)). The term *target area* is defined as a geographic area served by a TS project, and the term *target school* is a school designated by the applicant as a focus of project services (34 CFR 643.7(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Geraldine Smith or ReShone Moore, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting one of the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 65 pages using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures and graphs.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance Face Sheet (SF 424); Part II, the budget information summary form (ED Form 524); the TS Program Profile, the one-page Project Abstract narrative; and the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices, these items will be counted as part of Part III, the application narrative, for purposes of the page-limit requirement. You must include your complete response to the selection criteria, which also includes the budget narrative in Part III, the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: November 3, 2010.

Deadline for Transmittal of Applications: December 28, 2010.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 28, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 643.31. We reference additional regulations outlining restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the

Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Talent Search Program, CFDA number 84.044A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Talent Search Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF file or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case

Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Geraldine Smith, U.S. Department of Education, 1990 K Street, NW., room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and three copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.044A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.044A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are in 34 CFR 643.21 and listed in the application package.

Note: With the changes made to the Higher Education Act of 1965, as amended, by the Higher Education Opportunity Act, the TS Program objectives have been standardized. Please note that applicants are required to use these objectives to measure performance under the program. Specifically, under the "Objectives" selection criterion, 34 CFR 643.21(b), worth eight points, applicants should address the standardized objectives related to the participants' academic achievements, including secondary school persistence, secondary school graduation with a regular secondary school diploma, secondary school graduation from a rigorous secondary school program of study, postsecondary education enrollment, and postsecondary degree attainment.

2. *Review and Selection Process:* A panel of non-federal readers will review each application on the basis of the selection criteria in 34 CFR 643.21. The individual scores of the readers will be added and the sum divided by the number of readers to determine the reader score received in the review process. In accordance with 34 CFR 643.22, the Secretary will award prior experience points to applicants that have conducted a TS Program project during budget periods 2007–08, 2008–09, and 2009–10, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application. If there are insufficient funds for all applications with the same total scores, per 34 CFR 643.20(c), the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the TS Program.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The success of the TS Program will be measured by secondary school persistence and graduation rates of TS Program participants, as well as postsecondary enrollment and completion rates. All TS Program grantees will be required to submit an annual performance report documenting secondary school persistence, secondary school graduation, and postsecondary enrollment of their participants. Because students may take different lengths of time to complete their postsecondary education, multiple years of performance report data are needed to determine the postsecondary completion rates of TS Program participants. The Department will aggregate the data provided in the annual performance reports from all grantees to determine the performance level of the overall TS Program.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Geraldine Smith or ReShone Moore, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: October 29, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–27732 Filed 11–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of Open Meeting and Partially Closed Sessions.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*e.g.:* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 5, 2010. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 18–20, 2010.

Times

November 18: Committee Meetings

Assessment Development Committee: Open Session—12:00 p.m–1:00 p.m..; Closed Session 1:00 p.m. to 4:15 p.m.

Executive Committee: Open Session—4:30 p.m. to 5:15 p.m.; Closed Session—5:15 p.m. to 6:00 p.m.

November 19

Full Board: Open Session—8:15 a.m. to 9:45 a.m.; Closed Session—12:45 p.m. to 1:45 p.m.; Open Session—1:45 p.m. to 4:45 p.m.

Committee Meetings

Assessment Development Committee: Open Session—10:00 a.m. to 12:00 p.m.; Closed Session—12:00 p.m. to 12:30 p.m.;

Committee on Standards, Design and Methodology: Open Session—10:00 a.m. to 12:30 p.m.

Reporting and Dissemination Committee: Open Session—10:00 a.m. to 12:30 p.m.

November 20

Nominations Committee: Closed Session—7:30 a.m. to 8:15 a.m.

Full Board: Open Session—8:30 a.m. to 12:00 noon.

Location: Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On November 18, from 1:00 p.m. to 4:15 p.m., the Assessment Development Committee will meet in closed session to review secure task outlines for test items for the new NAEP Technology and Engineering Literacy (TEL) Assessment. These task outlines are for the computer-based 8th grade 2013 pilot test in preparation for the 2014 operational assessment. The Board will be provided with secure test materials for review that cannot be discussed in an open meeting. Premature disclosure of these secure materials would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 18, from 4:30 p.m. to 5:15 p.m., the Executive Committee will meet in open session and thereafter in closed session from 5:15 p.m. to 6:00 p.m. During the closed session on November 18, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering assessment years beyond 2011 and discuss budget implications for the NAEP assessment schedule and for international linking studies. The discussion of contract options and costs will address the Congressionally mandated goals and Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 19, the full Board will meet in open session from 8:15 a.m. to 9:45 a.m. The Board will review and approve the meeting agenda and meeting minutes from the August 2010 Board meeting, followed by the Chairman's remarks. Secretary Arne Duncan is scheduled to administer the oath of office for new Board members at 8:30 a.m. followed by remarks from new Board members. The Executive Director of the Governing Board will then provide a report to the Board followed by an update from the Acting Commissioner of the National Center for Education Statistics. The Board will recess for Committee meetings on November 19 from 10:00 a.m. to 12:30 p.m.

The Reporting and Dissemination Committee and the Committee on Standards, Design and methodology will meet in open session on November 19 from 10:00 a.m. to 12:00 p.m. The Assessment Development Committee will meet in open session from 10:00 a.m. to 12:00 p.m. and thereafter in closed session from 12:00 p.m. to 12:30 p.m. During the closed session, the Assessment Development Committee will receive an embargoed briefing on preliminary results from the writing computer-based 2010 pilot test at grades 8 and 12 in preparation for the 2011 operational assessment. This secure data cannot be discussed in an open meeting prior to official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 19, from 12:45 p.m. to 1:45 p.m. the full Board will meet in closed session to receive a briefing on the 2009 National Assessment of Educational Progress (NAEP) Science Report Card. The Board will be provided with embargoed results that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:45 p.m. to 2:30 p.m. the Board will meet in open session to receive a report from the Governing Board/Council of Chief State School Officers Policy Task Force. Following this session, from 2:30 p.m. to 3:30 p.m., the Board will receive presentations by the two State assessment consortia working on the Common Core State Standards and Assessments. From 3:45 p.m. to 4:15 p.m., the Board will receive an update on 12th Grade Preparedness Research. At 4:15 p.m., Board members will receive their annual ethics briefing from the Office of General Counsel. The November 19, 2010 Board meeting is scheduled to conclude at 4:45 p.m.

On November 20, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to review and discuss specific names for Board vacancies, and their qualifications for Board membership for Board terms beginning October 1, 2011. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in closed session on November 20 from 8:30 a.m. to 9:45 a.m. to receive a briefing on the 2011 NAEP Computer-Based Writing Assessment, which will contain secure test information. Premature disclosure of the assessment items and the pilot test results would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Thereafter, the Board will meet in open session to discuss the Future of the Governing Board and NAEP. At 11:00 a.m. the Board will receive Committee reports and take action on Committee recommendations. The November 20,

2010 session of the Board meeting is scheduled to adjourn at 12 noon.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 29, 2010.

Mary Crovo,

Deputy Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. 2010–27754 Filed 11–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of Scoping Period for the Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Notice; extension of scoping period.

SUMMARY: On October 1, 2010, the National Nuclear Security Administration (NNSA), a semi-autonomous agency within the U.S. Department of Energy (DOE), published a notice of intent to prepare the *Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (CMRR–NF SEIS; DOE/EIS–0350–S1). That notice stated that the scoping period would continue until November 1, 2010. NNSA has extended the public scoping period through November 16, 2010.

ADDRESSES: Written comments or suggestions concerning the scope of the CMRR–NF SEIS, or requests for more information on the SEIS and public scoping process, should be directed to: Mr. John Tegtmeier, CMRR–NF SEIS Document Manager, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 3747 West Jemez Road, TA–3 Building 1410, Los Alamos, New Mexico, 87544; facsimile at 505–667–5948; or e-mail at: *NEPALASO@doeal.gov.* Mr. Tegtmeier may also be reached by telephone at 505–665–0113. Additionally, may record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the SEIS Hotline at (toll free) 1–877–427–9439. The Hotline will provide instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Ms. Mary Martin (NA–56), NNSA NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone 202–586–9438.

For general information concerning the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–4600; leave a message at (800) 472–2756; or send an e-mail to *askNEPA@hq.energy.gov.* Additional information regarding DOE NEPA activities and access to many DOE NEPA documents are available on the Internet through the DOE NEPA Web site at *http://nepa.energy.gov.*

SUPPLEMENTARY INFORMATION: The Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (NEPA) (40 CFR 1502.9[c] [1] and [2]) and DOE's NEPA implementing regulations (10 CFR 1021.314) require the preparation of a supplement to an environmental impact statement (EIS) when there are substantial changes to a proposal or when there are significant new circumstances or information relevant to environmental concerns. DOE may also prepare a supplemental EIS at any time to further the purposes of NEPA. Pursuant to these provisions, the NNSA intends to prepare a supplemental environmental impact statement (SEIS) to assess the potential environmental impacts of the construction and operation of the nuclear facility portion of the Chemistry and Metallurgy Research Building Replacement Project (CMRR–NF) at Los Alamos National Laboratory (LANL), Los Alamos, New Mexico.

On October 1, 2010, NNSA published a notice of intent to prepare the *Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS–0350–S1). That notice stated that the scoping period would continue until November 1, 2010. In response to public requests, NNSA has extended the public scoping period through November 16, 2010. NNSA will consider comments received after this date to the extent practicable as it prepares the Draft CMRR–NF SEIS.

Issued in Washington, DC, on November 1, 2010.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–27864 Filed 11–1–10; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on November 16, 2010, at the headquarters of the IEA in Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on November 16; in connection with the IEA's Emergency Disruption Simulation Exercise (ERE5) to be held November 16–18, 2010; and on November 19, 2010, in connection with a meeting of the SEQ.

DATES: November 16–19, 2010.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 16, 2010, beginning at 9 a.m.; in connection with the IEA's Emergency Disruption Simulation Exercise (ERE5) on November 16–18, 2010; and on November 19, 2010, commencing at 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on November 16, which is scheduled to be held at the headquarters of the IEA commencing at 9 a.m., and a meeting of the SEQ, which is scheduled to be held at the same location beginning at 9 a.m. on November 19; and participation in the IEA's Emergency Disruption Simulation Exercise, which is scheduled to be conducted at the same location from 2 p.m.–5:30 p.m. on November 16, from 9 a.m.–6 p.m. on November 17, and from 9 a.m.–6 p.m. on November 18. The purpose of ERE5 is to train IEA Government delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario.

The agenda of the joint SEQ/SOM meeting on November 16 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the June 2010 Joint Meeting.
3. Reports on Recent Oil Market and Policy Developments in IEA Countries.
4. The 2011–2012 Program of Work for the SOM and SEQ.
   —Possible Future Projects for the Oil Industry and Markets Division and the Emergency Policy Division.
5. The Current Oil Market Situation.
6. Oil Price Formation.
   —Oral Report by the Secretariat.
7. Assessing the Drivers and Impacts of Overseas Investments by China's National Oil Companies.
8. Update on the Gas Market.
9. Other Business.
   —Tentative Schedule of Meetings for 2011:
   —March 22–24 SOM and SEQ Meetings.
   —June 28–30 SOM and SEQ Meetings.
   —November 15–17 SOM and SEQ Meetings.

The agenda for ERE5 is under the control of the IEA. It is expected that the IEA will adopt the following agenda:

I. Training Session for New SEQ Participants and Selected IEA Non-Member Countries

1. Welcome to the IEA.
2. Opening Session Address.
3. Introduction to IEA Emergency Response Policies and Objectives.
4. How the Global Oil Market Works.
5. Natural Gas Market.
6. IEA Energy Statistics and Oil Data Systems.
7. The Media's Perspective.
8. The Oil Disruption Simulation Exercise (ERE5).

II. Disruption Simulation

Day 1

1. Welcome.
2. Simulation (Breakout Groups).
3. Discussion (Plenary).
4. Simulation (Breakout Groups).
5. Discussion (Plenary).

Day 2

6. Introduction (Plenary).
7. Simulation (Breakout Groups).
8. Discussion (Plenary).
9. Simulation (Breakout Groups).
10. Discussion and Wrap-Up (Plenary).

The agenda of the SEQ meeting on November 19 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 130th Meeting.
3. Status of Compliance with IEP Stockholding Commitments.
4. Emergency Response Review Program.
   —Schedule of Emergency Response Reviews.
   —Emergency Response Review of Norway.
   —Emergency Response Review of Denmark.
   —Questionnaire Response of Poland.
   —Questionnaire Response of Spain.
   —Questionnaire Response of the Slovak Republic.
5. Emergency Policy for Natural Gas.
   —Update on the Questionnaire on Gas Security.
   —The Use of Oil Stocks During Gas Disruptions (Governing Board Decision).
6. Emergency Response Exercise 5 (ERE 5).
   —Roundtable Discussion on the Exercise.
7. Cooperation with Non-Member Countries During Supply Disruptions.
   —Draft Discussion Paper for Governing Board.
8. Emergency Response Measures.
   —Report on the Workshop on Industry Stocks (June 29).
   —Fuel Switching Questionnaire.
9. Policy and Other Developments in Member Countries.
   —Czech Republic.
   —France.
   —Japan.
   —United States.
10. Activities with International Organizations and Non-Member Countries.
   —APEC Emergency Response Training Week.
   —Thailand: Emergency Response Assessment.
   —Upcoming Workshops in China.
   —Chile.
   —Update on Cooperation with the APEC Energy Working Group.
   —Indonesia.
   —Energy Community Oil Forum.
11. Documents for Information.
   —Emergency Reserve Situation of IEA Member Countries on July 1, 2010.
   —Base Period Final Consumption: 3Q 2009–2Q 2010.
   —Updated Emergency Contacts List.
12. Other Business.
   —Tentative Schedule of Meetings for 2011:
   —March 22–24 SOM and SEQ Meetings.
   —June 28–30 SOM and SEQ Meetings.
   —November 15–17 SOM and SEQ Meetings.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, on October 29, 2010.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2010–27742 Filed 11–2–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0852; FRL–9219–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Pollutant Discharge Elimination System (NPDES) Permits for Point Source Discharges From the Application of Pesticides to Waters of the United States (New); EPA ICR No. 2397.01, OMB Control No. 2040–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting public comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 3, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0852, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail:* EPA Docket Center, Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0852. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

FOR FURTHER INFORMATION CONTACT: Jack Faulk, EPA Headquarters, Office of Water, Office of Wastewater Management, Mailcode 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; *telephone number:* 202–564–0768; *fax number:* 202–564–6384; *e-mail address: faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2010–0852, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are those required to obtain an NPDES permit for their

point source discharges from the application of pesticides to waters of the United States. States responsible for permitting these entities are also affected.

Title: National Pollutant Discharge Elimination System (NPDES) Permits for Point Source Discharges from the Application of Pesticides to Waters of the United States (New).

ICR Numbers: EPA ICR No. 2397.01, OMB Control No. 2040–NEW.

ICR Status: This ICR is for a new information collection activity. 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 title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with information collection and reporting activities from EPA and State NPDES general permits for point source discharges from the application of pesticides to waters of the United States. On November 27, 2006, EPA issued a final rule (hereinafter called the "2006 NPDES Pesticides Rule") clarifying circumstances in which an NPDES permit was not required to apply pesticide to, or over, including near, waters of the U.S. On January 9, 2009, the Sixth Circuit Court vacated EPA's 2006 NPDES Pesticides Rule. As a result of the Court's decision, on April 9, 2011 NPDES permits will be required for discharges to waters of the U.S. from the application of biological pesticides and chemical pesticides that leave a residue. Regulations governing permit requirements for NPDES discharges are codified at 40 CFR parts 122. This ICR includes information submitted or recorded by permittees as well as information used primarily by permitting authorities. The permitting authority will use the information to assess permittee compliance and modify/add new permit requirements as appropriate. The estimated burden in this ICR is based on EPA's proposed NPDES Pesticide General Permit (PGP). EPA published the PGP in a **Federal Register** notice on June 4, 2010 (75 FR 31775) and received over 700 public comments. EPA is reviewing the comments and will address them in the final permit. The final ICR will reflect the final permit.

Burden Statement: The annual permittees and permitting authorities (44 states and Virgin Islands) reporting and recordkeeping burden for this collection of information is estimated to average 0.8 hours per response. Burden means the total time, effort, or financial resources expended by permittees and permitting authorities to generate, maintain, retain, 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; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 365,000 permittees, 45 permitting authorities (44 states and Virgin Islands).

Frequency of response: varies from once every 5 years to occasionally as needed

Estimated total average number of responses for each respondent: 3.6.

Estimated total annual burden hours: 1,033,713 hours (987,904 hrs for permittees and 45,809 hrs for permitting authorities).

Estimated total annual costs: $51,850,723 ($50,109,969 for permittees and $1,740,754 for permitting authorities). This includes an estimated labor burden cost of $51,850,723 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Change in the Estimates: This is a new ICR. The burden from this ICR will be consolidated in the existing ICR for the NPDES Program (ICR Number 0229.19, OMB Number 2040–0004) during the next standard renewal cycle. The current annual burden in OMB's inventory for the existing NPDES Program ICR is 30,943,308 hours. This ICR will add 1,033,713 hours, increasing the burden by 3.3%.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend this ICR as appropriate. EPA will also revise the burden estimates based on the final PGP. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 27, 2010.

Sheila E. Frace,

Acting Director, Office of Wastewater Management.

[FR Doc. 2010–27765 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0848; FRL–8851–2]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes a Notice of Intent to Suspend issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrants of the affected pesticide products listed in Table 1, containing a certain pesticide active ingredient, to take appropriate steps to secure the data, as listed in Table 2, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under section 3(c)(2)(B) of FIFRA.

DATES: Each Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend, or 30 days after the date of publication of this notice in the **Federal Register** if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant

after making reasonable efforts to do so, unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (*i.e.,* how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Terria Northern, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001; telephone number: (703) 305–7093; e-mail address: *northern.terria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0848. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Registrant Issued Notice of Intent to Suspend Active Ingredient, Product Affected, and Date Issued

A Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS), return receipt requested, to the registrants for the products listed in Table 1 of this unit.

TABLE 1—LIST OF PRODUCTS

Registrant affected	Active ingredient	EPA registration number	Product name	Date EPA issued notice of intent to suspend
Roebic Labs Inc.	Copper Compounds	7792–1	Roebic Root Killer Formula K–77	TBD.
Roebic Labs Inc.	Copper Compounds	7792–5	Roebic Root ENDZ	TBD.
Qualco Inc.	Copper Compounds	3525–102	Winter Tablets “W”	TBD.

III. Basis for Issuance of Notice of Intent to Suspend; Requirement List

The registrants failed to submit the required data or information or to take other appropriate steps to secure the required data listed in Table 2 for their pesticide products.

TABLE 2—LIST OF REQUIREMENTS

EPA registration number	Guideline # as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
7792–1 7792–5 3525–102	830.1550	Product identity and composition.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1600	Description of materials used to produce the product.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1620	Description of production process.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1650	Description of formulation process.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1670	Discussion of formation of impurities.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1700	Preliminary analysis	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1750	Certified limits	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.1800	Enforcement analytical method.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6302	Color	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6303	Physical state	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6304	Odor	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.

TABLE 2—LIST OF REQUIREMENTS—Continued

EPA registration number	Guideline # as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
	830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6314	Oxidizing or reducing action.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6315	Flammability	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6316	Explodability	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6317	Storage stability	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6319	Miscibility	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6320	Corrosion characteristics	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.6321	Dielectric breakdown voltage.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7000	pH	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7050	UV/Visible absorption	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7100	Viscosity	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7200	Melting point/melting range.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7220	Boiling point/Boiling range	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7300	Density/relative density	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7370	Dissociation constants in water.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7550	Partition coefficient (n-octanol/water) shake flask method.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7570	Partition coefficient (n-octanol/water), estimation by liquid chromatography.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7840	Water solubility: Column elution method, shake flask method.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7860	Water solubility, generator column method.	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	830.7950	Vapor pressure	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.1100	Acute Oral Toxicity	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.1200	Acute dermal toxicity	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.1300	Acute inhalation toxicity	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.2400	Acute eye irritation	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.2500	Acute dermal irritation	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.
	870.2600	Skin sensitization	December 14, 2007.	December 24, 2007.	August 30, 2008	No data received.

IV. How to avoid suspension under this Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail, return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (*see* **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA.

Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s). A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected products will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex-parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex-parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30 day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with the data requirements listed in Table 2—List of Requirements in Unit II, for each product by submitting all required supporting data/information described in Table 2, and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your products. The suspension of the registrations of your company's products pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrants subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive, and having so received, deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrants subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive, and having so received, deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive, and having so received, deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II in any manner which would have been unlawful prior to the suspension.

If the registrations for your products listed in Table 1 of Unit II are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, *i.e.,* all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for

violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's authority for taking this action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 25, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–27506 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–8]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) will meet on November 17–18, 2010, in Washington, DC. The Committee meeting will be located at The Hall of States, 444 North Capitol Street, NW., Washington, DC. The focus of the Committee meeting will be on Administrator Lisa P. Jackson's priorities for EPA: Protecting America's waters; cleaning up our communities; expanding the conversation on environmental protection; improving air quality; taking action on climate change; assuring the safety of chemicals, and building strong partnerships.

This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 3:15 p.m. and 3:45 p.m. on Wednesday, November 17, 2010. Individuals or organizations wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *Eargle.Frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

DATES: November 17–18, 2010.

ADDRESSES: The LGAC meeting will be held at The Hall of States, located at 444 North Capitol Street NW., Washington DC. The Committee's meeting minutes and summary notes will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or e-mail at *Eargle.frances@epa.gov.*

INFORMATION ON SERVICES FOR THOSE WITH DISABILITIES: For Information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 29, 2010.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2010–27875 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–3]

Notice of a Project Waiver of Section 1605: (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Windsor, CA; Project# 4910017–033 Funded by the California DWSRF ARRA Loan# AR09FP45

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the Town of Windsor, a California Drinking Water State Revolving Fund (DWSRF)/ARRA loan recipient, for the purchase of a 20-inch diameter mild steel well casing (API standard 5L or ASTM standard A53 schedule 30b or better). This is a project-specific waiver and only applies to the use of the specified product for the ARRA-funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception under section 1605(b)(2) of ARRA.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, Water Division, Infrastructure Office (WTR–4), (415) 972–3437, U.S. EPA Region 9, 75 Hawthorne, San Francisco, CA, 94105.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and OMB regulations at 2 CFR Part 176, Subpart B, the EPA hereby provides notice that it is granting a late project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the purchase and use of a 20-inch diameter mild steel well casing manufactured abroad. The head of each Federal agency is authorized to issue project waivers pursuant to Section 1605(c) of ARRA. A delegation of authority memorandum was issued by the EPA Administrator on March 31, 2009 which provided EPA Regional Administrators with the authority to issue waivers to Section 1605(a) of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

This waiver request came after the goods had been used in the project. Under 2 CFR 176.130(c)(1), the applicable noncompliance provision regarding unauthorized use of foreign manufactured goods, EPA is authorized to process a waiver under 2 CFR 176.120(a) if "the need for such determination otherwise was not reasonably foreseeable." EPA has further outlined this process in its April 28, 2009 memorandum: Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009" (the April 28 memorandum). EPA has determined under these circumstances that the need for such a waiver was not reasonably foreseeable. Therefore, under the authority of 2 CFR 176.120 and 176.130(c)(1), and as explained in the April 28 memorandum, EPA will process the waiver request as if it was requested in a timely manner. EPA has determined that it would have evaluated a waiver request had the recipient applied for a waiver prior to using the foreign casing in the ARRA project. EPA

has determined that granting this waiver is appropriate because it avoids penalizing the City for the use of a non-U.S.-made good for which the City has sufficiently established that there were no U.S.-made alternatives. And, this determination takes into account the City's due diligence and good faith effort to implement the requirements of section 1605.

Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Pursuant to Section 1605(b) and (c), a waiver may be provided if EPA determines: (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The purpose of this project in Windsor is to replace the existing Bluebird and Esposti Park wells that were shut down due to arsenic contamination and build-up of sediment on the casings. To solve this problem, Windsor is installing two new wells designed to provide adequate storage for times of drought or emergency. The current system draws water from the Russian River, but the Sonoma County Water Agency (SCWA) issued an order to reduce the in-stream flow requirements for the Russian River. This reduction of in-stream flow requirements will deplete the water production of the off-river wells during the peak summer demand. The new well system will help maximize water storage to meet demand during peak seasons.

Per the specifications, the wells conductor casing and upper stem will be constructed of mild steel, while the well screening and lower stem will be constructed of stainless steel. For the two wells planned, 110 feet of 20-inch mild steel casing would be required. Analysis by EPA's national contractor indicated that American-made 20-inch diameter mild steel casing was not available for the conductor casing (as previously anticipated). The only casings to meet the town's dimensions and specifications are foreign made.

The April 28, 2009 EPA memorandum for implementation of the ARRA Buy American provisions of Public Law 111–5, states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

Windsor's submittal articulates a reasonable and appropriate basis for the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality to meet its technical specifications. Windsor has incorporated specific technical design specifications for the proposed project based on their needs and provided information to the EPA justifying the need for a 20-inch diameter mild steel casing. Windsor has also provided certification from its supplier indicating there are no products of comparable quality available from a domestic manufacturer to meet its specifications and satisfy project restrictions. Based on additional research conducted by the EPA's Buy American consultant, there did not appear to be other domestically manufactured products available to meet Windsor's specifications at the necessary delivery time. When the project was originally bid, the contractor was assured by pipe suppliers that domestically manufactured well casing material would be available for the project. However, as work progressed on the construction of the well, the applicant was informed by the contractor's material supplier that domestically made well casing pipe would not be available from any domestic mills in time to deliver to the West Coast for installation. The only available material would be supplied from Korean manufacturers.

EPA Region 9, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by Windsor is sufficient to meet the criteria listed under ARRA Section 1605(b)(2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111–5. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Windsor is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111–5, for the purchase of the 20-inch mild steel casing, specified in Windsor's request of March 31, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

Authority: Public Law 111–5, Section 1605.

Dated: August 13, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Pacific Southwest Region.

[FR Doc. 2010–27807 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9220–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Consent Decree; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Comite Civico Del Valle, Inc. in the United States District Court for the Northern District of California: *Comite Civico Del Valle, Inc.* v. *Jackson,* No. 10–cv–02859–PJH (N.D. Cal.). Plaintiff filed a deadline suit to compel the Administrator to take final action under section 110(k) of the Act on Imperial County Air Pollution Control District (ICAPCD) Rules 201, 202 and 217 submitted to the Environmental Protection Agency (EPA) on or about August 24, 2007 as revisions to the state implementation plan. The proposed consent decree establishes deadlines for EPA's action on ICAPCD Rules 201, 202 and 217.

DATES: Written comments on the proposed consent decree must be received by *December 3, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0900, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental

Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; e-mail address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than April 15, 2011 a notice of the Agency's final action on ICAPCD Rules 201 and 202 pursuant to section 110(k) of the CAA. Rules 201 and 202 includes permitting requirements and exemptions within the Imperial Valley. The proposed consent decree also requires EPA to sign for publication in the **Federal Register** no later than September 15, 2011 a notice of the Agency's final action on ICAPCD Rule 217 pursuant to section 110(k) of the CAA. Rule 217 includes measures to control particulate matter emissions from large confined animal facilities within the Imperial Valley.

This proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k) of the Act on ICAPCD Rules 201, 202 and 217 submitted to EPA as revisions to the state implementation plan. The proposed consent decree provides that EPA will sign for publication in the **Federal Register** notice of the Agency's final action pursuant to CAA section 110(k) on Rules 201, 202 and 217 by April 15, 2011 and September 13, 2011 respectively. If EPA fulfills its obligations, Plaintiff has agreed to dismiss this suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0900) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* 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, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 28, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–27767 Filed 11–2–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 10, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 14, 2010

B. New Business

- Advance Notice of Proposed Rulemaking—Disclosure to Shareholders and Investors on Senior Officer Compensation

Closed Session*

Reports

- Office of Management Services Quarterly Report

Dated: October 28, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board

[FR Doc. 2010–27910 Filed 11–1–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by *FR Y–9C, FR Y–9LP, FR Y–11, FR 2314, FR Y–7N, or FR 2886b,* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision of the following reports:

1. *Report title:* Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP.

OMB control number: 7100–0128.

Frequency: Quarterly.

Reporters: Bank holding companies.

Estimated annual reporting hours: FR Y–9C: 189,449; FR Y–9LP: 27,195.

Estimated average hours per response: FR Y–9C: 45.15; FR Y–9LP: 5.25.

Number of respondents: FR Y–9C: 1,049; FR Y–9LP: 1,295.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6)).

Abstract: The FR Y–9C and the FR Y–9LP are standardized financial statements for the consolidated bank holding company (BHC) and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

Current actions: The Federal Reserve proposes the following revisions and clarifications to the FR Y–9C: (1) Break out by loan category of other loans and leases that are troubled debt restructurings for those that (a) are past due 30 days or more or in nonaccrual status or (b) are in compliance with their modified terms and clarify reporting of restructured troubled debt consumer loans, (2) break out other consumer loans into automobile loans and all other consumer loans in several schedules, (3) break out commercial mortgage-backed securities issued or guaranteed by U.S. Government agencies and sponsored agencies, (4) create a new Schedule HC–V, Variable Interest Entities, for reporting major categories of assets and liabilities of consolidated variable interest entities (VIEs), (5) break out loans and other real estate owned (OREO) information covered by FDIC loss-sharing agreements by loan and OREO category, (6) break out life insurance assets into data items for general account and separate account life insurance assets, (7) add new data items for the total assets of captive insurance and reinsurance subsidiaries, (8) add new income statement items for credit valuation adjustments and debit valuation adjustments included in trading revenues (for BHCs with total assets of $100 billion or more), (9) revise reporting instructions in the areas of construction lending, 1–4 family residential mortgage banking activities, and maturity and repricing data, and (10) collect expanded information on the quarterly-averages schedule. The proposed changes would be effective as of March 31, 2011.

The Federal Reserve proposes to revise the FR Y–9LP to modify a data item collecting loans and leases of the parent restructured in compliance with modified terms. This data item would be redefined to exclude leases and to explicitly refer to restructured loans in this data item as troubled debt restructurings. The proposed changes would be effective as of March 31, 2011.

For the March 31, 2011, reporting date, BHCs may provide reasonable estimates for any new or revised FR Y–9C or FR Y–9LP data item initially required to be reported as of that date for which the requested information is not readily available. The specific wording of the captions for the new or revised FR Y–9C or FR Y–9LP data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

Proposed Revisions—FR Y–9C

A. Proposed Revisions Related to Call Report Revisions

The Federal Reserve proposes to make the following revisions to the FR Y–9C to parallel proposed changes to the Call Report. BHCs have commented that changes should be made to the FR Y–9C in a manner consistent with changes to the Call Report to reduce reporting burden.

A.1 Troubled Debt Restructurings

The Federal Reserve proposes that BHCs report additional detail on loans that have undergone troubled debt restructurings in Schedule HC–C, Loans and Lease Financing Receivables, and Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. More specifically, Schedule HC–C, Memorandum item 1.b, Other loans and all leases, restructured and in compliance with modified terms, and Schedule HC–N, Memorandum item 1.b, restructured, Other loans and all leases, included in Schedule HC–N, would be broken out to provide information on restructured troubled loans for many of the loan categories reported in the bodies of Schedule HC–C and Schedule HC–N. The breakout would also include Loans to individuals for household, family, and other personal expenditures, whose terms have been modified in troubled debt restructurings, which are currently excluded from the reporting of troubled debt restructurings.

In the aggregate, troubled debt restructurings for all FR Y–9C respondents have grown from $11.4 billion at year-end 2007 to $106.2 billion as of March 31, 2010. The proposed additional detail on troubled debt restructurings in Schedules HC–C and HC–N would enable the Federal Reserve to better understand the level of restructuring activity at BHCs, the categories of loans involved in this activity, and whether BHCs are working with their borrowers to modify and restructure loans. In particular, to encourage banking organizations to work constructively with their commercial borrowers, the banking agencies recently issued guidance on commercial real estate loan workouts and small business lending.[1] While this guidance has explained the agencies' expectations for prudent workouts, the Federal Reserve and the industry would benefit from additional reliable data outside of the examination process to assess restructuring activity at BHCs for commercial real estate loans and commercial and industrial loans. Further, it is important to separately identify commercial real estate loan restructurings from commercial and industrial loan restructurings given that the value of the real estate collateral is a consideration in a BHC's decision to modify the terms of a commercial real estate loan in a troubled debt restructuring, but such collateral protection would normally be absent from commercial and industrial loans for which a loan modification is being explored because of borrowers' financial difficulties.

It is also anticipated that other loan categories will experience continued workout activity in the coming months given that most asset classes have been

[1] Interagency Statement on Meeting the Credit Needs of Creditworthy Small Business Borrowers, issued February 12, 2010, and Policy Statement on Prudent Commercial Real Estate Loan Workouts, issued October 30, 2009.

adversely affected by the recent recession. This affect is evidenced by the increase in past due and nonaccrual assets across virtually all asset classes over the past two to three years.

Currently, BHCs report loans and leases restructured and in compliance with their modified terms (Schedule HC–C, Memorandum item (1) with separate disclosure of (a) loans secured by 1–4 family residential properties (in domestic offices) and (b) other loans and all leases (excluding loans to individuals for household, family, and other personal expenditures). This same breakout is reflected in Schedule HC–N, Memorandum item 1, for past due and nonaccrual restructured troubled loans. The broad category of other loans in Schedule HC–C, Memorandum item 1.b, and Schedule HC–N, Memorandum item 1.b, does not permit an adequate analysis of troubled debt restructurings. In addition, the disclosure requirements for troubled debt restructurings under generally accepted accounting principles (GAAP) do not exempt restructurings of loans to individuals for household, family, and other personal expenditures. Therefore, if more detail were to be added to match the reporting of loans in Schedule HC–C and Schedule HC–N, the new data would provide the Federal Reserve with the level of information necessary to assess BHCs' troubled debt restructurings to the same extent that other loan quality and performance indicators can be assessed. However, the Federal Reserve notes that, under GAAP, troubled debt restructurings do not include changes in lease agreements [2] and therefore propose to exclude leases from Schedule HC–C, Memorandum item 1, and from Schedule HC–N, Memorandum item 1, and strike the phrase "and all other leases" from the caption of these data items.

Thus, the proposed breakdowns of existing Memorandum item 1.b in both Schedule HC–C and Schedule HC–N would create new Memorandum items in both schedules covering troubled debt restructurings of 1–4 family residential construction loans, Other construction loans and all land development and other land loans, Loans secured by multifamily (5 or more) residential properties, Loans secured by owner-occupied nonfarm nonresidential properties, Loans secured by other nonfarm nonresidential properties, Commercial and industrial loans, and All other loans and all leases (including loans to individuals for household, family, and other personal expenditures). [3] If restructured loans in any category of loans, as defined in Schedule HC–C, included in restructured, All other loans, exceeds 10 percent of the amount of restructured, All other loans, the amount of restructured loans in this category or categories would be itemized and described.

Finally, Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1, are intended to capture data on loans that have undergone troubled debt restructurings as that term is defined in GAAP. However, the captions of these two Memorandum items include only the term "restructured" rather than explicitly mentioning troubled debt restructurings, which has led to questions about the scope of these Memorandum items. Accordingly, the Federal Reserve proposes to revise the captions so that they clearly indicate that the loans to be reported in Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1, are troubled debt restructurings.

A.2 Auto Loans

The Federal Reserve proposes to add a breakdown of the other consumer loans [4] or all other loans loan categories contained in five separate schedules in order to separately collect information on auto loans. The affected schedules would be Schedule HC–C, Loans and Lease Financing Receivables; Schedule HC–K, Quarterly Averages; Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets; Schedule HI, Income Statement; and Schedule HI–B, Part I, Charge-offs and Recoveries on Loans and Leases. Auto loans would include loans arising from retail sales of passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use. This new loan category would exclude loans to finance fleet sales, personal cash loans secured by automobiles already paid for, loans to finance the purchase of commercial vehicles and farm equipment, and lease financing.

Automobile loans are a significant consumer business for many large BHCs. Because of the limited disclosure of auto lending on existing regulatory reports, supervisory oversight of auto lending is presently diminished by the need to rely on the examination process and public information sources that provide overall market information but not data on idiosyncratic risks.

Roughly 65 percent of new vehicle sales and 40 percent of used vehicle sales are funded with auto loans. According to household surveys and data on loan originations, commercial banks are an important source of auto loans. In 2008, this sector originated approximately one-third of all auto loans. Finance companies, both independent and those affiliated with auto manufacturers, originated a bit more than one-third, while credit unions originated a bit less than one-quarter. In addition to originating auto loans, some banks purchase auto loans originated by other entities, which suggests that commercial banks could be the largest holder of auto loans.

Despite the importance of BHCs to the auto loan market, the Federal Reserve knows less about BHCs' holdings of auto loans than is known about finance company, credit union, and savings association holdings of these loans. All nonbank depository institutions are required to report auto loans on their respective regulatory reports, including savings associations, which originate less than 5 percent of auto loans. On their regulatory reports, credit unions must provide not only the outstanding amount of new and used auto loans, but also the average interest rate and the number of loans. In a monthly survey, the Federal Reserve collects information on the amount of auto loans held by finance companies. As a consequence, during the financial crisis when funds were scarce for finance companies in general and the finance companies affiliated with automakers in particular, a lack of data on auto loans at banks hindered the Federal Reserve's ability to estimate the extent to which BHCs were filling in the gap in auto lending left by the finance companies.

Additional disclosure regarding consolidated auto loans on the FR Y–9C is especially important with the implementation of the amendments to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topics 860, Transfers and Servicing, and 810, Consolidations, resulting from Accounting Standards Update (ASU) No. 2009–16 [5], and ASU No. 2009–17 [6], respectively. Until 2010, Schedule HC–

[2] Accounting Standards Codification paragraph 470–60–15–11.

[3] For BHCs with foreign offices, the Memorandum items for restructured real estate loans would cover such loans in domestic offices. In addition, BHCs would also provide a breakdown of restructured commercial and industrial loans between U.S. and non-U.S. addressees.

[4] As described later in this notice, the other consumer loans loan category is proposed to be added to Schedule HC–K beginning March 31, 2011.

[5] Formerly Statement of Financial Accounting Standards (SFAS) No. 166, *Accounting for Transfers of Financial Assets* (FAS 166).

[6] Formerly SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167).

S, Servicing, Securitization, and Asset Sale Activities, had provided the best supervisory information on auto lending because it included a separate breakout of securitized auto loans outstanding as well as securitized auto loan delinquencies and charge-offs. The accounting changes brought about by the amendments to ASC Topics 860 and 810, however, mean that if the auto loan securitization vehicle is now required to be consolidated, securitized auto lending previously reported on Schedule HC–S will be grouped as part of other consumer loans or all other loans on Schedules HC–C, HC–K, HC–N, HI, and HI–B, Part I, which diminishes supervisors' ability to assess auto loan exposures and performance.

Finally, separating auto lending from other consumer loans will assist the Federal Reserve in understanding consumer lending activities at individual institutions. When an institution holds both auto loans and other types of consumer loans (other than credit cards, which are currently reported separately), the current combined reporting of these loans in the FR Y–9C tends to mask any significant differences that may exist in the performance of these portfolios. For example, a BHC could have a sizeable auto loan portfolio with low loan losses, but its other consumer lending, which could consist primarily of unsecured loans, could exhibit very high loss rates. The current blending of these divergent portfolios into a single loan category makes it difficult to adequately monitor consumer loan performance.

A.3 Commercial Mortgage Backed Securities Issued or Guaranteed by U.S. Government Agencies and Sponsored Agencies

The Federal Reserve proposes to split the existing data items on commercial mortgage-backed securities (CMBS) in Schedule HC–B, Securities, and Schedule HC–D, Trading Assets and Liabilities, to distinguish between CMBS issued or guaranteed by U.S. Government agencies and sponsored agencies (collectively, U.S. Government agencies) and those issued by others. Until June 2009, information reported in the FR Y–9C on mortgage-backed securities (MBS) issued or guaranteed by U.S. Government agencies included both residential MBS and CMBS. However, in June 2009 when BHCs began to report information on CMBS separately from residential MBS, data was collected only for commercial mortgage pass-through securities and for other CMBS without regard to issuer or guarantor. Thus, the Federal Reserve was no longer able to identify all MBS issued or guaranteed by U.S. Government agencies.

U.S. Government agencies issue or guarantee a significant volume of CMBS that are backed by multifamily residential properties. In the fourth quarter of 2009, out of a total of $854 billion in commercial and multifamily loans that were securitized, loan pools issued or guaranteed by U.S. Government agencies accounted for 19 percent or $164 billion. These pools present a substantially different risk profile than privately issued CMBS, but current reporting does not allow for the identification of bank holdings of CMBS issued or guaranteed by U.S. Government agencies. In addition, because CMBS issued or guaranteed by U.S. Government agencies are accorded lower risk weights than CMBS issued by others, banks generally should have the information necessary to separately report these two categories of CMBS in the proposed new data items in Schedules HC–B and HC–D.

Thus, in Schedule HC–B, the Federal Reserve proposes to split both data item 4.c.(1), Commercial mortgage pass-through securities, and data item 4.c.(2), Other commercial MBS, into separate data items for those issued or guaranteed by U.S. Government agencies (new data items 4.c.(1)(a) and 4.c.(2)(a)) and all other CMBS (new data items 4.c.(1)(b) and 4.c.(2)(b)). Similarly, in Schedule HC–D, existing data item 4.d, Commercial MBS, would be split into separate data items for CMBS issued or guaranteed by U.S. Government agencies (data item 4.d.(1)) and all other CMBS (data item 4.d.(2)).

A.4 Variable Interest Entities

In June 2009, the FASB issued accounting standards that have changed the way entities account for securitizations and special purpose entities. ASU No. 2009–16 (formerly FAS 166) revised ASC Topic 860, Transfers and Servicing, by eliminating the concept of a qualifying special-purpose entity (QSPE) and changing the requirements for derecognizing financial assets. ASU No. 2009–17 (formerly FAS 167) revised ASC Topic 810, Consolidations, by changing how a banking organization or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, for example a VIE, should be consolidated. For most banking organizations, ASU Nos. 2009–16 and 2009–17 took effect January 1, 2010.

Under ASC Topic 810, as amended, determining whether a BHC is required to consolidate a VIE depends on a qualitative analysis of whether that BHC has a "controlling financial interest" in the VIE and is therefore the primary beneficiary of the VIE. The analysis focuses on the BHC's power over and interest in the VIE. With the removal of the QSPE concept from GAAP that was brought about in amended ASC Topic 860, a BHC that transferred financial assets to an SPE that met the definition of a QSPE before the effective date of these amended accounting standards was required to evaluate whether, pursuant to amended ASC Topic 810, it must begin to consolidate the assets, liabilities, and equity of the SPE as of that effective date. Thus, when implementing amended ASC Topics 860 and 810 at the beginning of 2010, BHCs began to consolidate certain previously off-balance-sheet securitization vehicles, asset-backed commercial paper conduits, and other structures. Going forward, BHCs with variable interests in new VIEs must evaluate whether they have a controlling financial interest in these entities and, if so, consolidate them. In addition, BHCs must continually reassess whether they are the primary beneficiary of VIEs in which they have variable interests.

For those VIEs that banks must consolidate, the Federal Reserve's FR Y–9C instructional guidance advises institutions to report the assets and liabilities of these VIEs on the balance sheet (Schedule HC) in the category appropriate to the asset or liability. However, ASC paragraph 810–10–45–25 [7] requires a reporting entity to present "separately on the face of the statement of financial position: a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE [and], b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." This requirement has been interpreted to mean that "each line item of the consolidated balance sheet should differentiate which portion of those amounts meet the separate presentation conditions." [8] In requiring separate presentation for these assets and liabilities, the FASB agreed with commenters on its proposed accounting standard on consolidation that "separate presentation * * * would provide transparent and useful information about an enterprise's involvement and

[7] Formerly paragraph 22A of FIN 46(R), as amended by FAS 167.

[8] Deloitte & Touche LLP, "Back on-balance sheet: Observations from the adoption of FAS 167," May 2010, page 4 (*http://www.deloitte.com/view/en_US/us/Services/audit-enterprise-risk-services/Financial-Accounting-Reporting/f3a70ca28d9f8210VgnVCM200000bb42f00aRCRD.htm*).

associated risks in a variable interest entity."[9] The Federal Reserve concurs that separate presentation would provide similar benefits to them and other FR Y–9C users, particularly since data on securitized assets that are reconsolidated is no longer reported on Schedule HC–S, Servicing, Securitization, and Asset Sale Activities.

Consistent with the presentation requirements discussed above, the Federal Reserve proposes to add a new Schedule HC–V, Variable Interest Entities, to the FR Y–9C in which BHCs would report a breakdown of the assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting BHC. The following proposed categories for these assets and liabilities would include some of the same categories presented on the balance sheet (Schedule HC): (1) Cash and balances due from depository institutions, (2) Held-to-maturity securities, (3) Available-for-sale securities, (4) Securities purchased under agreements to resell, (5) Loans and leases held for sale, (6) Loans and leases, net of unearned income, (7) Less: Allowance for loan and lease losses, (8) Trading assets (other than derivatives), (9) Derivative assets, (10) Other real estate owned, (11) Other assets, (12) Securities sold under agreements to repurchase, (13) Derivative liabilities, (14) Other borrowed money (other than commercial paper), (15) Commercial paper, and (16) Other liabilities. These assets and liabilities would be presented separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

In addition, the Federal Reserve proposes to include two separate data items in new Schedule HC–V in which BHCs would report the total amounts of all other assets and all other liabilities of consolidated VIEs (*i.e.,* all assets of consolidated VIEs that are not dedicated solely to settling obligations of the VIE and all liabilities of consolidated VIEs for which creditors have recourse to the general credit of the reporting BHC). The collection of this information would help the Federal Reserve understand the total magnitude of consolidated VIEs. These assets and liabilities would also be reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs. The asset and liability information collected in Schedule HC–V would represent amounts included in the reporting BHC's consolidated assets and liabilities reported on Schedule HC, Balance Sheet, *i.e.,* after eliminating intercompany transactions.

A.5 Assets Covered by FDIC Loss-Sharing Agreements

In March 2010, the banking agencies added a four-way breakdown of assets covered by loss-sharing agreements with the FDIC to Call Report Schedule RC–M, Memoranda (and a comparable four-way breakdown was added to FR Y–9C Schedule HC–M, Memoranda). FR Y–9C data items 6.a through 6.d collect data on covered loans and leases, other real estate owned, debt securities, and other assets. In a January 22, 2010, comment letter to the banking agencies on the agencies' submission for OMB review of proposed Call Report revisions for implementation in 2010, the American Bankers Association (ABA) stated that while the addition of the covered asset data items to Schedule RC–M was:

> A step in the right direction, ABA believes it would be beneficial to regulators, reporting banks, investors, and the public to have additional, more granular information about the various categories of assets subject to the FDIC loss-sharing agreements. While we recognize that this would result in additional reporting burden on banks, on balance our members feel strongly that the benefit of additional disclosure of loss-sharing data would outweigh the burden of providing these detailed data. Thus, we urge the Agencies and the FFIEC to further revise the collection of data from banks on assets covered by FDIC loss-sharing agreements on the Call Report to include the several changes suggested below. * * * We believe these changes would provide a more precise and accurate picture of a bank's asset quality.

The changes suggested by the ABA included revising Call Report Schedule RC–M by replacing the two data items for covered loans and leases and covered other real estate owned with separate breakdowns of these assets by loan category and real estate category. The ABA also suggested revising existing data items 10 and 10.a in Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, which collect data on past due and nonaccrual loans and leases that are wholly or partially guaranteed by the U.S. Government, including the FDIC. The ABA recommended that the reporting of these past due and nonaccrual loans and leases be segregated into separate data items for loans and leases covered by FDIC loss-sharing agreements and loans and leases with other U.S. Government guarantees.

After reviewing the ABA's recommendations, the Federal Reserve proposes to make substantively similar revisions to the FR Y–9C. Thus, the Federal Reserve proposes to create a breakdown of Schedule HC–M, data item 6.a, covered Loans and leases, that would include each category of Loans secured by real estate (in domestic offices) from Schedule HC–C, Loans to finance agricultural production and other loans to farmers, Commercial and industrial loans, Credit cards, Other consumer loans, and All other loans and all leases. If any category of loans or leases, as defined in Schedule HC–C, included in covered All other loans and all leases exceeds 10 percent of total covered loans and leases, the amount of covered loans or leases in that category or categories must be itemized and described. Similarly, the Federal Reserve proposes to create a breakdown of Schedule HC–M, data item 6.b, covered Other real estate owned, into the following categories: Construction, land development, and other land, Farmland, 1–4 family residential properties, Multifamily (5 or more) residential properties, and Nonfarm nonresidential properties. BHCs would also report the guaranteed portion of the total amount of covered other real estate owned. In Schedule HC–N, as suggested by the ABA for the Call Report, the Federal Reserve proposes to remove loans and leases covered by FDIC loss-sharing agreements from the scope of existing data items 11 and 11.a on past due and nonaccrual loans wholly or partially guaranteed by the U.S. Government. Past due and nonaccrual covered loans and leases would then be collected in new data item 12, which would include a breakdown of these loans and leases using the same categories as in proposed revised data item 6.a of Schedule HC–M.

A.6 Life Insurance Assets

BHCs purchase and hold bank-owned life insurance (BOLI) policies as assets, the premiums for which may be used to acquire general account or separate account life insurance policies. BHCs currently report the aggregate amount of their life insurance assets in data item 5 of Schedule HC–F, Other Assets, without regard to whether their holdings are general account or separate account policies.

Many BHCs have BOLI assets, and the distinction between those life insurance policies that represent general account products and those that represent separate account products has meaning with respect to the degree of credit risk involved as well as performance measures for the life insurance assets in a volatile market environment. In a general account policy, the general assets of the insurance company issuing

[9] *See* paragraphs A80 and A81 of FAS 167.

the policy support the policy's cash surrender value. In a separate account policy, the policyholder's cash surrender value is supported by assets segregated from the general assets of the insurance carrier. Under such an arrangement, the policyholder neither owns the underlying separate account created by the insurance carrier on its behalf nor controls investment decisions in the account. Nevertheless, the policyholder assumes all investment and price risk.

A number of BHCs holding separate account life insurance policies have recorded significant losses in recent years due to the volatility in the markets and the vulnerability to market fluctuations of the instruments that are investment options in separate account life insurance policies. Information distinguishing between the cash surrender values of general account and separate account life insurance policies would allow the Federal Reserve to track BHCs' holdings of both types of life insurance policies with their differing risk characteristics and changes in their carrying amounts resulting from their performance over time. Accordingly, the Federal Reserve proposes to split data item 5 of Schedule HC–F into two data items: data item 5.a, General account life insurance assets, and data item 5.b, Separate account life insurance assets.

A.7 Captive Insurance and Reinsurance Subsidiaries

Captive insurance companies are utilized by banking organizations to "self insure" or reinsure their own risks pursuant to incidental activities authority. A captive insurance company is a limited purpose insurer that may be licensed as a direct writer of insurance or as a reinsurer. Insurance premiums paid by a BHC to its captive insurer, and claims paid back to the BHC by the captive, are transacted on an intercompany basis, so there is no evidence of this type of self-insurance activity when a BHC prepares consolidated financial statements, including its FR Y–9C. The cash flows for a captive reinsurer's transactions also are not transparent in a BHC's consolidated financial statements.

A number of BHCs own captive insurers or reinsurers, several of which were authorized to operate more than 10 years ago. Some of the most common lines of business underwritten by BHC captive insurers are credit life, accident and health, and disability insurance and employee benefits coverage. Additionally, BHC captive reinsurance subsidiaries may underwrite private mortgage guaranty reinsurance or terrorism risk reinsurance.

As part of their supervisory processes, the Federal Reserve has been following the proliferation of BHC captive insurers and reinsurers and the performance trends of these captives for the past several years. Collection of financial information regarding the total assets of captive insurance and reinsurance subsidiaries would assist the agencies in monitoring the insurance activities of banking organizations as well as any safety and soundness risks posed to the parent BHC from the activities of these subsidiaries.

The Federal Reserve proposes to collect two new data items in Schedule HC–M, Memoranda, for captive insurance subsidiaries operated by BHCs: Data item 7.a, Total assets of captive insurance subsidiaries, and data item 7.b, Total assets of captive reinsurance subsidiaries. These new data items are not expected to be applicable to the vast majority of BHCs. When reporting the total assets of these captive subsidiaries in the proposed new data items, BHCs should measure the subsidiaries' total assets before eliminating intercompany transactions between the consolidated subsidiary and other offices or subsidiaries of the consolidated BHC.

A.8 Credit and Debit Valuation Adjustments Included in Trading Revenues

BHCs that reported average trading assets of $2 million or more for any quarter of the preceding calendar year provide a breakdown of trading revenue by type of exposure in Memorandum items 9.a through 9.e of Schedule HI, Income Statement. These revenue data items are reported net of credit adjustments made to the fair value of BHCs' derivative assets and liabilities that are reported as trading assets and liabilities.

There are two forms of credit adjustments that affect the valuation of derivatives held for trading and trading revenue. The first is the credit valuation adjustment (CVA), which is the discounted value of expected losses on a BHC's derivative assets due to changes in the creditworthiness of the BHC's derivative counterparties and future exposures to those counterparties. In contrast, the debit valuation adjustment (DVA) reflects the effect of changes in the BHC's own creditworthiness on its derivative liabilities. During the financial crisis, the recognition of both the CVA and the DVA had a material affect on overall trading revenues. Because of their potential materiality, information on these two adjustments is needed in order for the Federal Reserve to better understand the level and trend of BHCs' trading revenues.

The Federal Reserve therefore proposes to add two new Memorandum items to the existing Schedule HI Memorandum items for trading revenue. In new Memorandum item 9.f, BHCs would report the Impact on trading revenue of changes in the creditworthiness of the bank holding company's derivatives counterparties on the bank holding company's derivative assets (included in Memorandum items 9.a through 9.e above). In new Memorandum item 9.g., BHCs would report the Impact on trading revenue of changes in the creditworthiness of the bank holding company on the bank holding company's derivative liabilities (included in Memorandum items 9.a through 9.e above). Because derivatives held for trading are heavily concentrated in the very largest BHCs, these new data items would be reported only by BHCs with $100 billion or more in total assets.

A.9 Instructional Revisions

1. Construction Loans:

BHCs report the amount of their Construction, land development, and other land loans in the appropriate loan subcategory of Schedule HC–C, data item 1.a. Questions have arisen about the reporting treatment for a Construction, land development, and other land loan that was not originated as a "combination construction-permanent loan," but was originated with the expectation that repayment would come from the sale of the real estate, when the BHC changes the loan's terms so that principal amortization is required. This may occur after completion of construction when the BHC renews or refinances the existing loan or enters into a new real estate loan with the original borrower. The Federal Reserve believes that as long as the repayment of a loan that was originally categorized as a Construction, land development, and other land loan remains dependent on the sale of the real property, the loan should continue to be reported in the appropriate subcategory of data item 1.a of Schedule HC–C because it continues to exhibit the risk characteristics of a construction loan.

The instructions for Schedule HC–C, data item 1.a, state that:

> Loans written as combination construction-permanent loans secured by real estate should be reported in this item until construction is completed or principal amortization payments begin, whichever comes first. When the first of these events occurs, the loans should begin to be reported

in the real estate loan category in Schedule HC–C, data item 1, appropriate to the real estate collateral. All other construction loans secured by real estate should continue to be reported in this item after construction is completed unless and until (1) the loan is refinanced into a new permanent loan by the reporting bank holding company or is otherwise repaid, (2) the bank holding company acquires or otherwise obtains physical possession of the underlying collateral in full satisfaction of the debt, or (3) the loan is charged off.

A combination construction-permanent loan results when the lender enters into a contractual agreement with the original borrower at the time the construction loan is originated to also provide the original borrower with permanent financing that amortizes principal after construction is completed and a certificate of occupancy is obtained (if applicable). This construction-permanent loan structure is intended to apply to situations where, at the time the construction loan is originated, the original borrower:

• Is expected to be the owner-occupant of the property upon completion of construction and in receipt of a certificate of occupancy (if applicable), for example, where the financing is being provided to the original borrower for the construction and permanent financing of the borrower's residence or place of business or

• Is not expected to be the owner-occupant of the property, but repayment of the permanent loan will be derived from rental income associated with the property being constructed after receipt of a certificate of occupancy (if applicable) rather than from the sale of the property being constructed.

For a loan not written as a combination construction-permanent loan at the time the construction loan was originated, the Federal Reserve proposes to clarify the instructional language quoted above stating that "[a]ll other construction loans secured by real estate should continue to be reported in this item after construction is completed unless and until * * * the loan is refinanced into a new permanent loan by the reporting bank holding company." This clarification is intended to ensure the appropriate categorization of such a loan in Schedule HC–C. Thus, the Federal Reserve proposes to revise the instructions for Schedule HC–C, data item 1.a, to explain that the phrase "the loan is refinanced into a new permanent loan" refers to:

• An amortizing permanent loan to a new borrower (unrelated to the original borrower) who has purchased the real property or

• A prudently underwritten new amortizing permanent loan at market terms to the original borrower—including an appropriate interest rate, maturity, and loan-to-value ratio—that is no longer dependent on the sale of the property for repayment. The loan should have a clearly identified ongoing source of repayment sufficient to service the required principal and interest payments over a reasonable and customary period relative to the type of property securing the new loan. A new loan to the original borrower not meeting these criteria (including a new loan on interest-only terms or a new loan with a short-term balloon maturity that is inconsistent with the ongoing source of repayment criterion) should continue to be reported as a "Construction, land development, and other land loan" in the appropriate subcategory of Schedule HC–C, data item 1.a.

2. Revisions Related to 1–4 Family Residential Mortgages Held for Trading in Schedule HC–P

The Federal Reserve began collecting information in Schedule HC–P, 1–4 Family Residential Mortgage Banking Activities in Domestic Offices, in September 2006. At that time, the instructions for Schedule HC–C, Loans and Lease Financing Receivables, were written to indicate that loans generally could not be classified as held for trading. Therefore, all 1–4 family residential mortgage loans designated as held for sale were reportable in Schedule HC–P. In March 2008, the Federal Reserve provided instructional guidance establishing conditions under which BHCs were permitted to classify certain assets (*e.g.,* loans) as trading and specified that loans classified as trading assets should be excluded from Schedule HC–C, Loans and Lease Financing Receivables, and reported instead in Schedule HC–D, Trading Assets and Liabilities (if the reporting threshold for this schedule were met). However, the Federal Reserve neglected to address the reporting treatment on Schedule HC–P of 1–4 family residential loans that met the conditions for classification as trading assets. Therefore, the Federal Reserve proposes to correct this by providing explicit instructional guidance that all 1–4 family residential mortgage banking activities, whether held for sale or trading purposes, are reportable on Schedule HC–P.

3. Maturity and Repricing Data for Assets and Liabilities at Contractual Ceilings and Floors

BHCs report maturity and repricing data for debt securities (not held for trading) in Schedule HC–B, Securities. The Federal Reserve uses these data to assess, at a broad level, a BHC's exposure to interest rate risk. The instructions for reporting the maturity and repricing data currently require that when the interest rate on a floating rate instrument has reached a contractual floor or ceiling level, which is a form of embedded option, the instrument is to be treated as fixed rate rather than floating rate until the rate is again free to float. As a result, a floating rate instrument whose interest rate has fallen to its floor or risen to its ceiling is reported based on the time remaining until its contractual maturity date rather than the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier). This reporting treatment is designed to capture the potential effect of the embedded option under particular interest rate scenarios.

The ABA has requested that the Federal Reserve reconsider the reporting treatment for floating rate instruments with contractual floors and ceilings. More specifically, the ABA has recommended that the instructions be revised so that floating rate instruments would always be reporting based on the time remaining until the next interest rate adjustment date without regard to whether the rate on the instrument has reached a contractual floor or ceiling.

The Federal Reserve agrees that an instruction revision is warranted, but the extent of the revision should be narrower than recommended by the ABA. The Federal Reserve believes that when a floating rate instrument is at its contractual floor or ceiling and the embedded option has intrinsic value to the BHC, the floor or ceiling should be ignored and the instrument should be treated as a floating rate instrument. However, if the embedded option has intrinsic value to the BHC's counterparty, the contractual floor or ceiling should continue to be taken into account and the instrument should be treated as a fixed rate instrument. For example, when the interest rate on a floating rate loan reaches its contractual ceiling, the embedded option represented by the ceiling has intrinsic value to the borrower and is a detriment to the BHC because the loan's yield to the BHC is lower than what it would have been without the ceiling. When the interest rate on a floating rate loan reaches its contractual floor, the

embedded option represented by the floor has intrinsic value to the BHC and is a benefit to the BHC because the loan's yield to the BHC is higher than what it would have been without the floor.

Accordingly, the Federal Reserve proposes to revise the instructions for reporting maturity and repricing data in Schedule HC–B. As revised, the instructions would indicate that a floating rate asset that has reached its contractual ceiling and a floating rate liability that has reached its contractual floor would be treated as a fixed rate instrument and reported based on the time remaining until its contractual maturity date. In contrast, the instructions would state that a floating rate asset that has reached its contractual floor and a floating rate liability that has reached its contractual ceiling would be treated as a floating rate instrument and reported based on the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier).

B. Proposed Revisions Not Related to Call Report Revisions

The Federal Reserve proposes to make the following revisions to the FR Y–9C effective as of March 31, 2011. These proposed revisions are not related to the revisions proposed to the Call Report.

B.1 Expanding Information Collected on Schedule HC–K, Quarterly Averages

The Federal Reserve proposes to expand the information collected on Schedule HC–K, Quarterly Averages, to collect more detailed breakdowns on securities and loan portfolios, consistent with information currently reported by commercial banks on Call Report Schedule RC–K, Quarterly Averages. Specifically, Schedule HC–K, data item 2, Securities, would be broken out to provide information on (1) U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities), (2) Mortgage-backed securities, and (3) All other securities. Also, new loan categories would be added to Schedule HC–K, data item 6, Loans, to provide information on (1) Loans to finance agricultural production and other loans to farmers, (2) Commercial and industrial loans, and (3) Loans to individuals for household, family, and other personal expenditures, with a breakdown of (a) Credit cards, (b) Auto loans, and (c) Other.

A more granular breakdown on securities and loan portfolios would facilitate analysis when the value or size of a firm's assets has changed or fluctuated over a quarter, particularly when used to calculate net charge-off, growth, and return on average asset rates. Disclosure of this information would also be consistent with firms' public Securities and Exchange Commission (SEC) filings, where net charge-off rates by product type are calculated using quarterly average balances.

Proposed Revisions—FR Y–9LP

The Federal Reserve proposes to make the following revision to the FR Y–9LP effective as of March 31, 2011.

Troubled Debt Restructurings

To be consistent with revisions proposed for the FR Y–9C, the Federal Reserve proposes to modify the instructions for Schedule PC–B—Memoranda item 8, Loans and leases of the parent restructured in compliance with modified terms, to clearly indicate that the loans to be reported in this data item should be troubled debt restructurings and to exclude leases. Also the phrase "and leases" would be stricken from the caption of this data item. Under GAAP, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, the Federal Reserve proposes to revise the instructions for this data item to include (currently excluded) loans to individuals for household, family, and other personal expenditures and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings.

2. *Report title:* Financial Statements for Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Bank holding companies.

Annual reporting hours: FR Y–11 (quarterly): 15,966; FR Y–11 (annual): 2,768.

Estimated average hours per response: FR Y–11 (quarterly): 6.80; FR Y–11 (annual): 6.80.

Number of respondents: FR Y–11 (quarterly): 587; FR Y–11 (annual): 407.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic bank holding companies (BHCs). BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current Actions: The Federal Reserve proposes to revise the FR Y–11 reporting form and instructions to clarify the reporting of the net change in fair values of financial instruments accounted for under a fair value option. The Federal Reserve proposes to revise the item caption for Schedule IS, Income Statement, Memorandum item 2, Net change in fair values of financial instruments accounted for under a fair value option, by adding the parenthetical (included in items 5.a.(3), 5.a.(6), 5.a.(10) and 5.b. above). Schedule IS, Memoranda item 2 instructions currently state that respondents only include net change in fair value included in noninterest income from nonrelated organizations. However, respondents should also include the net change in fair value included in trading revenue, net servicing fees, and other noninterest income from nonrelated and related organizations. The Federal Reserve would also make the corresponding instructional revision.

To be consistent with revisions proposed to the FR Y–9C, the Federal Reserve also proposes to clarify the caption for Schedule BS–A, Loans and Lease Financing Receivables, data item 7.d, Restructured loans and leases, to clearly indicate that the loans to be reported in this item should be troubled debt restructurings and to exclude leases. Under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, The Federal Reserve proposes to revise the instructions for this item to include (currently excluded) loans to individuals for household, family, and other personal expenditures, and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings. These revisions would be effective as of March 31, 2011.

3. *Report title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations.

Annual reporting hours: FR 2314 (quarterly): 16,394; FR 2314 (annual): 3,379.

Estimated average hours per response: FR 2314 (quarterly): 6.60; FR 2314 (annual): 6.60.

Number of respondents: FR 2314 (quarterly): 621; FR 2314 (annual): 512.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4) (b)(6) and (b)(8)].

Abstract: The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current actions: The Federal Reserve proposes to revise the FR 2314 reporting form and instructions to clarify the reporting of the net change in fair values of financial instruments accounted for under a fair value option. The Federal Reserve proposes to revise the item caption for Schedule IS, Income Statement, Memorandum item 2, Net change in fair values of financial instruments accounted for under a fair value option, by adding the parenthetical (included in items 5.a.(3), 5.a.(6), 5.a.(10) and 5.b. above). Schedule IS, Memoranda item 2 instructions currently state that respondents only include net change in fair value included in noninterest income from nonrelated organizations. However, respondents should also include the net change in fair value included in trading revenue, net servicing fees, and other noninterest income from nonrelated and related organizations. The Federal Reserve would also make the corresponding instructional revision.

To be consistent with revisions proposed to the FR Y–9C, the Federal Reserve also proposes to clarify the caption for Schedule BS–A, Loans and Lease Financing Receivables, data item 7.d, Restructured loans and leases, to clearly indicate that the loans to be reported in this item should be troubled debt restructurings and to exclude leases. Under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, The Federal Reserve proposes to revise the instructions for this item to include (currently excluded) loans to individuals for household, family, and other personal expenditures, and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings. These revisions would be effective as of March 31, 2011.

4. *Report title:* Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number: FR Y–7N.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: Foreign banking organizations (FBOs).

Annual reporting hours: FR Y–7N (quarterly): 4,978; FR Y–7N (annual): 1,299.

Estimated average hours per response: FR Y–7N (quarterly): 6.80; FR Y–7N (annual): 6.80.

Number of respondents: FR Y–7N (quarterly): 183; FR Y–7N (annual): 191.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)].

Abstract: The FR Y–7N collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. bank holding company (BHC), U.S. financial holding company (FHC) or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis.

Current actions: The Federal Reserve proposes to revise the FR Y–7N reporting form and instructions to clarify the reporting of the net change in fair values of financial instruments accounted for under a fair value option. The Federal Reserve proposes to revise the item caption for Schedule IS, Income Statement, Memoranda item 1, Net change in fair values of financial instruments accounted for under a fair value option, by adding the parenthetical (included in items 5.a.(3), 5.a.(6), 5.a.(10) and 5.b. above). Schedule IS, Memoranda item 1, instructions currently state that respondents only include net change in fair value included in noninterest income from nonrelated organizations. However, respondents should include the net change in fair value included in trading revenue, net servicing fees, and other noninterest income from nonrelated and related organizations. The Federal Reserve would also make the corresponding instructional revision.

To be consistent with revisions proposed to the FR Y–9C, the Federal Reserve also proposes to clarify the caption for Schedule BS–A, Loans and Lease Financing Receivables, data item 7.d, Restructured loans and leases, to clearly indicate that the loans to be reported in this data item should be troubled debt restructurings and to exclude leases. Under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, The Federal Reserve proposes to revise the instructions for this item to include (currently excluded) loans to individuals for household, family, and other personal expenditures, and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings. These revisions would be effective as of March 31, 2011.

5. *Report title:* Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Frequency: Quarterly.

Reporters: Edge and agreement corporations.

Annual reporting hours: 1,679.

Estimated average hours per response: 15.15 banking corporations, 9.60 investment corporations.

Number of respondents: 13 banking corporations, 42 investment corporations.

General description of report: This information collection is mandatory (12 U.S.C. 602 and 625). Schedules RC–M (with the exception of item 3) and RC–V are held as confidential pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: The mandatory FR 2886b comprises a balance sheet, income

statement, two schedules reconciling changes in capital and reserve accounts, and 11 supporting schedules and it parallels the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and FFIEC 041; OMB No. 7100–0036) that commercial banks file. The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

Current actions: The Federal Reserve proposes to revise the FR 2886b reporting form and instructions to clarify the reporting of the net change in fair values of financial instruments accounted for under a fair value option. The Federal Reserve proposes to revise the item caption for Schedule RI, Income Statement, Memoranda item 1, Net change in fair values of financial instruments accounted for under a fair value option, by changing the parenthetical from (included in item 5.a.(6) above) to (included in items 5.a.(6) and 5.b. above). Schedule RI, Memoranda item 1 currently states that respondents only include net change in fair value included in noninterest income from nonrelated organizations. However, respondents may elect to apply the fair value option to instruments with nonrelated and related organizations. The Federal Reserve would also make the corresponding instructional revision.

To be consistent with revisions proposed for the FR Y–9C, the Federal Reserve also proposes to revise the caption for Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, Memorandum item 1, Restructured loans and leases, to clearly indicate that the loans to be reported in this item should be troubled debt restructurings and to exclude leases. Under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, the Federal Reserve proposes to revise the instructions for this item to include (currently excluded) loans to individuals for household, family, and other personal expenditures, and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings. These revisions would be effective as of March 31, 2011.

Proposal to approve under OMB delegated authority the extension for three years, without revision of the following reports:

1. *Report title:* Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly and annually.

Reporters: Bank holding companies.

Annual reporting hours: FR Y–9SP: 45,209; FR Y–9ES: 44; FR Y–9CS: 400.

Estimated average hours per response: FR Y–9SP: 5.40; FR Y–9ES: 30 minutes; FR Y–9CS: 30 minutes.

Number of respondents: FR Y–9SP: 4,186; FR Y–9ES: 87; FR Y–9CS: 200.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6)).

Abstract: The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include BHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9ES collects financial information from ESOPs that are also BHCs on their benefit plan activities. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements. The FR Y–9CS is a supplemental report that may be utilized to collect additional information deemed to be critical and needed in an expedited manner from BHCs. The information is used to assess and monitor emerging issues related to BHCs. It is intended to supplement the FR Y–9 reports, which are used to monitor BHCs between on-site inspections. The data items of information included on the supplement may change as needed.

2. *Report title:* Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11S.

OMB control number: 7100–0244.

Frequency: Annually.

Reporters: Bank holding companies.

Annual reporting hours: 774.

Estimated average hours per response: 1.0.

Number of respondents: 774.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4)].

Abstract: The FR Y–11S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR Y–11S is filed annually, as of December 31, by top-tier BHCs for each individual nonbank subsidiary (that does not meet the criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

3. *Report title:* Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314S.

OMB control number: 7100–0073.

Frequency: Annually.

Reporters: U.S. state member banks, bank holding companies, and Edge or agreement corporations.

Annual reporting hours: 787.

Estimated average hours per response: 1.0.

Number of respondents: 787.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR 2314S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR 2314S is filed annually, as of December 31, for each individual subsidiary (that does not meet the criteria for filing the detailed report) with assets of at least $50 million but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

4. *Report title:* Financial Reports of Foreign Banking Organizations.

Agency form number: FR Y–7NS, FR Y–7Q.

OMB control number: 7100–0125.

Frequency: Annually and quarterly.

Reporters: Foreign banking organizations (FBOs).

Annual reporting hours: FR Y–7NS: 237; FR Y–7Q (quarterly): 340; FR Y–7Q (annual): 111.

Estimated average hours per response: FR Y–7NS: 1.0; FR Y–7Q (quarterly): 1.25; FR Y–7Q (annual): 1.0.

Number of respondents: FR Y–7NS: 237; FR Y–7Q (quarterly): 68; FR Y–7Q (annual): 111.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)].

Abstract: The FR Y–7NS collect financial information for non-functionally regulated U.S. nonbank subsidiaries held by foreign banking organizations (FBOs) other than through a U.S. bank holding company (BHC), U.S. financial holding company (FHC), or U.S. bank. The FR Y–7NS is filed annually, as of December 31, by top-tier FBOs for each individual nonbank subsidiary (that does not meet the filing criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million. The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. FBOs that have effectively elected to become FHCs file the FR Y–7Q quarterly. All other FBOs (those that have not elected to become FHCs) file the FR Y–7Q annually.

Board of Governors of the Federal Reserve System, October 29, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–27698 Filed 11–2–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Robert John Dentel, Victor, Iowa, and Mary P. Howell, Ames, Iowa; each to control 25 percent or more of the voting shares of Dentel Bancorporation, and thereby indirectly control of Victor State Bank, both of Victor, Iowa; Corydon State Bank, Corydon, Iowa; First State Bank of Colfax, Colfax, Iowa; Maxwell State Bank, Maxwell, Iowa; Pocahontas State Bank, Pocahontas, Iowa; and Panora State Bank, Panora, Iowa.

Board of Governors of the Federal Reserve System, October 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27683 Filed 11–2–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP 1396]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved the private sector adjustment factor (PSAF) for 2011 of $39.5 million and the 2011 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved maintaining the current earnings credit rate on clearing balances.

DATES: The new fee schedules and earnings credit rate become effective January 3, 2011.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jeffrey C. Marquardt, Deputy Director, (202/452–2360); Jeffrey S.H. Yeganeh, Manager, Retail Payments, (202/728–5801); Linda S. Healey, Senior Financial Services Analyst, (202/452–5274), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Deputy Associate Director, (202/452–3945); Brenda L. Richards, Manager, Financial Accounting, (202/452–2753); or Jonathan C. Mueller, Senior Financial Analyst, (202/530–6291), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call 202/263–4869. Copies of the 2011 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor And Priced Services

A. *Overview*—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF. Similarly, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB). From 2000 through 2009, the Reserve Banks recovered 97.8 percent of their total expenses (including imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[1]

Table 1 summarizes 2009, 2010 estimated, and 2011 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 102.9 percent in 2010 and budgeted to be 102.0 percent in 2011. The check service accounts for slightly over half of the total cost of priced services and thus

[1] The ten-year recovery rate is based on the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report.*

Effective December 31, 2006, the Reserve Banks implemented Statement of Financial Accounting Standards (SFAS) No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans [Accounting Standards Codification (ASC) 715 Compensation—Retirement Benefits*], which resulted in recognizing a reduction in equity related to the priced services' benefit plans. Including this reduction in equity results in cost recovery of 93.0 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

significantly influences the aggregate cost-recovery rate.

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [A]

[$ Millions]

Year	1 [b] Revenue	2 [c] Total expense	3 Net income (ROE) [1 − 2]	4 [d] Targeted ROE	5 [e] Recovery rate after targeted ROE [1/(2+4)]
2009	675.4	707.5	-32.1	19.9	92.8%
2010 (estimate)	572.7	543.3	29.4	13.3	102.9%
2011 (budget)	497.6	470.9	26.7	16.8	102.0%

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes net income on clearing balances. Clearing balances are assumed to be invested in a broad portfolio of investments, such as short-term Treasury securities, government agency securities, federal funds, commercial paper, long-term corporate bonds, and money market funds. To impute income, a constant spread is determined from the historical average return on this portfolio and applied to the rate used to determine the cost of clearing balances. For 2011, investments are limited to short-term Treasury securities and federal funds with no constant spread imputed. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pension plans under FAS 158 [ASC 715] are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF. For the 2010 estimate, the targeted ROE reflects average actual clearing balance levels through July 2010.

[e] The recovery rates in this and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effect on cost recovery, cannot be projected.

Table 2 portrays an overview of cost-recovery performance for the ten-year period from 2000 to 2009, 2009, 2010 budget, 2010 estimate, and 2011 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2000–2009	2009	2010 Budget	2010 Estimate	2011 Budget [a]
All services	97.8	92.8	96.9	102.9	102.0
Check	96.8	92.8	94.7	103.7	102.8
FedACH	102.6	93.4	99.9	101.9	100.4
Fedwire Funds and NSS	101.5	92.1	100.2	100.2	101.0
Fedwire Securities	101.0	93.8	103.1	104.3	103.8

[a] 2011 budget figures reflect the latest data from the Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2010, for Board consideration in December 2010.

1. *2010 Estimated Performance*—The Reserve Banks estimate that they will recover 102.9 percent of the costs of providing priced services in 2010, including imputed costs and targeted ROE, compared with a budgeted recovery rate of 96.9 percent, as shown in table 2. The Reserve Banks estimate that all services will achieve full cost recovery. Overall, the Reserve Banks estimate that they will fully recover actual and imputed costs and earn net income of $29.4 million, compared with the target of $13.3 million. The greater-than-targeted net income is driven largely by the performance of the check service, which had greater-than-expected operational cost savings and revenue.

2. *2011 Private Sector Adjustment Factor*—The 2011 PSAF for Reserve Bank priced services is $39.5 million. This amount represents a decrease of $2.4 million from the estimated 2010 revised PSAF of $41.9 million. Although the estimated imputed cost of equity is expected to increase, it is offset by a decrease in other required PSAF costs.[2]

3. *2011 Projected Performance*—The Reserve Banks project a priced services cost recovery rate of 102.0 percent in 2011. The 2011 fees for priced services are projected to result in a net income of $26.7 million compared with the target ROE of $16.8 million.

The primary risks to the Reserve Banks' ability to achieve their targeted cost recovery rates are unanticipated volume and revenue reductions and the potential for cost overruns or delays with technological upgrades. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to aggressively manage operating costs, take advantage of efficiencies gained from technological upgrades, and increase value-added product revenue.

4. *2011 Pricing*—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2011:

Check

• The Reserve Banks will decrease FedForward fees 8 percent for checks presented electronically and increase FedForward fees 50 percent for checks presented as substitute checks.[3] The

[2] In October 2009, the Board approved a budgeted 2010 PSAF of $50.2 million, which was based on the July 2009 clearing balance level of $4,831.5 million. Since that time, clearing balances have declined, which affects the 2010 PSAF and NICB. The 2010 estimated PSAF of $41.9 million, which is based on actual average clearing balances of $2,772.2 million through July 2010, reflects the lower equity costs resulting from the decrease in clearing balances. The 2010 final PSAF will be adjusted to reflect average clearing balance levels through the end of 2010.

[3] FedForward is the electronic forward check collection product. A substitute check is a paper

average fee paid by FedForward depositors will decline 14 percent from the average 2010 fee as the number of depository institutions that accept their presentments electronically increases. The Reserve Banks will retain FedReturn fees for checks returned electronically through FedLine at the current level, decrease fees 30 percent for checks returned electronically in PDF files, and increase fees 14 percent for endpoints that receive substitute checks.[4] The average fee paid by FedReturn depositors will decrease 20 percent as the number of institutions that accept their returns electronically increases.[5]

• The Reserve Banks will increase traditional paper forward collection fees 181 percent and traditional paper return service fees 81 percent.

• With the 2011 fees, the price index for the total check service will have increased 80 percent since 2001. In comparison, since 2005, the first full year in which the Reserve Banks offered Check 21 services, the price index for Check 21 services will have decreased 60 percent.

FedACH

• The Reserve Banks will raise the addenda record fees for originations and receipts from $0.0013 to $0.0015 and increase the information extract file fee from $50 to $75.

• With the 2011 fees, the price index for the FedACH service will have decreased 32 percent since 2001.

Fedwire Funds and National Settlement

• The Reserve Banks will implement a per-item surcharge of $0.18 on the sender of Fedwire Funds transfers processed by the Reserve Banks after 5 p.m. ET.

• The Reserve Banks will introduce a $10 monthly fee for the usage of the import/export feature of the FedLine Advantage electronic access package for the Fedwire Funds Service. This feature allows FedLine Advantage customers to import (export) an external file with multiple transactions into (from) the Fedwire Funds Service.

• The Reserve Banks will increase the National Settlement Service's settlement file fee from $18 to $20, and the settlement entry fee from $0.80 to $0.90.

• The Reserve Banks will change the Fedwire Funds Service's volume-based transfer fee structure to include incentive discounts based on customers' historic volume. This change will increase the base price of transfers but will provide substantial discounts from these fees for a portion of customers' expected volumes. The change will be implemented in two parts. First, the existing fees for all volume tiers will increase by as much as 73 percent. Second, customers will receive an 80 percent discount on these higher fees for the portion of a customer's monthly online volume that exceeds 50 percent of their historic benchmark volume, calculated as an average monthly volume of activity over the previous five calendar years. The change will produce a more stable stream of revenue for the Fedwire Funds service, for the first 50 percent of their customers' historic benchmark volume. Further, the Reserve Banks expect the incentive discounts to improve their ability to retain business and attract additional volume by decreasing the marginal price of transfers to a fee closer to the Reserve Banks' marginal cost. The decrease in the marginal price of transfers is consistent with the Federal Reserve's objectives to foster efficiency in the payment systems and to improve the efficiency of Reserve Bank services.

• With the 2011 fees, the price index for the Fedwire Funds and National Settlement Services will have increased 28 percent since 2001.

Fedwire Securities

• The Reserve Banks will retain fees at their current levels.

• With the 2011 fees, the price index for the Fedwire Securities Service will have decreased 14 percent since 2001.

5. *2011 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price index. Compared with the price index for 2010, the price index for all Reserve Bank priced services is projected to decrease 3 percent in 2011. The price index for total check services is projected to decrease approximately 8 percent. The price index for Check 21 services is projected to decrease approximately 17 percent, reflecting the rapid increase in the number of depository institutions accepting checks electronically and the resulting reductions in the effective prices paid to collect and return checks using Check 21 services. The price index for all other check services is projected to increase 46 percent. The price index for electronic payment services, which include the FedACH Service, Fedwire Funds and National Settlement Services, and Fedwire Securities Service, is projected to increase approximately 3 percent. For the period 2001 to 2011, the price index for all priced services is expected to increase 68 percent. In comparison, for the period 2001 to 2009, the GDP price index increased 21 percent.

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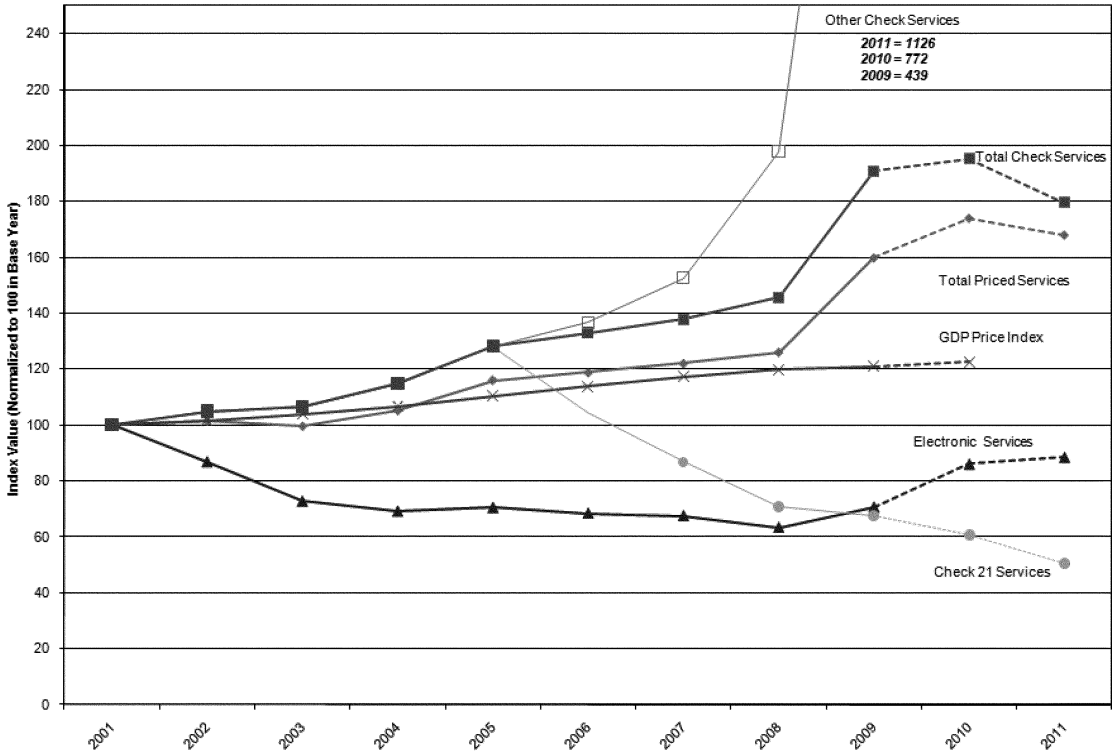
reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check.

[4] FedReturn is the electronic check return product.

[5] The Reserve Bank's Check 21 service fees include separate and substantially different fees for the delivery of checks to electronic endpoints and substitute check endpoints. Therefore, the average effective fee paid by depository institutions that use Check 21 services is dependent on the proportion of institutions that accept checks electronically. The Reserve Banks are decreasing FedForward fees for the presentment of checks to electronic endpoints and raising fees for the presentment of checks to substitute check endpoints, the effective fee paid by depository institutions will decline by 14 percent in 2011 due to the expected increase in the number of institutions that accept checks electronically. The Reserve Banks are also retaining FedReturn fees for checks delivered electronically through FedLine, decreasing fees for checks delivered electronically via PDF files, and increasing fees for checks delivered as substitute checks. However, the effective fee paid by depository institutions will decrease 20 percent in 2011 as an increasing proportion of checks are returned to electronic endpoints and PDF receivers, which are subject to relatively lower fees than checks returned to paper endpoints.

FIGURE 1
2011 PRICE INDEX
PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES



B. *Private Sector Adjustment Factor*—In March 2009, the Board requested comment on proposed changes to the methodology for calculating the PSAF.[6] The Board proposed replacing the current correspondent bank model with a "publicly traded firm model" in which the key components used to determine the priced-services balance sheet and the PSAF costs would be based on data for the market of U.S. publicly traded firms. Specifically, these components include the capitalization ratio used to determine financing on the priced-services balance sheet and the effective tax rate, return on equity rate, and debt financing rates. The proposed changes were prompted by the implementation of the payment of interest on reserve balances held by depository institutions at the Reserve Banks and the anticipated consequent decline in balances held by depository institutions at Reserve Banks for clearing priced-services transactions (clearing balances).

Since the implementation of the payment of interest on reserve balances, clearing balances have not declined as rapidly as originally anticipated and remain significant. Between the October 2008 implementation of the payment of interest on reserve balances and January 2009, the total level of clearing balances held by depository institutions decreased approximately $2 billion, from $6.5 billion to $4.5 billion. During the first half of 2009, clearing balance levels were nearly flat at approximately $4.5 billion. Since mid-2009, clearing balances have declined moderately each month, and as of the end of July 2010, clearing balances were $2.6 billion. As a result of the relative significance of the remaining balances, the Board continued to use the correspondent bank model for the 2010 PSAF, and will continue using the correspondent bank model for the 2011 PSAF.[7]

The method for calculating the financing and equity costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist if these priced services were provided by a private business firm are imputed. The same generally accepted accounting principles that apply to commercial-entity financial statements apply to the relevant elements in the priced services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information on actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Federal Reserve liabilities consists of clearing balances and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances, other long-term liabilities, and equity are not sufficient to fund long-term assets.[8] Short-term debt is imputed only when other short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. A portion of clearing balances is used as a funding source for short-term priced services assets. Long-term assets may be

[6] 74 FR 15481–15491 (Apr. 6, 2009).

[7] The Board is currently analyzing further the proposed publicly traded firm model.

[8] Core clearing balances, currently $1 billion, are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

partially funded from core clearing balances.

Imputed equity is set to meet the FDIC requirements for a well-capitalized institution for insurance premium purposes and represents the market capitalization, or shareholder value, for Reserve Bank priced services.[9] The equity financing rate is the targeted ROE rate produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a risk premium. To implement the CAPM, the risk-free rate is based on the three-month Treasury bill; the beta is assumed to equal 1.0, which approximates the risk of the market as a whole; and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would require in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill the priced services' imputed income tax obligations. To the extent that actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate that is the median of the rates paid by the top 50 bank holding companies based on deposit balances over the past five years, adjusted to the extent that they invested in tax-free municipal bonds.

The PSAF also includes the estimated priced-services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance is imputed based on current FDIC rates and projected clearing balances held with the Reserve Banks.

1. *Net Income on Clearing Balances*—The NICB calculation is performed each year along with the PSAF calculation and is based on the assumption that the Reserve Banks invest clearing balances net of an imputed reserve requirement and balances used to finance priced services assets.[10] The Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate and apply this investment rate to the net level of clearing balances.[11] A return on the imputed reserve requirement, which is based on the level of clearing balances on the pro forma balance sheet, is imputed to reflect the return that would be earned on a required reserve balance held at a Reserve Bank.

The calculation also involves determining the priced services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted Treasury bill rate. Rates and clearing balance levels used in the 2011 projected NICB are based on July 2010 rates and clearing balance levels. Because clearing balances are held for clearing priced services transactions or offsetting priced-services fees, they are directly related to priced services. The net earnings or expense attributed to the investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services.

NICB is projected to be $1.2 million for 2011, including earnings on imputed reserve requirements.[12] The imputed rate is equal to the three-month Treasury bill rate with no constant spread due to the results of the interest rate sensitivity analysis. See the "Analysis of the 2011 PSAF" section for more information on the interest rate sensitivity analysis results and the effect on the 2011 NICB.

2. *Calculating Cost Recovery*—The PSAF and NICB are incorporated into the projected and actual annual cost-recovery calculations for Reserve Bank priced services. Each year, the Board projects the PSAF for the following year using July clearing balance and rate data during the process of establishing priced services fees. When calculating actual cost recovery for the priced services at the end of each year, the Board historically has used the PSAF derived during the price-setting process with only minimal adjustments for actual rates or balance levels.[13] Beginning in 2009, in light of the uncertainty about the long-term effect that the payment of interest on reserve balances would have on the level of clearing balances, the Board adjusts the PSAF used in the actual cost-recovery calculation to reflect the actual clearing balance levels maintained throughout the year. NICB is also projected in the fall of each year using July data and is recalculated to reflect actual interest rates and clearing balance levels during the year when calculating actual priced services cost recovery.

3. *Analysis of the 2011 PSAF*—The decrease in the 2011 PSAF is due primarily to a reduction in the level of imputed equity associated with a decrease in assets and clearing balances.

Projected 2011 Federal Reserve priced-services assets, reflected in table 3, have decreased $1,844.0 million, mainly due to a decline in imputed investments in marketable securities of $1,496.1 million. This reduction stems from the decline in clearing balances held by depository institutions at Reserve Banks.

The priced services balance sheet includes projected clearing balances of $2,600.3 million for 2011, which represents a decrease of $2,231.2 million from the amount of clearing balances on the balance sheet for the budgeted 2010 PSAF. Because of the continued uncertainty regarding the level of clearing balances in an interest-on-reserves environment, the actual PSAF costs used in cost-recovery calculations will continue to be based on the actual levels of clearing balances held throughout 2011.

Credit float, which represents the difference between items in process of collection and deferred credit items, increased from $1,200.0 million in 2010

[9] As shown in table 7, the FDIC requirements for a well-capitalized depository institution are (1) a ratio of total capital to risk-weighted assets of 10 percent or greater, (2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater, and (3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. The priced services balance sheet has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

As used in this context, the term "shareholder" does not refer to the member banks of the Federal Reserve System, but rather to the implied shareholders that would have an ownership interest if the Reserve Banks' priced services were provided by a private firm.

[10] Reserve requirements are the amount of funds that a depository institution must hold, in the form of vault cash or deposits with Federal Reserve Banks, in reserve against specified deposit liabilities. The dollar amount of a depository institution's reserve requirement is determined by applying the reserve ratios specified in the Board's Regulation D to the institution's reservable liabilities. The Reserve Banks' priced services impute a reserve requirement of 10 percent, which is applied to the amount of clearing balances held with the Reserve Banks.

[11] The allowed portfolio of investments is comparable to a bank holding company's investment holdings, such as short-term Treasury securities, government agency securities, federal funds, commercial paper, long-term corporate bonds, and money market funds. As shown in table 7, the investments imputed for 2011 are three-month Treasury bills and federal funds.

[12] The 2010 NICB was initially budgeted to be $14.5 million and is now estimated at $8.0 million. The decrease in NICB is due to a decrease in clearing balance levels.

[13] The largest portion of the PSAF, the target ROE, historically has been fixed. Imputed sales tax, income tax, and the FDIC assessment are recalculated at the end of each year to adjust for actual expenditures, net income, and clearing balance levels.

to $1,800.0 million in 2011.[14] The increase is primarily a result of credit float generated by a greater use of Check 21 deferred-availability products.

As previously mentioned, clearing balances are available as a funding source for priced-services assets. As shown in table 4, in 2011, $15.5 million in clearing balances is used as a funding source for short-term assets. Long-term liabilities and equity exceed long-term assets by $23.8 million; therefore, no core clearing balances are used to fund long-term assets.

The Board uses an interest rate sensitivity analysis to ensure that the interest rate risk of the priced services balance sheet, and its effect on cost recovery, are appropriately managed and that the priced services long-term assets are appropriately funded with long-term liabilities and equity. The interest rate sensitivity analysis measures the relationship between rate sensitive assets and liabilities when they reprice as a result of a change in interest rates.[15] If a 200 basis point increase or decrease in interest rates changes priced services cost recovery by more than 2 percentage points, rather than using core clearing balances to fund long-term assets, long-term debt is imputed.

The interest rate sensitivity analysis shown in table 5 indicates that a 200 basis point decrease in rates decreases cost recovery 5.1 percentage points, while an increase of 200 basis points in rates increases cost recovery 4.9 percentage points. The greater-than-two-percentage-point effect on cost recovery is the result of a large gap between rate-sensitive assets and liabilities, and the relationship to priced services net income. The gap is caused by an increase in rate sensitive assets, specifically, the imputed federal funds investment needed to offset projected level of credit float in 2011. The results of the analysis have the following effects on the 2011 PSAF and NICB:

- Generally, the results of the interest rate sensitivity analysis indicate when long-term debt should be imputed rather than using core clearing balances to fund long-term assets. The requirement to impute debt remedies an asset mismatch when too many clearing balances (rate sensitive liabilities) are being used to fund long-term assets and there is a need for another funding source (*i.e.* long-term debt). For the 2011 PSAF, however, the mismatch arises from the level of credit float rather than the use of clearing balances to fund long-term assets. If debt were to be imputed for the 2011 PSAF, clearing balances now used to finance assets would be invested in rate sensitive assets. Therefore, imputing debt would cause the gap between interest-rate-sensitive assets and liabilities to widen further, resulting in an even greater effect on cost recovery than shown in table 5. Accordingly, the Board will not impute debt for the 2011 PSAF. Going forward, imputed debt will be limited to the amount of clearing balances used to finance long-term assets. (See table 4 for the portion of clearing balances used to fund priced-services assets.)
- Because of the heightened cost recovery sensitivity to interest rate fluctuations, the investment of clearing balances is limited to three-month Treasury bills (with no additional imputed constant spread).

As shown in table 3, the amount of equity imputed for the 2011 PSAF is $277.2 million, a decrease of $92.2 million from the imputed equity for 2010. In accordance with FAS 158 [ASC 715], this amount includes an accumulated other comprehensive loss of $343.2 million. Both the capital-to-total-assets ratio and the capital-to-risk-weighted-assets ratio meet or exceed the regulatory requirements for a well-capitalized depository institution. Equity is calculated as 5 percent of total assets, and the ratio of capital to risk-weighted assets exceeds 10 percent.[16] The Reserve Banks imputed an FDIC assessment for the priced services based on the FDIC's proposed assessment rates and the level of clearing balances held at Reserve Banks.[17] For 2011, the FDIC assessment is imputed at $5.3 million, compared with an FDIC assessment of $9.6 million in 2010.

Table 6 shows the imputed PSAF elements, including the pretax ROE and other required PSAF costs, for 2010 and 2011. The $3.4 million decrease in ROE is caused by a lower amount of imputed equity, slightly offset by a higher target ROE rate. Imputed sales taxes decreased from $5.2 million in 2010 to $4.2 million in 2011. The effective income tax rate used in 2011 decreased to 32.4 percent from 33.1 percent in 2010. The priced services portion of the Board's expenses decreased $2.0 million, from $7.2 million in 2010 to $5.2 million in 2011.

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES[18]

[Millions of dollars—projected average for year]

	2011	2010	Change
Short-term assets:			
Imputed reserve requirement on clearing balances	$440.0	$603.1	$(163.1)
Receivables	41.4	45.9	(4.5)
Materials and supplies	1.5	0.9	0.6
Prepaid expenses	7.6	23.2	(15.6)
Items in process of collection[19]	300.0	520.0	(220.0)
Total short-term assets	790.7	1,193.1	(402.6)
Imputed investments	3,968.6	5,464.7	(1,496.1)
Long-term assets:			
Premises[20]	173.1	235.4	(62.3)
Furniture and equipment	43.2	62.1	(18.9)
Leasehold improvements and long-term prepayments	68.2	60.3	7.9
Prepaid pension costs	299.8	148.9	150.9
Prepaid FDIC asset	10.9	24.6	(13.7)

[14] Credit float occurs when the Reserve Banks present transactions to the paying bank prior to providing credit to the depositing bank.

[15] Interest rate sensitive assets and liabilities are defined as those balances that will reprice in a year.

[16] In December 2006, the Board, the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision announced an interim ruling that excludes FAS 158 [ASC 715]-related accumulated other comprehensive income or losses from the calculation of regulatory capital. The Reserve Banks, however, elected to impute total equity at 5 percent of assets, as indicated previously, until the regulators announce a final ruling.

[17] For information on the proposed FDIC assessment rates, *see http://www.fdic.gov/news/news/press/2010/pr10229.html.*

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES [18]—Continued

[Millions of dollars—projected average for year]

	2011	2010	Change
Deferred tax asset	189.7	198.9	(9.2)
Total long-term assets	784.9	730.2	54.7
Total assets	5,544.0	7,388.0	(1,844.0)
Short-term liabilities [21]:			
Clearing balances	2,600.3	4,831.5	(2,231.2)
Deferred credit items [19]	2,100.0	1,720.0	380.0
Short-term payables	35.0	59.8	(24.8)
Total short-term liabilities	4,735.3	6,611.3	(1,876.0)
Long-term liabilities [21]			
Postemployment/postretirement benefits liability [22]	531.5	407.3	124.2
Total liabilities	5,266.8	7,018.6	(1,751.8)
Equity [23]	277.2	369.4	(92.2)
Total liabilities and equity	5,544.0	7,388.0	(1,844.0)

TABLE 4—PORTION OF CLEARING BALANCES USED TO FUND PRICED-SERVICES ASSETS

[Millions of dollars]

	2011		2010	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$41.4		$45.9	
Materials and supplies	1.5		0.9	
Prepaid expenses	7.6		23.2	
Total short-term assets to be financed	50.5		70.0	
Short-term funding sources.				
Short-term payables	35.0		59.8	
Portion of short-term assets funded with clearing balances [24]		15.5		10.2
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	173.1		235.4	
Furniture and equipment	43.2		62.1	
Leasehold improvements and long-term prepayments	68.2		60.3	
Prepaid pension costs	299.8		148.9	
Prepaid FDIC asset	10.9		24.6	
Deferred tax asset	189.7		198.9	
Total long-term assets to be financed	784.9		730.2	
Long-term funding sources:				
Postemployment/postretirement benefits liability	531.5		407.3	
Imputed equity [25]	277.2		369.4	
Total long-term funding sources	808.7		776.7	
Portion of long-term assets funded with core clearing balances [24]		0.0		0.0
C. Total clearing balances used for funding priced-services assets		15.5		10.2

[18] The 2010 PSAF values in tables 3, 4, and 6 reflect the budgeted 2010 PSAF of $50.2 million approved by the Board in October 2009.

[19] Represents float that is directly estimated at the service level.

[20] Includes the allocation of Board of Governors assets to priced services of $0.7 million for 2011 and $0.9 million for 2010.

[21] No debt is imputed because clearing balances are a funding source.

[22] Includes the allocation of Board of Governors liabilities to priced services of $0.5 million for 2011 and $0.4 million for 2010.

[23] Includes an accumulated other comprehensive loss of $407.7 million for 2010 and $343.2 million for 2011, which reflects the ongoing amortization of the accumulated loss in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected.

[24] Clearing balances shown in table 3 are available for financing priced-services assets. Using these balances reduces the amount available for investment in the NICB calculation. Long-term assets are financed with long-term liabilities, equity, and core clearing balances; a total of $1 billion in clearing balances is available for this purpose in 2010 and 2011, respectively. Short-term assets are financed with short-term payables and clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

[25] See table 6 for calculation of required imputed equity amount.

TABLE 5—2011 INTEREST RATE SENSITIVITY ANALYSIS [26]

[Millions of dollars]

	Rate sensitive	Rate insensitive	Total
Assets:			
Imputed reserve requirement on clearing balances	$440.0		$440.0
Imputed investments	3,968.6		3,968.6
Receivables		$41.4	41.4
Materials and supplies		1.5	1.5
Prepaid expenses		7.6	7.6
Items in process of collection		300.0	300.0
Long-term assets		784.9	784.9
Total assets	4,408.6	1,135.4	5,544.0
Liabilities:			
Clearing balances	2,600.3		2,600.3
Deferred credit items		2,100.0	2,100.0
Short-term payables		35.0	35.0
Long-term liabilities		531.5	531.5
Total liabilities	2,600.3	2,666.5	5,266.8
Rate change results:		200 basis point decrease in rates	200 basis point increase in rates
Asset yield ($4,408.6 × rate change)		$(88.2)	$88.2
Liability cost ($2,600.3 × rate change)		(52.0)	52.0
Effect of 200 basis point change		(36.2)	36.2
2011 budgeted revenue		497.6	497.6
Effect of change		(36.2)	36.2
Revenue adjusted for effect of interest rate change		461.4	533.8
2011 budgeted total expenses		443.4	443.4
2011 budgeted PSAF		44.3	44.3
Tax effect of interest rate change ($ change × 32.4%)		(11.7)	11.7
Total recovery amounts		476.0	499.4
Recovery rate before interest rate change		102.0%	102.0%
Recovery rate after interest rate change		96.9%	106.9%
Effect of interest rate change on cost recovery [27]		(5.1)%	4.9%

TABLE 6—DERIVATION OF THE 2011 AND 2010 PSAF

[Millions of dollars]

		2011			2010	
A. Imputed elements						
Short-term debt [28]		$0.0			$0.0	
Long-term debt [29]		0.0			0.0	
Equity						
Total assets from table 3	$5,544.0			$7,388.0		
Required capital ratio [30]	5%			5%		
Total equity		$277.2			$369.4	
B. Cost of capital						
1. Financing rates/costs						
Short-term debt		N/A			N/A	
Long-term debt		N/A			N/A	

[26] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and rate-sensitive liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points.

[27] The effect of a potential change in rates is greater than a two percentage point change in cost recovery; however, no long-term debt is imputed for 2011 because the priced services have adequate funding sources. See the "Analysis of the 2011 PSAF" section for more information on the interest rate sensitivity analysis results and its effect on the 2011 PSAF and NICB.

TABLE 6—DERIVATION OF THE 2011 AND 2010 PSAF—Continued

[Millions of dollars]

	2011		2010	
Pretax return on equity [31]	8.9%		7.6%	
2. Elements of capital costs				
Short-term debt		$0.0		$0.0
Long-term debt		0.0		0.0
Equity	$277.2×8.9% =	24.8	$369.4×7.6% =	28.2
		$24.8		$28.2
C. Other required PSAF costs				
Sales taxes	$4.2		$5.2	
FDIC assessment	5.3		9.6	
Board of Governors expenses	5.2		7.2	
		14.7		22.0
D. Total PSAF		$39.5		$50.2
As a percent of assets		0.7%		0.7%
As a percent of expenses [32]		8.9%		9.6%
E. Tax rates		32.4%		33.1%

TABLE 7—COMPUTATION OF 2011 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$440.0	0.0	$0.0
Imputed investments:			
3-month Treasury bills [33]	2,168.6	0.0	0.0
Federal funds [34]	1,800.0	0.2	360.0
Total imputed investments	3,968.6		360.0
Receivables	41.4	0.2	8.3
Materials and supplies	1.5	1.0	1.5
Prepaid expenses	7.6	1.0	7.6
Items in process of collection	300.0	0.2	60.0
Premises	173.1	1.0	173.1
Furniture and equipment	43.2	1.0	43.2
Leasehold improvements and long-term prepayments	68.2	1.0	68.2
Prepaid pension costs	299.8	1.0	299.8
Prepaid FDIC asset	10.9	1.0	10.9
Deferred tax asset	189.7	1.0	189.7
Total	5,544.0		1,222.3
Imputed equity for 2011	$277.2		
Capital to risk-weighted assets	22.7%		
Capital to total assets	5.0%		

C. *Earnings Credits on Clearing Balances*—The Reserve Banks will maintain the current rate of 80 percent of the three-month Treasury bill rate to calculate earnings credits on clearing balances.

Clearing balances were introduced in 1981, as part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. The

[28] No short-term debt is imputed because clearing balances are a funding source for those assets that are not financed with short-term payables.

[29] No long-term debt is imputed because core clearing balances are a funding source.

[30] Based on the regulatory requirements for a well-capitalized institution for the purpose of assessing insurance premiums.

[31] The 2011 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2011 after-tax CAPM ROE is calculated as 0.16% + (1 * 5.88%) = 6.04%. Using a tax rate of 32.4%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (6.04%/(1–32.4%)) = 8.9%.

[32] System 2011 budgeted priced services expenses less shipping and float are $441.7 million.

[33] The imputed investments are similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at *http://www.federalreserve.gov/releases/h15/data.htm.*

[34] The investments are computed from the amounts arising from the collection of items prior to providing credit according to established availability schedules. These imputed amounts are invested in federal funds.

earnings credit calculation uses a percentage discount on a rolling 13-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. Earnings credits, which are calculated monthly, can be used only to offset charges for priced services and expire if not used within one year.[35]

D. *Check Service*—Table 8 shows the 2009, 2010 estimated, and 2011 budgeted cost recovery performance for the commercial check service.

TABLE 8—CHECK SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)] (percent)
2009	490.9	514.6	−23.7	14.4	92.8
2010 (estimate)	358.7	337.6	21.1	8.2	103.7
2011 (budget)	279.2	262.2	17.0	9.3	102.8

1. *2010 Estimate*—For 2010, the Reserve Banks estimate that the check service will recover 103.7 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 94.7 percent. The Reserve Banks expect to recover all actual and imputed costs of providing check services and earn a net income of $21.1 million (see table 8).

The higher-than-budgeted cost recovery is the result of higher projected revenue of $13.3 million. In paper services, revenue is higher than expected because of mid-year price increases and higher-than-budgeted exception item volume. In electronic services, the higher revenue is due to greater use of products with later deposit deadlines and volume destined to higher-priced paper endpoints. Expenses are projected to be $16.1 million lower than expected due primarily to the full-year effects of cost savings associated with the earlier-than-expected elimination of transportation for paper checks among Reserve Bank offices, the transition from courier service to overnight delivery service for paper check presentments, and the accelerated restructuring of the Reserve Banks' check processing infrastructure.

The general decline in the number of checks written continues to influence the decline in checks collected by the Reserve Banks. Through August, total forward check volume and return check volume is 9 percent and 16 percent lower, respectively, than the same period last year. For full-year 2010, the Reserve Banks estimate that their total forward check collection volume will decline nearly 10 percent and return check volume will decline 15 percent from 2009 levels.[36] The proportion of checks deposited and presented electronically has grown steadily in 2010 (see table 9). The Reserve Banks expect that year-end 2010 FedForward deposit and FedReceipt presentment penetration rates will reach 99.7 percent and 98.9 percent, respectively. The Reserve Banks also expect that year-end 2010 FedReturn and FedReceipt Return penetration rates will reach 96.2 percent and 80.0 percent, respectively. FedReturn and FedReturn Receipt penetration rates have lagged those of FedForward and FedReceipt because initial efforts by the Reserve Banks and depository institutions to apply electronics to the check clearing process focused on the relatively higher volume forward collection process. Moreover, the recent economic environment has limited depository institutions' back-office investments to apply electronics to the check return process. To increase the adoption of FedReceipt Return, the Reserve Banks have introduced a PDF delivery option for lower-volume receivers of returned checks.

TABLE 9—CHECK 21 PRODUCT PENETRATION RATES [a]

[percent] [b]

	Forward deposit volume				Return volume [c]			
	FedForward		FedReceipt		FedReturn		FedReceipt return	
	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end
2005	1.9	5.0	<0.1	0.1	4.0	6.9	N/A	N/A
2006	14.4	26.0	1.0	3.5	19.7	30.5	<0.1	<0.1
2007	42.6	57.9	12.5	22.7	37.8	45.4	0.5	1.1
2008	76.8	91.8	41.5	60.7	58.4	72.0	6.4	13.2
2009	96.5	98.6	80.4	91.7	81.2	91.2	34.1	50.8
2010 (estimate)	99.4	99.7	95.8	98.9	94.3	96.2	65.4	80.0
2011 (budget)	99.7	99.8	99.7	99.7	97.3	98.2	95.0	99.7

[a] FedForward is the electronic forward check collection product; FedReceipt is electronic presentment with accompanying images; FedReturn is the electronic check return product; and FedReceipt Return is the electronic delivery of returned checks with accompanying images.

[35] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

[36] Total Reserve Bank forward check volumes are expected to drop from roughly 8.6 billion in 2009 to 7.8 billion in 2010. Total Reserve Bank return check volumes are expected to drop from roughly 87.6 million in 2009 to 74.4 million in 2010.

[b] Deposit and presentment statistics are calculated as a percentage of total forward collection volume. Return statistics are calculated as a percentage of total return volume.
[c] The Reserve Banks began offering PDF delivery of returned checks in 2009. For 2011 budget, volume associated with the delivery of returned checks in PDF files is included in FedReceipt Return volume.

Paper forward-collection volume is expected to decline nearly 85 percent and paper return-check volume is expected to decline 74 percent for the full year (see table 10).

TABLE 10—PAPER CHECK PRODUCT VOLUME CHANGES

[Percent]

	Budgeted 2010 change	Estimated 2010 change
Forward Collection	−84	−85
Returns	−76	−74

2. *2011 Pricing*—In 2011, the Reserve Banks project that the check service will recover 102.8 percent of total expenses and targeted ROE. Revenue is projected to be $279.2 million, a decline of $79.5 million from 2010. This decline is driven largely by an increasing proportion of checks being deposited and presented electronically and by projected reductions in both forward check collection and return check volume. Total expenses for the check service are projected to be $262.2 million, a decline of $75.2 million from 2010. The reduction in check costs is driven primarily by the full-year effects of cost savings associated with the consolidation of Reserve Bank check-processing sites, associated staff reductions, and reductions in transportation costs, as well as indirect support and overhead cost savings.[37]

For 2011, the Reserve Banks estimate that their total forward check volume will decline nearly 10 percent (*see* table 11). FedForward and traditional paper check volumes are expected to decline 10 percent and 60 percent, respectively. The decline in Reserve Bank check volume can be attributed to increased competition, increased use of direct exchanges, and the continued decline in check use nationwide. The Reserve Banks also expect that total return volume will decline 14 percent, as FedReturn volume declines 11 percent and traditional paper returns decline 59 percent.

TABLE 11—CHECK VOLUMES

	2011 Budgeted volume (millions of items)	Growth from 2010 estimate (percent)
FedForward	6,960	−10
Traditional paper forward	18	−60
Total forward	6,978	−10
FedReturn	62	−11
Traditional paper return	2	−59
Total return	64	−14

The Reserve Banks will reduce FedForward fees, on average, 8 percent for checks presented electronically and increase fees 50 percent for checks presented as substitute checks (*see* table 12). The average fee paid by FedForward depositors will decline by 14 percent from the average 2010 fee, as the number of depository institutions that accept their presentments electronically increases. FedReturn fees, on average, will remain flat for checks returned electronically through FedLine, decrease 30 percent for checks returned electronically via PDF, and increase 14 percent for substitute check endpoints. The average fee paid by depository institutions using FedReturn will decrease 20 percent as the number of institutions that accept their returns electronically increases.

The Reserve Banks project that less than 1 percent of check forward deposit volume will be in traditional paper-based products. Accordingly, for the traditional paper check products, the Reserve Banks will increase forward paper check collection fees 181 percent and increase paper return fees 81 percent (see table 12). These increases reflect the high costs of handling the small remaining paper volume and are designed to encourage the continued adoption of Check 21 services.

[37] In response to both the decline in check volume and the electronic check-clearing methods enabled by Check 21, the Reserve Banks fundamentally restructured their check-processing operations and reduced the number of sites at which they process paper checks—from 45 in late 2003 to one in 2010.

TABLE 12—2011 FEE CHANGES

	2010 Average fee	2011 Average fee	Fee change (percent)
FedForward			
Cash letter fee	$3.09	$3.18	3
Electronic endpoints	0.0204	0.0189	−8
Substitute check endpoints	0.1013	0.1514	50
Weighted average fee [a,b]	0.0252	0.0216	−14
FedReturn			
Cash letter fee	3.51	3.51	0
Electronic endpoints.			
FedLine	0.4282	0.4296	<1
PDF	1.2151	0.85	−30
Substitute check endpoints	1.2151	1.39	14
Weighted average fee [a,b]	0.8183	0.6515	−20
Paper			
Forward collection	0.4111	1.1537	181
Returns	5.7180	10.3651	81

[a] The weighted average fees in this table represent combined cash letter and per-item fees for each product type, whereas the electronic and substitute check endpoints reflect only per item fees.

[b] The weighted average fees for FedForward and FedReturn products are dependent on electronic receipt penetration rates. In this table, the weighted average fees are based on electronic receipt penetration rates estimated for full-year 2010 and projected for full-year 2011.

Risks to the Reserve Banks' ability to achieve budgeted 2011 cost recovery for the check service include greater-than-expected check volume losses to correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue, and cost overruns associated with unanticipated problems with the Reserve Banks' Check 21 platform.

E. *FedACH Service*—Table 13 shows the 2009, 2010 estimate, and 2011 budgeted cost-recovery performance for the commercial FedACH service.

TABLE 13—FEDACH SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)] (percent)
2009	94.7	98.6	−3.8	2.9	93.4
2010 (estimate)	110.6	105.9	4.7	2.7	101.9
2011 (budget)	110.4	106.1	4.3	3.8	100.4

1. *2010 Estimate*—The Reserve Banks estimate that the FedACH service will recover 101.9 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 99.9 percent. The Reserve Banks expect to recover all actual and imputed costs of providing FedACH services and earn net income of $4.7 million. Through August, FedACH commercial origination volume is 3 percent higher than it was during the same period last year. For the full year, the Reserve Banks estimate that volume will grow nearly 3 percent.

2. *2011 Pricing*—The Reserve Banks project that the FedACH service will recover 100.4 percent of total expenses and targeted ROE in 2011. Total revenue is budgeted to decrease $0.2 million from the 2010 estimate, primarily as a result of reductions in net income on clearing balances and electronic connection revenue, which is offset in part by an increase in product revenue. Total expenses are budgeted to increase $0.2 million from the 2010 estimate.

The Reserve Banks expect both FedACH commercial origination and receipt volume to grow approximately 3 percent in 2011, consistent with 2010 volume trends. Moreover, the sustained growth of direct exchanges, bank merger activity, and competition from the private-sector ACH operator, Electronic Payments Network (EPN), is expected to limit FedACH volume growth.

The Reserve Banks will maintain processing and service fees at current levels with two exceptions. The Reserve Banks will increase the addenda record fees for origination and receipt transactions from $0.0013 to $0.0015 and the monthly information extract file fee from $50 to $75.

Risks to meeting the Reserve Banks' budgeted 2011 cost recovery include lower-than-anticipated volume growth due to competition from EPN, increases in direct ACH exchanges, increased on-us volume due to bank mergers, and unanticipated problems with technology upgrades that result in cost overruns.

F. *Fedwire Funds and National Settlement Services*—Table 14 shows the 2009, 2010 estimate, and 2011 budgeted cost-recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 14—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)] (percent)
2009	65.6	69.3	−3.6	2.0	92.1
2010 (estimate)	79.1	77.1	2.0	1.9	100.2
2011 (budget)	84.0	80.3	3.7	2.9	101.0

1. *2010 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 100.2 percent of total expenses and targeted ROE, compared with a 2010 budgeted recovery rate of 100.9 percent. The lower-than-expected recovery rate is attributed to lower-than-expected revenues from transaction volume and NICB. Through August, online Fedwire Funds volume was down 2 percent from the same period in 2009. For full-year 2010, the Reserve Banks estimate that online Fedwire Funds volume will decline 2 percent, compared to a budgeted decline of less than 1 percent. With respect to the National Settlement Service, the Reserve Banks estimate that the volume of settlement files will decrease 32 percent and the volume of settlement file entries will increase 11 percent for full-year 2010. The decline in settlement files and increase in entries is due primarily to the continued attrition and consolidation of local check clearinghouse arrangements.

2. *2011 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 101.0 percent of total expenses and targeted ROE in 2011. The Reserve Banks project total expenses to increase $3.3 million from the 2010 estimate. This increase is primarily due to pension costs and increasing amortization costs of the Fedwire technology migration. The Reserve Banks project total revenue to increase $4.9 million from the 2010 estimate due to increases in electronic connection revenue and the implementation of new fees and a new volume-based transfer fee structure for the Fedwire Funds Service, in addition to fee increases for the National Settlement Service.

The Reserve Banks will implement two new fees for the Fedwire Funds Service. First, an end-of-day per-item surcharge of $0.18 will apply to the sender of Fedwire Funds transfers processed by the Reserve Banks after 5 p.m. ET.[38] Second, a $10 monthly fee will be charged for the usage of the import/export feature of the FedLine Advantage electronic access package for the Fedwire Funds Service.[39] This feature, currently provided by the Reserve Banks for no additional charge, allows FedLine Advantage customers to import (export) an external file with multiple transactions into (from) the Fedwire Funds Service.

The Reserve Banks will change the Fedwire Funds Service's volume-based transfer fee structure to include incentive discounts based on customers' historic volume. This change will increase the base price of transfers but will provide substantial discounts on these prices for a portion of customers' expected volume. The change will be implemented in two parts. First, the existing fees for all volume tiers will increase by as much as 73 percent.[40] Second, the Reserve Banks will apply an 80 percent discount on these new fees for the portion of a customer's monthly online volume that exceeds 50 percent of its historic benchmark volume.[41] The Reserve Banks expect online volumes for the Fedwire Funds Service to increase 1 percent in 2011 from 2010 estimates in response to this new fee structure and general expectations for improved economic conditions.

The change in the volume-based transfer fees for the Fedwire Funds Service is consistent with the Reserve Banks' objectives to identify stable sources of revenue to recover the high fixed costs of operating the service and to improve the service's competitiveness in the wholesale payments market. The fee increases will produce more revenue from the relatively stable portion of a customer's monthly online volume (*i.e.,* the first 50 percent of a customer's historic benchmark volume). The Reserve Banks expect these changes to improve their ability to retain existing business and attract new volume by aligning the marginal price of transfers for customers closer to the marginal cost of providing the service. The decrease in the marginal price of transfers is consistent with the Federal Reserve's objective to foster efficiency in the payment systems and to improve the efficiency of Reserve Bank provided services. With respect to the National Settlement Service, the Reserve Banks will increase the settlement file fee from $18 to $20, and the settlement entry fee from $0.80 to $0.90.[42] Settlement file and settlement entry volumes for the National Settlement Service are budgeted to decrease slightly in 2011 from 2010 estimates.

G. *Fedwire Securities Service*—Table 15 shows the 2009, 2010 estimate, and 2011 budgeted cost recovery performance for the Fedwire Securities Service.[43]

[38] This fee is consistent with the Federal Reserve's policy to discourage the concentration of payments late in the business day.

[39] This fee is applied to customers that originate transfers through the FedLine Advantage electronic access channel and have activated the import/export feature for the Fedwire Funds Service at any point during a given calendar month.

[40] The fee for the first 14,000 transfers will increase to $0.52 from $0.30. The fee for the next 76,000 transfers will increase to $0.23 from $0.19. The fee for any additional transfers will increase to $0.13 from $0.09.

[41] Historic benchmark volume will be based on a customer's average daily activity over the previous five full calendar years, adjusted for the number of business days in the current month. If a customer has less than five full calendar years of previous activity, then the historic benchmark volume will be based on the daily activity for as many full calendar years of available data. If a customer has less than one full calendar year's worth of prior activity, historic benchmark volume will be set retroactively at actual volume for the current month.

[42] The settlement file fee was last increased in 2010, from $14.00 to $18.00. The settlement entry fee was last changed in 2002, lowered from $0.95 to $0.80.

[43] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this notice, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement

Continued

TABLE 15—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)] (percent)
2009	24.2	25.1	−0.9	0.7	93.8
2010 (estimate)	24.2	22.7	1.6	0.6	104.3
2011 (budget)	24.0	22.3	1.7	0.8	103.8

1. *2010 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 104.3 percent of total expenses and targeted ROE, compared with a 2010 budgeted recovery rate of 103.9 percent. The higher-than-budgeted recovery rate is primarily attributable to lower-than-expected pension costs and higher-than-expected volume for Treasury securities.[44] Through August, online securities volume is down almost 31 percent from the same period in 2009, due primarily to lower volume for agency securities.

2. *2011 Pricing*—The Reserve Banks project that the Fedwire Securities Service will recover 103.8 percent of total expenses and targeted ROE in 2011. The Reserve Banks project that 2011 revenue and expense will decrease slightly from the 2010 estimate. For 2011, online securities volume is projected to remain flat from current 2010 estimates.

The fees for the Fedwire Securities Service will remain unchanged from 2010.

H. *Electronic Access*—The Reserve Banks allocate the costs and revenues associated with electronic access to the Reserve Banks' priced services. There are currently six electronic access channels through which customers can access the Reserve Banks' priced services: FedLine Direct®, FedLine Command®, FedLine Advantage®, FedLine Web®, FedMail®, and FedPhone®.[45] The Reserve Banks package these channels into nine electronic access packages that are supplemented by a number of premium (or à la carte) access and accounting information options.

Attended access packages offer access to critical payment and information services via a web-based interface. The FedMail e-mail package provides access to basic information services via fax or e-mail, while the FedLine Web packages offer FedMail e-mail and online attended access to a broad range of informational services, including cash services, FedACH services, and check services. The FedLine Advantage packages expand upon the FedLine Web informational service packages and offer attended access to transactional services: FedACH, Fedwire Funds, and Fedwire Securities.

Unattended access packages are computer-to-computer, IP-based interfaces designed for medium- to high-volume customers. The FedLine Command package offers an unattended connection to FedACH, as well as most accounting information services. The final three packages are FedLine Direct packages that allow for unattended connections at one of three connection speeds to FedACH, Fedwire Funds, and Fedwire Securities transactional and information services and to most accounting information services.

For 2011, the Reserve Banks will restructure their FedLine packages to better meet their customers' needs for access options, delivery solutions, and information services. The Reserve Banks will offer redesigned versions of most FedLine packages. The more-robust versions will include access to certain value-added services with moderate price increases. The Reserve Banks will also increase fees for most of the FedLine Direct electronic access packages to improve the alignment of revenues and costs. In addition, the Reserve Banks will raise fees on various premium option services.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, "The Federal Reserve in the Payments System."[46] Under this policy, the Board assesses whether proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If any proposed changes create such an effect, the Board must further evaluate the changes to assess whether the associated benefits — such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The Board projects that the 2011 fees, fee structures, and changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing

component of a Treasury securities transfer; this component is not treated as a priced service.

[44] Total operating costs are allocated between the U.S. Treasury and the Reserve Banks according to the volume of transfers for Treasury securities relative to non-Treasury securities. Through August, Treasury securities volume is 17 percent higher than budgeted and non-Treasury securities volume is 28 percent lower than budgeted, resulting in a greater-than-expected share of operating costs allocated to the U.S. Treasury.

[45] FedLine Direct, FedLine Command, FedLine Advantage, FedLine Web, FedMail, and FedPhone are registered trademarks of the Federal Reserve Banks. These connections may also be used to access nonpriced services provided by the Reserve Banks. FedPhone is a free-access option.

[46] Federal Reserve Regulatory Service (FRRS) 9–1558.

[47] An ODFI is subject to a $25 minimum fee on its origination volume; an RDFI that does not originate forward items is subject to a $15 minimum fee on its receipt volume.

[48] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from EPN.

[49] Receipt fees do not apply to items that the Reserve Banks send to EPN.

[50] This per-item surcharge is in addition to the standard origination and input file processing fees for forward items.

[51] This per-item discount is a reduction to the standard origination and input file processing fees for return items.

[52] This per-item discount is a reduction to the standard receipt fees.

[53] There is no fee for the first set of monitoring criteria for RTN or one company ID.

[54] The account-servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S.

similar services. The fees should permit the Reserve Banks to earn a ROE that is comparable to overall market returns and provide for full cost recovery over the long run.

FEDACH SERVICE 2011 FEE SCHEDULE

[Effective January 3, 2011. **Bold indicates changes from 2010 prices.**]

	Fee
FedACH minimum monthly fee [47]	
ODFI	$25.00.
RDFI	15.00.
Origination (per item or record): [48]	
Forward or return items in small files	0.0030.
Forward or return items in large files	0.0025.
Addenda record	**0.0015.**
Receipt (per item or record): [49]	
Forward item fees with volume-based discount (excluding FedACH SameDay service items)	
For the first 1,000,000 items per month	0.0025.
For 1,000,001 to 25,000,000 items per month	0.0018.
For more than 25,000,000 items per month	0.0016 (all items).
Return items	0.0025.
Addenda record	**0.0015.**
FedACH SameDay Service	
Origination [50] [51]	
Forward item in a small file	0.0030.
Forward item in a large file	0.0035.
Addenda record	**0.0015.**
Return item in a small file	0.0030.
Return item in a large file	0.0025.
Return addenda record	**0.0015.**
Receipt [52]	
Forward item	0.0025.
Addenda record/return addenda record	**0.0015.**
Return item	0.0025.
Risk Product:	
Risk origination monitoring criteria [53]	
Tier 1 (2–20 sets)	8.00/set of criteria/month.
Tier 2 (21–150 sets)	4.00/set of criteria/month.
Tier 3 (more than 150 sets)	1.00/set of criteria/month.
Risk origination monitoring batch	0.0025/batch.
FedEDI Plus:	
Defined report generated	0.20.
On demand report generated	0.75.
Monthly premier report	10.00.
Daily premier report	0.50.
Secure delivery via e-mail	0.20.
Delivery via FedLine file access solution	0.30.
Monthly fee (per routing number):	
Account servicing fee [54]	37.00.
FedACH settlement [55]	45.00.
Information extract file	**75.00.**
IAT Output File Sort	35.00.
FedLine Web origination returns and notification of change (NOC) fee: [56]	0.30.
Voice response returns/NOC fee: [57]	3.00.
Automated NOC fee: [58]	0.15.
Non-electronic input/output fee: [59]	
CD or DVD input/output	50.00.
Paper input/output	50.00.
Facsimile exception returns/NOC [60]	30.00.
Canadian cross-border fee:	
Item originated to Canada [61]	0.62.
Return received from Canada [62]	0.99.
Trace of item at receiving gateway	5.50.
Trace of item not at receiving gateway	7.00.
Mexico service fee:	
Item originated to Mexico [61]	0.67.

government transactions or that elect to use the other operator exclusively are not assessed the account servicing fee.

[55] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for U.S. government transactions only.

[56] The fee includes the transaction and addenda fees in addition to the conversion fee.

[57] The fee includes the transaction and addenda fees in addition to the voice response fee.

[58] The fee includes the notification of change processing fee.

[59] Limited services are offered in contingency situations.

[60] The fee includes the transaction fee in addition to the conversion fee.

[61] This per-item surcharge is in addition to the standard domestic origination and input file processing fees.

[62] This per-item surcharge is in addition to the standard domestic receipt fees.

FEDACH SERVICE 2011 FEE SCHEDULE—Continued

[Effective January 3, 2011. **Bold indicates changes from 2010 prices.**]

	Fee
Return received from Mexico[62]	0.91.
Item trace	13.50.
A2R item originated to Mexico	3.45.
F3X item originated to Mexico	0.67.
Panama service fee:	
Item originated to Panama[61]	0.72.
Return received from Panama[62]	1.00.
Item trace	7.00.
NOC	0.72.
Latin America (MFIC) service fee:	
Item originated to MFIC[61]	4.40.
Return received from MFIC[62]	0.72.
Item trace	5.00.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2011 FEE SCHEDULE

[Effective January 3, 2011. **Bold indicates changes from 2010 Fee Schedule.**]

	Fee
Fedwire Funds Service	
Monthly participation fee	$75.00
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 14,000 transfers per month	**0.52**
Per transfer for additional transfers up to 90,000 per month	**0.23**
Per transfer for every transfer over 90,000 per month	**0.13**
Volume-based transfer fee with the incentive discount (originations and receipts)[63]	
Per eligible transfer for the first 14,000 transfers per month	**0.104**
Per eligible transfer for additional transfers up to 90,000 per month	**0.046**
Per eligible transfer for every transfer over 90,000 per month	**0.026**
Surcharge for offline transfers (originations and receipts)	40.00
Surcharge for end-of-day transfers originations[64]	**0.18**
Monthly import/export fee[65]	**10.00**
National Settlement Service	
Basic	
Settlement entry fee	**0.90**
Settlement file fee	**20.00**
Surcharge for offline file origination	40.00
Minimum monthly charge (account maintenance)[66]	60.00
Special settlement arrangements[67]	
Fee per day	150.00
Basic transfer fee	
Transfer or reversal originated or received	0.35
Surcharge	
Offline transfer or reversal originated or received	60.00
Monthly maintenance fees	
Account maintenance (per account)	36.00
Issues maintained (per issue/per account)	0.40
Claim adjustment fee	0.60
Joint custody fee	40.00

[63] The incentive discounts are applicable on the portion of a customer's volume that exceeds 50 percent of their historic benchmark volume. Historic benchmark volume would be based on a customer's average daily activity over the previous five full calendar years, adjusted for the number of business days in the current month. If a customer has less than five full calendar years of previous activity, then the historic benchmark volume would be based on the daily activity for as many full calendar years of available data. If a customer has less than one full year calendar year's worth of prior activity, historic benchmark volume would be set retroactively at actual volume for the current month.

[64] This surcharge will apply to originators of transfers that are processed by the Reserve Banks after 5:00 p.m. ET.

[65] This fee is applied to customers that originate transfers through the FedLine Advantage electronic access channel and have activated the import/export feature for the Fedwire Funds Service at any point during a given calendar month.

[66] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60.

[67] Special settlement arrangements use Fedwire Funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire Funds transfer fee for each transfer into and out of the settlement account.

ELECTRONIC ACCESS 2011 FEE SCHEDULE

[Effective January 3, 2011. **Bold prices indicate changes from 2010 Fee Schedule.**]

Electronic Access Packages (monthly)	Fee
FedMail E-mail	$30.00.
FedLine Web (W3) Traditional	110.00.
Includes: FedMail e-mail	
FedLine Web with three individual subscriptions	
FedACH information services (includes RDFI file alert service)	
Check 21 services[68]	
Check 21 duplicate notification	
Cash management system basic—own report only	
Service charge information	
Account management information[69]	
End of day accounting file (PDF)	
FedLine Web (W5) Enhanced	140.00.
Includes: FedLine Web (W3) traditional package	
FedLine Web with five individual subscriptions	
FedACH risk management services	
FedACH EDI plus service via secure e-mail	
Check payor bank services	
Account management information	
FedLine Advantage (A5) Traditional	380.00.
Includes: FedLine Web (W3) traditional package	
FedLine Web with five individual subscriptions	
FedACH transactions	
Fedwire funds transactions	
Fedwire securities transactions	
Fedwire cover payments	
Check payor bank services	
Account management information with intra-day search	
FedLine Advantage (A5) Enhanced	405.00.
Includes: FedLine Advantage A5 traditional package	
FedLine Advantage with five individual subscriptions	
FedACH risk management services	
FedACH EDI via secure e-mail	
FedLine Command Enhanced	700.00.
Includes: FedLine Advantage enhanced package	
FedLine Advantage with five individual subscriptions	
FedLine Command with two certificates	
ACTS Report <20 subaccounts	
Statement of account spreadsheet file (SASF)	
FedLine Direct Traditional (D56)	3,000.00.
Includes:	
FedLine Advantage A5 traditional package with 56K line speed	
FedLine Advantage with five individual subscriptions	
FedLine Command with two certificates	
FedLine Direct with two certificates	
Intra-day file	
Statement of account spreadsheet file	
End of day (machine readable) file	
Service charge information	
Billing data format file	
FedLine Direct Enhanced (D256)	3,500.00.
Includes: FedLine Direct traditional (D56) package with 256K line speed	
FedACH risk management services	
FedACH EDI via secure e-mail	
FedLine Direct Premier (DT1)	6,000.00.
Includes: FedLine Direct enhanced package with T1 line speed	
One dedicated unattended wide area network connection for FedLine Direct	
Premium Options (monthly)[70]	
Electronic Access	
Additional subscribers package (each package contains 5 additional subscribers)	80.00
Additional FedLine Command certificate[71]	80.00
Additional FedLine Direct certificate[72]	80.00
Maintenance of additional virtual private network	60.00
FedLine Advantage 800# Usage (per hour)	2.00
Additional dedicated connections[73]	
56K	2,000.00
256K	2,450.00
T1	3,000.00
Dial Only VPN surcharge	25.00.
Expedited VPN	500.00
FedLine international setup (one-time fee)	1,000.00
Transparent contingency[74]	1,000.00

ELECTRONIC ACCESS 2011 FEE SCHEDULE—Continued

[Effective January 3, 2011. **Bold prices indicate changes from 2010 Fee Schedule.**]

Electronic Access Packages (monthly)	Fee
FedImage/large file delivery	Various.
FedMail fax (monthly per routing number)	40.00
Accounting Information Services	
Cash Management System [75]	
Basic—Respondent and/or sub-account reports (per report/month)	10.00
Basic—Respondent/sub-account recap report (per month)	40.00
Plus—Own report up to six times a day (per month)	60.00
Plus—Less than 10 respondent and/or sub-accounts	125.00
Plus—10–50 respondent and/or sub-accounts	225.00
Plus—51–100 respondents and/or sub-accounts	400.00
Plus—101–500 respondents and/or sub-accounts	750.00
Plus—>500 respondents and/or sub-accounts	1,000.00
End of day reconcilement file (per month) [76]	150.00
Statement of account spreadsheet file (per month) [77]	150.00
Intra-day file (per month) [78]	150.00
ACTS Report—< 20 sub-accounts	250.00
ACTS Report—21–40 sub-accounts	500.00
ACTS Report—41–60 sub-accounts	750.00
ACTS Report—>60 sub-accounts	1,000.00

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 27, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–27697 Filed 11–2–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Aslin Opportunity Fund BK, LP, Cape Haze, Florida,* to acquire 46.7 percent of the voting shares of Aslin Group, Inc., parent of Alterra Bank, both in Overland Park, Kansas.

Board of Governors of the Federal Reserve System, October 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27729 Filed 11–2–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

[68] Check 21 services can be accessed via three options: FedLine Web, an Internet connection with Axway Secure Transport Client, or a dedicated connection using Connect:Direct.

[69] Daylight Overdraft Report, Ex-Post Activity Snapshot, and Integrated Accounting Statement of Account are available via FedMail.

[70] Premium options for FedLine Web Traditional are limited to FedMail Fax.

[71] Additional FedLine Command Certificates available for FedLine Command and Direct Packages only.

[72] Additional FedLine Direct Certificates available for FedLine Direct Packages only.

[73] Network diversity supplemental charge of $2,000 a month may apply in addition to these fees.

[74] Transparent contingency is available only for FedLine Direct Packages.

[75] Cash Management System options are limited to Enhanced and Premier Packages.

[76] End of Day Reconcilement File option is available to FedLine Web Enhanced and FedLine Advantage Enhanced Packages.

[77] Statement of Account Spreadsheet File option is available to FedLine Web Enhanced and FedLine Advantage Enhanced packages.

[78] ACTS Report options are limited to FedLine Command Enhanced and FedLine Direct Enhanced and Premier packages.

noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Peoples Bancorp, Inc.,* Prairie du Chien, Wisconsin; to acquire 100 percent of the voting shares of Woodhouse & Bartley Bank, Bloomington, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Exchange Bancorp of Missouri, Inc.,* Fayette, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bank of Missouri, Fayette, Missouri.

Board of Governors of the Federal Reserve System, October 28, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27684 Filed 11–2–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 001941–003.

Title: Baltimore Marine Terminal Association.

Parties: Ports Baltimore, Inc.; Maryland International Terminals, Inc.; Mid-Atlantic Terminal LLC; Ceres Marine terminals, Inc.; Tartan Terminals, Inc. and Ports America Chesapeake, Inc.

Filing Party: JoAnne Zawitoski, Esq.; Baltimore Marine Terminal Association; 25 South Charles Street, Suite 1400, Baltimore, MD 21201.

Synopsis: The amendment restates the agreement and identifies the current members of the BTMA.

Agreement No.: 011435–014.

Title: APL/HLAG Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment updates the corporate address for APL.

Agreement No.: 011741–015.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: ANL Singapore PTE Ltd.; A.P. Moller-Maersk A/S; CMA CGM S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment increases the amount of space CMA CGM is allotted from Pacific Northwest ports.

Agreement No.: 012077–001.

Title: APL/Maersk Line Reciprocal Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; and A.P. Moller Maersk A/S.

Filing Party: Eric. C. Jeffrey, Esq.; Counsel for APL; Goodwin Procter LLP; 901 New York Avenue, NW., Washington, DC 20001.

Synopsis: The amendment updates the corporate addresses of American President Lines, Ltd. and APL Co. Pte Ltd.

Agreement No.: 012108.

Title: The World Liner Data Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM S.A.; Compania Chilena de Navegacion Interoceanica S.A.; Hamburg-Sud; Hapag-Lloyd AG; Orient Overseas Container Line Ltd.; and United Arab Shipping Company S.A.G.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The pending agreement has been changed to include CCNI and Orient Overseas Container Line Ltd as parties to the Agreement.

Agreement No.: 201209.

Title: Marine Terminal Lease and Operating Agreement Between Broward County and Seafreight Agencies (USA), Inc.

Parties: Broward County and Seafreight Agencies (USA), Inc.

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502, Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease and operation of terminal facilities at Port Everglades in Broward County, Florida.

By Order of the Federal Maritime Commission.

Dated: October 29, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–27777 Filed 11–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF):

None.

Laboratories:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc. P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876 (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sterling Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: October 28, 2010.

Elaine Parry,

Director, Office of Management, Technology, and Operations, SAMHSA.

[FR Doc. 2010–27728 Filed 11–2–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5055–N]

Medicare Program: Community-Based Care Transitions Program (CCTP) Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public conference hosted by CMS. This conference will provide a forum for community-based organizations, hospitals, Quality Improvement Organizations, Administration on Aging grantees, and other healthcare providers to receive useful guidance and ask questions about the upcoming Community-based Care Transitions Program. The meeting is open to the public, but attendance is limited to space and Webinar lines available.

DATES: *Meeting Date:* Friday, December 3, 2010, from 8 a.m. to 4 p.m., eastern standard time (e.s.t.).

Deadline for Webinar or Web-based Registration: Thursday, December 2, 2010, 8 a.m., e.s.t.

Deadline for Meeting Registration: Friday, November 19, 2010, 4 p.m., e.s.t.

Limited walk-in registration may be available the evening prior to the conference and the morning of the conference as space permits.

ADDRESSES: *Meeting Location:* Marriott Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202.

Registration: The meeting is open to the public, but attendance is limited to space and Webinar lines available. A link to the agenda and registration information will be posted on the CMS Care Transitions Web site at *http://www.cms.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?itemID=CMS1239313* as soon as it is available. Persons wishing to attend this meeting in person or via Webinar are encouraged to register in advance.

Special Accommodations: Individuals who require special accommodations should send an e-mail request to *CareTransitions@cms.hhs.gov* or via regular mail to the address specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials will be posted on the CMS Care Transitions Web site prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Juliana Tiongson, Social Science Research Analyst, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850, Mail Stop C4–14–15, telephone 410–786–0342 or e-mail Juliana.Tiongson@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Community-based organizations (CBOs) are defined in the statute as community-based organizations that provide care transition services across a continuum of care through arrangements with subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) and whose governing body includes sufficient representation of multiple health care stakeholders, including consumers. Experts in the field will present evidence-based care transition models, and lessons learned from participation in the Quality Improvement Organizations' (QIOs) 9th scope of work care transitions sub-national theme and related initiatives. Healthcare leaders will present broader, hospital-based interventions to reduce readmissions, as well as the positive financial implications of successfully reducing readmissions. This conference will also provide an overview of the Community-based Care Transitions Program (CCTP) and provide the opportunity for hospitals to connect with CBOs in their communities. Once a solicitation for the CCTP is published, proposals will be accepted on a rolling quarterly basis beginning in early 2011.

II. Meeting Agenda

The agenda for the December 3, 2010 meeting will include the following topic areas:

- Overview of the CCTP under section 3026 of the Affordable Care Act.
- The Business Case for Improving Care Transitions.
- Building Community Support and Root Cause Analysis.
- Overview of Care Transition Interventions.
- Implementation of Care Transition Interventions—Successes and Challenges.

Authority: Section 3026 of the Affordable Care Act

Dated: October 21, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–27789 Filed 10–29–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 18, 2010, 2 p.m. to November 18, 2010, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 25, 2010, 75 FR 65498–65499.

The meeting title has been changed to "RFA Panel: Translational Research in Pediatric and Obstetric Pharmacology". The meeting is closed to the public.

Dated: October 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27769 Filed 11–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Devices and Detection Systems.

Date: November 17–18, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Ross D Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892. 301–435–2786. *ross.shonat@nih.hhs.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Voice and Speech.

Date: November 22, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 237–9918. *niw@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27743 Filed 11–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention (CDC)

Request for Nominations of Candidates To Serve on the Interagency Committee on Smoking and Health, (ICSH)

The ICSH is soliciting nominations for consideration of membership on the committee. This committee provides advice and guidance to the Secretary, HHS, and the Director, CDC regarding (a) coordination of all research and education programs and other activities within the Department and with other federal, State, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and State and local public health agencies with respect to smoking and health activities.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishment of the committee's objectives. Nominees must meet all of the following mandatory qualifications to be eligible for consideration: Expertise in the field of tobacco control and multi-disciplinary expertise in public health; and knowledge of national health policies and programs managed by HHS. Additionally, desirable qualifications include: (1) Knowledge of emerging tobacco control policies and experience in analyzing, evaluating, and interpreting Federal, State and/or local health or regulatory policy that includes Point of Sale, warning labels, and advertising restrictions; or (2) knowledge of product regulation and the emerging environment of tobacco control and expertise in developing or contributing to the development of policies/or programs; or (3) familiarity of rapid and emerging surveillance systems that will allow for the timely evaluation of tobacco product regulation and/or the impact of tobacco control interventions. Balanced membership will depend upon several factors, including: (1) The committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. Members may be invited to serve for up to four-year terms. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: name, affiliation, address, telephone number, and current curriculum vitae. E-mail addresses are requested if available. Additionally, the following information must be included: (1) Letter of recommendation stating the nominee's qualifications; (2) letter of nomination that provides specific attributes that qualify the nominee for service; (3) a statement indicating the nominee's willingness to serve as a potential member of the Committee; and (4) a narrative addressing the nominee's experience and professional/technical qualifications.

Nominations should be sent electronically or in writing, and postmarked by November 19, 2010 to: Ms. Monica Swann, Committee Management Specialist, NCCDPHP, CDC, 4770 Buford Highway (MS–K 50), Chamblee, Georgia 30341. (E-mail address: *zqe0@cdc.gov*). Telephone and facsimile submissions cannot be accepted.

Candidates invited to serve will be required to submit the Confidential Financial Disclosure Report (OGE 450) form for Special Government Employees (SGEs) serving on Federal Advisory Committees at CDC. This form allows CDC to determine whether there is a statutory conflict between that person's public responsibilities as a SGE and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at *http://www.usoge.gov/forms/oge450_pdf/oge450_accessible.pdf.* This form should not be submitted as part of a nomination.

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: October 27, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–27600 Filed 11–2–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0129.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“Haiti HOPE Act”). 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 January 3, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

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) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). 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: Haitian Hemispheric Opportunity through Partnership Encouragement (“Haiti HOPE”) Act of 2006.

OMB Number: 1651–0129.

Abstract: Title V of the Tax Relief and Health Care Act of 2006 amended the Caribbean Basin Economic Recovery Act (CBERA 19 U.S.C. 2701–2707) and authorized the President to extend additional trade benefits to Haiti. This trade program, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“Haiti HOPE Act”), provides for duty-free treatment for certain apparel articles and certain wire harness automotive components from Haiti.

Those wishing to claim duty-free treatment under this program must prepare a declaration of compliance which identifies and details the costs of the beneficiary components of production and non-beneficiary components of production to show that the 50% value content requirement was satisfied. The information collected under the Haiti Hope Act is provided for in 19 CFR 10.848.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 12.

Estimated Number of Annual Responses per Respondent: 17.

Estimated Number of Total Annual Responses: 204.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 67.

Dated: October 28, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–27695 Filed 11–2–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–99]

Notice of Submission of Proposed Information Collection to OMB; Application for FHA Insured Mortgage

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

These forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA’s insurance endorsement. Lenders seeking FHA’s insurance prepare these forms.

DATES: *Comments Due Date: December 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0059) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for FHA Insured Mortgage.

OMB Approval Number: 2502–0059.

Form Numbers: HUD–92900–A, HUD–92900–B, HUD–92900–LT, HUD–92561, HUD–92544, Addendum to HUD–1, Model Notice for Informed Consumer Choice Disclosure, Model Pre-insurance Review.

Description of the Need for the Information and Its Proposed Use:

These forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare these forms.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,240	1		32		478,758

Total Estimated Burden Hours: 478,758.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 28, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–27779 Filed 11–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–98]

Notice of Submission of Proposed Information Collection to OMB HUD NEPA ARRA Section 1609(c) Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Grantees who receive ARRA funding for projects must report on the status and progress of their projects and activities with respect to compliance with the National Environmental Policy Act (NEPA) requirements and documentation. HUD consolidates and transmits the information received from grantees to the Council on Environmental Quality and OMB for the Administration's reports to the House and Senate committees designated in the legislation.

DATES: *Comments Due Date: December 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0187) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD NEPA ARRA Section 1609(c) Reporting.

OMB Approval Number: 2506–0187.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

Grantees who receive ARRA funding for projects must report on the status and progress of their projects and activities with respect to compliance with the National Environmental Policy Act (NEPA) requirements and documentation. HUD consolidates and transmits the information received from grantees to the Council on Environmental Quality and OMB for the Administration's reports to the House and Senate committees designated in the legislation.

Frequency of Submission: Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	6,000	4		0.5		12,000

Total Estimated Burden Hours: 12,000.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–27781 Filed 11–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–97]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required by the Housing and Community Development Act of 1992. Public Housing Agencies (PHAs) will submit a proposal for a Designated Housing Plan (Plan) which is composed of information on their proposal to designate a public housing development for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

DATES: *Comments Due Date: December 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0192) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requirements for Designating Housing Projects.

OMB Approval Number: 2577–0192.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This information is collection is required by the Housing and Community Development Act Of 1992. Public Housing Agencies (PHAs) will submit a proposal for a Designated Housing Plan (Plan) which is composed of information on their proposal to designate a public housing development for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	70	1		15		1,050

Total Estimated Burden Hours: 1,050.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–27782 Filed 11–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–11]

Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the United States Small Business Administration (SBA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the HUD and the SBA.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (June 19, 1989, 54 FR 25818), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the SBA to utilize a computer information system of HUD, the Credit Alert Interactive Verification System (CAIVRS), with the SBA's debtor files. Additionally, the records to be matched section was updated to reflect HUD's new Privacy Act Systems of Records involved in the CAIVRS matching program. This update does not change the authority and the objectives of the existing HUD and SBA computer matching program.

DATES: *Effective Date:* The effective date of the matching program shall begin December 3, 2010 or 40 days from the date copies of the signed (by both HUD and SBA's Data Integrity Boards (DIBs)) computer matching agreement is sent to both Houses of Congress and the Office of Management and Budget (OMB), whichever is later, providing no comments are received which will result in a contrary determination.

Comments Due Date: December 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, HUD, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: From the "Recipient Agency" contact the Chief Privacy Officer, HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8076. From the "Source Agency" contact Walter Intlekofer, Chief, Portfolio Management Division, Small Business Administration, 409 Third Street, Suite 8300, SW., Washington, DC 20416, telephone number (202) 205–7543. (These are not toll-free numbers.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: HUD's data in the CAIVRS database includes delinquent debt information from the Department of Education, Veterans Affairs, Justice, and the Department of Agriculture. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or SBA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to query the CAIVRS debtor files which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on a direct or guaranteed loans of participating Federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

Reporting of a Matching Program

In accordance with the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), as amended, and Office of Management and Budget (OMB), Congress and the Public; copies of this notice and report are being provided to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform.

Authority

This computer matching will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended; and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs). OMB Circulars A–129 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); Section 2653 of Public Law 98–369; the Federal Credit Reform Act of 1990, as amended; the Federal Debt Collection Procedures Act of 1990; the Chief Financial Officers Act of 1990, as amended; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset payments to collect debts administratively. One of the purposes of all executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs.

Objectives To Be Met by the Matching Program

The matching program will allow SBA and HUD authorized users access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA debtor data for prescreening purposes.

Records To Be Matched

HUD will use records from its systems of records HUD/SFH–01, Single Family Default Monitoring System; HUD/SFH–02, Single Family Insurance System CLAIMS Subsystem; HUD/HS–55, Debt Collection Asset Management System; and HUD/HS–59, Single Family Mortgage Asset Recovery Technology. The debtor files for programs involved are included in these systems of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans) or who have had their partial claim subordinate mortgage called due and payable and it has not been repaid in full or who have any outstanding claims paid during the last three years on a Title I insured or guaranteed home mortgage loan. The Single Family Default Monitoring System was published in the **Federal Register** on November 20, 2007 (72 FR 65350); the Single Family Insurance System CLAIMS Subsystem was published in the **Federal Register** on November 20, 2007 (72 FR 65348); the Debt Collection Asset Management was originally published in the **Federal Register** on June 26, 2006 (71 FR 36351) and subsequently amended on November 13, 2007 (72 FR 63919) and the Single Family Mortgage Asset Recovery Technology was originally published in the **Federal Register** on July 17, 2008 (73 FR 41105) and subsequently amended on June 18, 2010 (75 FR 34755). The SBA will provide HUD with debtors files contained in its system of records for disaster home loans entitled Loan Case File (SBA 075), along with delinquent business (including disaster business) loans/guarantors that have received 60-day notification letters that their obligations may be referred to Treasury for offset or cross-servicing. On September 29, 2004, all SBA systems were republished and renumbered in the **Federal Register** (69 FR 58598). SBA 075 was re-numbered to SBA 21 Loan System. HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's systems of records noted above. SBA's data contains information on individuals who have defaulted on their guaranteed loans. The SBA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

Notice Procedures

HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on

the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and SBA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned and home improvement loan debtors who are delinquent or default on their loans or who have had their partial claim subordinate mortgage called due and payable and it has not been repaid in full.

Period of the Match

Matching is expected to begin at least 40 days from the date copies of the signed (by both HUD and SBA's Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, which ever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: October 28, 2010.

Jerry E. Williams,

Chief Information Officer.

[FR Doc. 2010–27784 Filed 11–2–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2011 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2011 funding agreements with self-governance Indian tribes and lists programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior, pursuant to the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2011.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Sharee M. Freeman, Director, Office of Self-Governance (MS 355H–SIB), 1849 C Street, NW., Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–1404, or to the bureau-specific points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the "Tribal Self-Governance Act" or the "Act") instituted a permanent self-governance program at the Department of the Interior. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Tribal Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies, "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law."

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Tribal Self-Governance Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, each non-BIA bureau will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

A consultation session was held at the Annual Tribal Self-Governance Conference in Scottsdale, Arizona on May 6, 2010, on the Draft 2011 **Federal Register** Notice List of Programs Eligible for Inclusion in Fiscal Year 2011 Funding Agreements To Be Negotiated with Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs. Written comments were to be to the Office of Self-Governance by May 27, 2010. No comments were received.

II. Funding Agreements Between Self-Governance Tribes and non-BIA Bureaus of the Department of the Interior for Fiscal Year 2010

A. Bureau of Land Management (none)
B. Bureau of Reclamation (5)
  Gila River Indian Community
  Chippewa Cree Tribe of Rocky Boy's Reservation
  Hoopa Valley Tribe
  Karuk Tribe of California
  Yurok Tribe
C. Bureau of Ocean Energy Management, Regulation and Enforcement (none)
D. Office of Natural Resources Revenue (ONRR) (none)
E. National Park Service (3)
  Grand Portage Band of Lake Superior

Chippewa Indians
Lower Elwha S'Klallam Tribe
Yurok Tribe
F. Fish and Wildlife Service (2)
Council of Athabascan Tribal Governments
Confederated Salish and Kootenai Tribes of the Flathead Reservation
G. U.S. Geological Survey (none)
H. Office of the Special Trustee for American Indians (1)
Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either "otherwise available to Indians" under Title I and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. The lists represent the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the self-governance tribe demonstrating a special geographic, culture, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

Tribal Services

1. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations: Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. *Cultural heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Forestry Management.* Activities such as environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. *Range Management.* Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. *Riparian Management.* Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. *Recreation Management.* Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities, such as construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

7. *Wild Horse Management.* Activities, such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management (MS L St—204), 1849 C Street, NW., Washington, DC 20240, telephone: (202) 912–7245, fax: (202) 452–7701.

B. Eligible Bureau of Reclamation (Reclamation) Programs

The mission of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon.
2. Trinity River Fishery, California.
3. Central Arizona Project, Arizona.
4. Rocky Boy's/North Central Montana Regional Water System, Montana.
5. Indian Water Rights Settlement Projects, as authorized by Congress.

Reclamation also has some programs (*e.g.,* drought relief) under which funding may be provided for specific tribal projects which qualify under the applicable program criteria, subject to available funding. When such projects are for the benefit of self-governance tribes, the projects, or portions thereof, may be eligible for inclusion in self-governance funding agreements.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Douglas Oellermann, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43200) (MS 7069–MIB); 1849 C Street, NW., Washington, DC 20240, telephone: (202) 513–0560, fax: (202) 513–0311.

C. Eligible Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) Programs

The BOEMRE provides stewardship of America's offshore resources and is responsible for the management of the Federal Outer Continental shelf, which are submerged lands off the coasts that have significant energy and mineral resources. Within the Offshore Energy Minerals Management program, environmental impact assessments and statements, and environmental studies may be available if a self-governance tribe demonstrates a special geographic, cultural or historical connection.

For questions regarding self-governance contact Brian Jordan, Headquarters Archaeologist, Environmental Division, Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, MS–4042, Herndon, VA 20170–4817, telephone: (703) 787–1748, fax: (703) 787–1026.

D. Eligible Office of Natural Resources Revenue (ONRR) Programs

Effective October 1, 2010, the Minerals Revenue Management program moved from the BOEMRE (formerly the Minerals Management Service (MMS)) to the Office of the Assistant Secretary—Policy, Management and Budget (PMB) and became the ONRR. The ONRR collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases. The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning tribes opportunities to become involved in its programs that address the intent of tribal self-governance. These programs are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions. Generally, ONRR program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR program functions that may be available to self-governance tribes include:

1. *Audit of Tribal Royalty Payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in ONRR cooperative audits, this program is offered as an option.)

2. *Verification of Tribal Royalty Payments.* Financial compliance verification and monitoring activities, and production verification.

3. *Tribal Royalty Reporting, Accounting, and Data Management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal Royalty Valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Internship Program.* An orientation and training program for auditors and accountants from mineral-producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this is the term contained in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance contact Shirley M. Conway, Special Assistant to the Director, Office of Natural Resources Revenue, Office of the Assistant Secretary—Policy, Management and Budget (MS 5438—MIB), 1849 C Street, NW., Washington, DC 20240, telephone: (202) 208–3981, fax: (202) 208–6684.

E. Eligible National Park Service Programs

The National Park Service administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for contracting through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Joshua Tree National Park—California
26. Lassen Volcanic National Park—California
27. Redwood National Park—California
28. Whiskeytown National Recreation Area—California
29. Hagerman Fossil Beds National Monument—Idaho

30. Effigy Mounds National Monument—Iowa
31. Fort Scott National Historic Site—Kansas
32. Tallgrass Prairie National Preserve—Kansas
33. Boston Harbor Islands National Recreation Area—Massachusetts
34. Cape Cod National Seashore—Massachusetts
35. New Bedford Whaling National Historical Park—Massachusetts
36. Sleeping Bear Dunes National Lakeshore—Michigan
37. Grand Portage National Monument—Minnesota
38. Voyageurs National Park—Minnesota
39. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
40. Glacier National Park—Montana
41. Great Basin National Park—Nevada
42. Aztec Ruins National Monument—New Mexico
43. Bandelier National Monument—New Mexico
44. Carlsbad Caverns National Park—New Mexico
45. Chaco Culture National Historic Park—New Mexico
46. White Sands National Monument—New Mexico
47. Fort Stanwix National Monument—New York
48. Cuyahoga Valley National Park—Ohio
49. Hopewell Culture National Historical Park—Ohio
50. Chickasaw National Recreation Area—Oklahoma
51. John Day Fossil Beds National Monument—Oregon
52. Alibates Flint Quarries National Monument—Texas
53. Guadalupe Mountains National Park—Texas
54. Lake Meredith National Recreation Area—Texas
55. Ebey's Landing National Recreation Area—Washington
56. Mt. Rainier National Park—Washington
57. Olympic National Park—Washington
58. San Juan Islands National Historic Park—Washington
59. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560, 9th Floor), 1201 Eye Street, NW., Washington, DC 20005–5905, telephone: (202) 354–6962, fax: (202) 371–6609.

F. Eligible Fish and Wildlife Service (Service) Programs

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be eligible for self-governance funding agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement. Such activities may include, but are not limited to: Taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. Sequoyah National Wildlife Refuge—Oklahoma
9. Tishomingo National Wildlife Refuge—Oklahoma
10. Bandon Marsh National Wildlife Refuge—Washington
11. Dungeness National Wildlife Refuge—Washington
12. Makah National Fish Hatchery—Washington
13. Nisqually National Wildlife Refuge—Washington

14. Quinault National Fish Hatchery—Washington
15. San Juan Islands National Wildlife Refuge—Washington
16. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington, VA 22203, telephone: (703) 358–1728, fax: (703) 358–1930.

G. Eligible U.S. Geological Survey (USGS) Programs

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact the Associate Director for Human Capital, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone 703–648–7442, fax 703–648–7451.

H. Eligible Office of the Special Trustee for American Indians (OST) Programs

The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

2. Appraisal Services Program. Tribes/consortia may negotiate a separate memorandum of understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs.

If those roles and responsibilities are already fully articulated in an existing funding agreement with the BIA, an MOU is not necessary. To the extent that an existing funding agreement with BIA lacks specific program standards, an MOU will be negotiated between the tribe/consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140—MIB), 1849 C Street, NW., Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

IV. Programmatic Targets

During Fiscal Year 2011, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: October 13, 2010.

Ken Salazar,

Secretary.

[FR Doc. 2010–27696 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2010–N245; 92220–1113–0000–C3]

Proposed Information Collection; OMB Control Number 1018–0095; Endangered and Threatened Wildlife, Experimental Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on March 31, 2011. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by January 3, 2011.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *infocol@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Mary Klee, U.S. Fish and Wildlife Service, MS 420–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), *mary_klee@fws.gov* (e-mail) or 703–358–2421 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 10(j) of the Endangered Species Act of 1973 (ESA), as amended, (16 U.S.C. 1531 *et seq.*) authorizes the Secretary of the Interior to establish experimental populations of endangered or threatened species. Because individuals of experimental populations are categorically protected under the ESA, the information we collect is important for monitoring the success of reintroduction efforts and recovery efforts in general. This is a nonform collection. Information collection requirements for experimental populations of endangered and threatened species are in 50 CFR 17.84. We collect three categories of information:

(1) General take or removal. Relates to human-related mortality including unintentional taking incidental to otherwise lawful activities (*e.g.,* highway mortalities); animal husbandry actions authorized to manage the population (*e.g.,* translocation or providing aid to sick, injured, or orphaned individuals); take in defense of human life; take related to defense of property (if authorized); or take in the form of authorized harassment.

(2) Depredation-related take. Involves take for management purposes where livestock depredation is documented, and may include authorized harassment or authorized lethal take of experimental animals in the act of attacking livestock.

(3) Specimen collection, recovery, or reporting of dead individuals. This information documents incidental or authorized scientific collection. Most of the contacts with the public deal primarily with the reporting of sightings

of experimental population animals or the inadvertent discovery of an injured or dead individual.

The information that we collect includes:

- Name, address, and phone number of reporting party.
- Species involved.
- Type of incident.
- Location and time of the reported incident.
- Description of the circumstances related to the incident.

This information helps us to assess the effectiveness of control activities and to develop better means to reduce problems with livestock for those species where depredation is a problem. Service recovery specialists use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

II. Data

OMB Control Number: 1018–0095.

Title: Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84 and 17.85.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Description of Respondents: Individuals and households, private sector, and State/local/tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (minutes)	Total annual burden hours
Notification—general take or removal	44	44	15	11
Notification—depredation-related take	36	36	15	9
Notification—specimen collection	21	21	15	5
Totals	101	101	.....	25

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 28, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–27693 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–FHC–2010–N246; 71490–1351–0000–L5]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control No. 1018–0070; Incidental Take of Marine Mammals During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on November 30, 2010. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before December 3, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (*e-mail*).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (*see* **ADDRESSES**) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 1018–0070.

Title: Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR 18, Subparts I and J.

Service Form Number: None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: 20 oil and gas companies.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Application for procedural regulations [1]	2	100	200
LOA Requests	25	24	600

Activity	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Onsite Monitoring and Observation Reports	300	1.5	450
Final Monitoring Report	25	10	250
TOTALS	352		1,500

[1] Occurs once every 5 years.

Abstract: This revised information collection combines requirements associated with specified marine mammal activities in the Beaufort and Chukchi Seas. The Office of Management and Budget approved the information collection requirements associated with oil and gas exploration activities in the Chukchi Sea and assigned OMB Control No. 1018–0139, which expires June 30, 2011. If OMB approves this combined request, we will discontinue OMB Control No. 1018–0139.

The Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 *et seq.*) imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking.

Applicants seeking to conduct activities must request a Letter of Authorization (LOA) for the specific activity and submit onsite monitoring reports and a final report of the activity to the Secretary. This is a nonform collection. Regulations at 50 CFR 18.27 outline the procedures and requirements for submitting a request. Specific regulations governing authorized activities in the Beaufort Sea are in 50 CFR 18, subpart J. Regulations governing authorized activities in the Chukchi Sea are in 50 CFR 18, subpart I. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether or not to issue specific regulations and, subsequently, LOAs.

We use the information to verify the finding required to issue incidental take regulations, to decide if we should issue an LOA, and, if issued, what conditions should be in the LOA. In addition, we will analyze the information to determine impacts to the marine mammals and the availability of those marine mammals for subsistence purposes of Alaska Natives.

Comments: On July 20, 2010, we published in the **Federal Register** (75 FR 42118) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 20, 2010. We received one comment. The commenter expressed opposition to authorization of activities for the oil and gas industry. We note the concerns raised by this individual; however, we do not grant authorization for industry activities. Instead, we are required under Section 101(a)(5)(A) of the MMPA to take certain actions with regard to the "incidental taking" of marine mammals that may result from specified activities. The regulations at 50 CFR 18.27(c) define incidental, but not intentional, taking as "takings which are infrequent, unavoidable, or accidental. It does not mean that the taking must be unexpected." The commenter did not address the information collection requirements, and we did not make any changes to our information collection.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 28, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–27694 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N187; 1265–0000–10137 S3]

Tualatin River National Wildlife Refuge, Washington and Yamhill Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for Tualatin River National Wildlife Refuge (refuge) in Sherwood, Oregon. We will also prepare an environmental assessment (EA) to evaluate the potential effects of various CCP alternatives. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions and to obtain suggestions and information on the scope of issues to consider during the CCP planning process.

DATES: To ensure consideration, please send your written comments by January 10, 2011. We will announce opportunities for public input in local news media, through mailings of planning updates, and by postings on the refuge's Web site throughout the CCP planning process.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

E-mail: TualatinCCP@fws.gov. Include "Tualatin River CCP/EA" in the subject line of the message.

Fax: Attn: Project Leader, (503) 625–5947.

U.S. Mail: Attn: Project Leader, Tualatin River National Wildlife Refuge,

19255 SW Pacific Highway, Sherwood, OR 97140.

In-Person Drop-off: You may drop off comments during regular business hours (8 a.m. to 4 p.m.) at 19255 SW Pacific Highway, Sherwood, OR 97140.

FOR FURTHER INFORMATION CONTACT: Ralph Webber, Project Leader, (503) 625–5944.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for the Tualatin River Refuge. This notice complies with our CCP policy to (1) advise the public, other Federal and State agencies, Tribes, and other organizations of our intention to conduct comprehensive conservation planning for this refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. These purposes are the foundation for developing and prioritizing the conservation and management goals and objectives for each refuge within the National Wildlife Refuge System mission, and determining compatible public uses of a refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will insure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreational opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Tualatin River Refuge.

We will conduct an environmental review of this project and prepare an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Tualatin River National Wildlife Refuge

Established in 1992 under guidelines of the Service's Urban Refuge Policy, Tualatin River Refuge is one of a handful of urban refuges in the country. Tualatin River National Wildlife Refuge and the satellite Wapato Lake Unit are both located within the midsection of the Tualatin River basin at the northern portion of the Willamette Valley in Washington and Yamhill Counties, Oregon. The refuge preserves a wetland ecosystem and provides a wildlife center in the shadow of Oregon's largest metropolitan area, Portland. The overarching refuge purpose of establishment cited in the Land Protection Plan (1992) is to "protect, enhance, and manage upland, wetland, and riparian habitats for a variety of migratory birds and resident fish and wildlife, as well as for the enjoyment of people."

The satellite Wapato Lake Unit was established in 2007. The Wapato Lake Unit serves a similar refuge purpose for establishment and supports many of the same types of habitats found within core management units at Tualatin River Refuge. However, there is a greater emphasis on maintaining and enhancing biological diversity as well as providing habitats for migratory waterfowl, with a special emphasis placed on wintering tundra swan populations. The approved refuge acquisition boundary consists of 7,370 acres of primarily floodplain habitats, of which 4,310 acres make up the Wapato Lake Unit.

The refuge manages landscapes made up of predominately flat bottomland bordered by uplands. Habitats consist of rivers and streams; seasonal, scrub-shrub, and forested wetlands; riparian forests; wet and dry meadows; oak and pine savanna; and mixed forested uplands. The refuge is home to nearly 200 species of birds; more than 50 species of mammals; 25 species of reptiles and amphibians; and a wide variety of insects, fish, and plants. The refuge opened to the public in 2006, and now nearly 100,000 annual visitors come to the refuge and participate in wildlife-dependent activities such as environmental education, resource interpretation, wildlife observation, and wildlife photography.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that may warrant consideration in the CCP. The following questions are presented to help express the types of matters under consideration. The public scoping process may identify additional issues.

Habitat Management and Restoration: What actions should the Service take to sustain and restore priority species and habitats over the next 15 years? What abiotic and biologic data is needed to accomplish these actions? How much should the refuge rely on existing periods of flooding to manage floodplain habitats where natural hydrology and landscape conditions have been altered by manmade influences? Should fire be used to maintain relic habitats as part of the management of imperiled landscapes and recovery of listed and/or rare species occupying these sites? What other management efforts should be considered to expand control of exotic species such as carp, bull frogs, nutria, and other feral animals? How should the Service manage external threats to the refuge, such as urban development, stormwater runoff, and wildlife disturbance? How are species, such as mosquitoes or browsing Canada geese, affecting property or people beyond the refuge boundaries? Should the refuge use cooperative farming as an interim-only form of management, or should it also be considered a long-term management strategy for managing waterfowl populations?

Public Use and Access: What type and level of recreation opportunities should be provided? When refuge access points and uses are developed, are they adequate and appropriate? Do current public-use programs have an unacceptable level of impact on refuge wildlife and habitat resources? Which areas of the refuge should be managed as undisturbed sanctuary areas and which areas should be open to public use?

Invasive Species Control: How do invasive species affect functioning native systems, and what actions should be taken to reduce the incidence and spread of invasive species, especially in a future of climate change?

Wapato Lake: What interim actions should the refuge take to minimize impacts to water quality of the Tualatin River? Can natural hydrology options be employed for restoring the lakebed without compromising water quality to riverine systems and down stream users? How should the refuge approach landscape-level restoration activities to enhance listed salmonid and other native fish habitat, particularly in regard to Wapato Lake? By what set of criteria and which means should the refuge consider active management strategies to control elk populations residing on the refuge?

Public Meetings

We will give the public opportunities to provide input at public open houses and informational meetings, and by submitting written comments. We will distribute mailings, news releases, and announcements when we have confirmed dates for the public open houses, meetings, and other public involvement opportunities.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 28, 2010.

Theresa E. Rabot,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–27720 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N221; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits, or the Fish and Wildlife Service is amending their existing permit, to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before December 3, 2010.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, NM 87102. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–24623A

Applicant: Miller Park Zoo, Bloomington, Illinois.

Applicant requests a new permit for research and recovery purposes to hold Mount Graham red squirrels (*Tamiasciurus hudsonicus grahamensis*) in captivity. The applicant's intended purpose is breeding, including (but not limited to) husbandry, maintenance, and transportation, at the Miller Park Zoo.

Permit TE–24625A

Applicant: Wendy Leonard, San Antonio, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–088197

Applicant: High Mesa Research, Valdez, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax trailii extimus*) within Arizona, California, Colorado, Utah, and Nevada.

Permit TE–821577

Permittee: Arizona Game and Fish Department, Phoenix, Arizona.

The Service is amending Arizona Game and Fish Department's current permit for research and recovery purposes for the range of activities they undertake, including, but not limited to presence/absence surveys, research, and reestablishment of the following species within Arizona and adjacent portions of California, Nevada, Utah, and New Mexico: Kanab ambersnail (*Oxyloma haydeni kanabensis*), Mexican long-nosed bat (*Leptonycteris nivalis*), masked bobwhite (*Colinus virginianus ridgwayi*), bonytail chub (*Gila elegans*), Gila chub (*Gila intermedia*), humpback chub (*Gila cypha*), Colorado pikeminnow (*Ptychocheilus lucius*), Quitobaquito pupfish (*Cyprinodon eremus*), Virgin River chub (*Gila seminuda*), woundfin (*Plagopterus argentissimus*),Yaqui chub (*Gila purpurea*), Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), California condor (*Gymnogyps californianus*), thick-billed parrot (*Rhynchopsitta pachyrhyncha*), black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), jaguar (*Pathera onca*), ocelot (*Leopardus pardalis*), desert pupfish (*Cyprinodon macularius*), Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*), Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), and Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*).

Permit TE–25446A

Applicant: Gerald Monks, Flagstaff, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher

(*Empidonax trailii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit TE–217655

Applicant: Rachel Barlow, Manchaca, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–25609A

Applicant: The Peregrine Fund, Boise, Idaho.

Applicant requests a new permit for research and recovery purposes for the California condor (*Gymnogyps californianus*). The applicant intends to captive breed, conduct genetic research, and reintroduce the species to the wild within California, Arizona, Utah, Nevada, New Mexico, and Idaho.

Permit TE–820085

Applicant: The Nature Conservancy, San Antonio, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to transport, handle, salvage, and collect seeds of the following rare plants: Star cactus (*Astrophytum asterius*), Johnston's frankenia (*Frankenia johnstonii*), south Texas ambrosia (*Ambrosia cheiranthifolia*), Texas ayenia (*Ayenia limitaris*), black-laced cactus (*Echinocereus reichenbachii* var. *albertii*), Zapata bladderpod (*Physaria thanmophilia*), Walker's manihot (*Manihot walkerae*), and ashy dogwood (*Thymophylla tephroleuca*), including propagation and repatriation activities on private and Federal lands in Texas, including The Nature Conservancy's Las Estrellas Preserve.

Permit TE–25736A

Applicant: Regina Overath, Corpus Christi, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and collect leaf tissue and seeds from the following endangered plants: South Texas ambrosia (*Ambrosia cheiranthifolia*), slender rush-pea (*Hoffmannseggia tenella*), and black lace cactus (*Echinocereus reichenbachii* var. *albertii*) within Texas.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 27, 2010.

Joy E. Nicholopoulos,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2010–27725 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

Notice of Filing of Plats

[LLCO956000.L14200000 BJ0000]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to file the land survey plats listed below, and to afford all affected parties a proper period of time to protest this action, prior to the plat filing.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on December 3, 2010.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurveys and surveys in Townships 50 North, Ranges 8 and 9 West, New Mexico Principal Meridian, Colorado, were accepted on June 2, 2010.

The plat and field notes of the dependent resurvey in Township 9 South, Range 104 West, Sixth Principal Meridian, Colorado, were accepted on June 4, 2010.

The plat and field notes of the dependent resurvey in Township 10 South, Range 104 West, Sixth Principal Meridian, Colorado, were accepted on June 4, 2010.

The supplemental plat of Section 14 in Township 1 North, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on June 10, 2010.

The plat and field notes of the dependent resurvey in Township 34 North, Range 10 West, New Mexico Principal Meridian, Colorado, were accepted on June 17, 2010.

The supplemental plat of Section 28 in Township 11 North, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on June 21, 2010.

The plat and field notes of the dependent resurvey in Township 33 North, Range 12 West, New Mexico Principal Meridian, Colorado, were accepted on July 9, 2010.

The plat and field notes of the dependent resurvey in Township 32 North, Range 13 West, New Mexico Principal Meridian, Colorado, were accepted on July 9, 2010.

The plat and field notes of the dependent resurvey in Township 33 North, Range 13 West, New Mexico Principal Meridian, Colorado, were accepted on July 9, 2010.

The plat and field notes of the dependent resurvey in Township 34½ North, Range 9 West, New Mexico Principal Meridian, Colorado, were accepted on July 15, 2010.

The plat and field notes of the dependent resurvey in Township 47 North, Range 7 East, New Mexico Principal Meridian, Colorado, were accepted on July 22, 2010.

The plat and field notes of the dependent resurvey and survey of tracts in Township 43 North, Range 5 East, New Mexico Principal Meridian, Colorado, were accepted on July 23, 2010.

The plat and field notes of the dependent resurvey and surveys in Township 9 South, Range 93 West, Sixth Principal Meridian, Colorado, were accepted on August 5, 2010.

The plat and field notes of the dependent resurvey and surveys in Township 21 South, Range 69 West, Sixth Principal Meridian, Colorado, were accepted on August 11, 2010.

The plat and field notes of the dependent resurvey in Township 47 North, Range 3 West, New Mexico Principal Meridian, Colorado, were accepted on August 11, 2010.

The plat incorporating the field notes of the dependent resurvey in Township 43 North, Range 12 East, New Mexico Principal Meridian, Colorado, was accepted on August 16, 2010.

The plat incorporating the field notes of the dependent resurvey in Township 44 North, Range 12 East, New Mexico Principal Meridian, Colorado, was accepted on August 16, 2010.

The plat and field notes of the dependent resurvey and subdivision of Section 25 in Township 9 South, Range 77 West, Sixth Principal Meridian, Colorado, were accepted on September 30, 2010.

The plat and field notes, of the dependent resurvey and surveys, in Townships 6 North, Ranges 75 and 76 West, Sixth Principal Meridian, Colorado, were accepted on October 6, 2010.

The plat and field notes of the dependent resurvey and surveys in Township 5 North, Range 76 West,

Sixth Principal Meridian, Colorado, were accepted on October 6, 2010.

If a protest of any of these projects is received prior to the date of the official filing, the official filing of that project will be stayed pending consideration of the merits of the protest.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2010–27724 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOROR957000–L63100000–BJ000: HAG11–0047]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 30 S., R. 9 W., accepted September 27 2010

T. 3 S., R. 8 W., accepted September 27 2010

T. 29 S., R. 9 W., accepted September 27 2010

T. 7 S., R. 2 E., accepted September 29 2010

T. 6 S., R. 2 E., accepted October 1, 2010

T. 14 S., R. 2 W., accepted October 12, 2010

T. 6 & 7 S., R. 7 W., accepted October 21, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/ Washington State Office, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204.

Cathie Jensen,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–27721 Filed 11–2–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on October 26, 2010, a proposed Consent Decree in *The United States of America and the Coeur d'Alene Tribe* v. *Douglas Mining Company,* Civ. No. 10–525–EJL, was lodged with the United States District Court for the District of Idaho.

Plaintiffs the United States and the Tribe filed a complaint concurrently with the Consent Decree alleging that Defendant Douglas Mining Company is liable pursuant to Section 107(a) of CERCLA for response costs incurred and to be incurred by the United States and for natural resources damages in connection with releases of hazardous substances at or from Operable Unit 3 of the Bunker Hill Mining and Metallurgical Complex Superfund Site (Bunker Hill Site) in northern Idaho. The proposed Consent Decree grants the Defendant a covenant not to sue for response costs, as well as natural resource damages, in connection with the Bunker Hill Site. The Coeur d'Alene Tribe is a co-trustee of injured natural resources at the Bunker Hill Site and a party to the proposed Consent Decree. The settlement is based on an analysis of Defendant's limited ability to pay and requires payments totaling $16,000. The settlement also requires assignment of interest in insurance policies to a trust, for the benefit of EPA and the natural resource trustees, and payment of two percent of net smelter returns generated from any future mining activities.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *U.S., et al.* v. *Douglas Mining Company.,* Civ. No. 10–525–EJL and D.J. Ref. No. 90–11–3–128/12.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $19.25 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–27705 Filed 11–2–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on October 28, 2010, a proposed Settlement Agreement was filed with the United States Bankruptcy Court for the District of Delaware in *In re: Smurfit Stone Container Corporation, et al.,* Case No. 09–10235 (Jointly Administered). The proposed settlement agreement resolves cost recovery claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, for:

(1) Response costs incurred and to be incurred by the Environmental Protection Agency ("EPA") in connection with response actions performed by EPA at the following sites: Sauer Dump Site in Dundalk, Maryland; 68th Street Dump Site in Baltimore, Maryland; Casmalia Disposal Site near Santa Maria, California; BCX Tank Superfund Site in Jacksonville, Florida; Ward Transformer Site, Raleigh, North Carolina; and the Portland Harbor Superfund Site in Portland, Oregon;

(2) removal costs pursuant to the Oil Pollution Act ("OPA"), 33 U.S.C. 2701–2762, in connection with the discharge

of oil from Debtor's Portland Harbor Superfund Site; and

(3) natural resource damages and assessment costs, incurred and to be incurred by the Department of the Interior and National Oceanic and Atmospheric Administration (collectively, "natural resource trustees"), at and near Debtor's Portland Harbor facility.

Pursuant to the Settlement Agreement, Smurfit will distribute stock on account of allowed bankruptcy claims in the total amount of $15,358,174.00 for federal environmental claims—$12,358,174.00 for EPA claims and $3,000,000.00 for natural resource trustee claims.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, comments should refer to In re: Smurfit Stone Container Corporation, *et al.,* Case No. 09–10235 (Bankr. Del.), D.J. Ref. No. 90–11–3–09733. Commenters may request an opportunity for a public meeting in the affected areas, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the District of Delaware, Chemical Bank Plaza, 1201 N Market St., # 2300, Wilmington, DE 19899 and at the Headquarters office of the Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20004. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Settlement agreement Library, please enclose a check in the amount of $11.00 for the Settlement Agreement (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–27706 Filed 11–2–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Baseline Safety and Health Practices Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR), "Baseline Safety and Health Practices Survey," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 44 U.S.C. chapter 35.

DATES: Submit comments on or before December 3, 2010.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *dol_pra_public@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6881/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *dol_pra_public@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL is seeking OMB authorization of information collections related to Baseline Safety and Health Practices Survey. The OSHA is undertaking a rulemaking effort directed toward requiring employers to establish injury and illness prevention programs (I2P2) to monitor and more effectively implement practices to mitigate workplace hazards, thereby reducing the incidence of employee injuries and illnesses. The OSHA believes widespread implementation of such programs will substantially improve overall workplace safety and health conditions.

The OSHA is proposing to conduct a statistical survey of private sector establishments in non-agricultural industries. The goal of the survey is to develop industry-specific, statistically accurate estimates of current prevalence of a variety of baseline safety and health practices that may be elements of I2P2 among establishments. The OSHA also proposes to conduct case study interviews with establishments in the agriculture sector to assess the prevalence of safety and health practices among farms with more than 10 employees. Finally, the OSHA proposes to conduct case study interviews with government officials in state-plan states to assess safety and heath practices among agencies and departments operated by state and local governments.

The Baseline Safety and Health Practices Survey is an information collection subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provision of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The DOL is seeking approval for this new information collection. For additional information, see the related notice published in the **Federal Register** on May 13, 2010 (75 FR 27001).

The DOL, as part of its continuing effort to reduce paperwork and respondent burden, submits information collections for OMB consideration after conducting a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This program ensures that information is in the desired format, reporting burden

(time and cost) is minimal, collection instruments are clearly understood, and the estimate of the information collection burden is accurate.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB ICR Tracking Number 201010–1218–001. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: New collection of information.

Title of Collection: Baseline Safety and Health Practices.

Form Numbers: Not applicable.

OMB Control Number: Pending.

Affected Public: Private sector, Businesses, or other for-profits, Farms; State, Local, and Tribal Governments.

Total Estimated Number of Responses: 10,787.

Total Estimated Annual Burden Hours: 4177.

Total Estimated Annual Costs Burden: $0.

Dated: October 27, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–27753 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,682; TA–W–73,682A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Hartford Financial Services Group, Incorporated, et al.; Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support Including On-Site Leased Workers From Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Service Corp., and PDS Technical Services, Inc., Aurora, Illinois; Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support Including On-Site Leased Workers From Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Service Corp., and PDS Technical Services, Inc., Syracuse, New York

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 10, 2010, applicable to workers of Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support, Aurora, Illinois and Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support, Syracuse, New York. The notice was published in the **Federal Register** on July 1, 2010 (75 FR 38137). The notice was amended on July 14, 2010 to include on-site leased workers from Beeline. The notice was published in the **Federal Register** on July 26, 2010 (75 FR 43557).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to medical bill processing services.

New information shows that workers leased from Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Services Corp., and PDS Technical Services, Inc. were employed on-site at the Aurora, Illinois and Syracuse, New York locations of Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Services Corp., and PDS Technical Services, Inc. working on-site at the Aurora, Illinois and Syracuse, New York locations of Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support.

The amended notice applicable to TA–W–73,682 and TA–W–73,682A are hereby issued as follows:

All workers of Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support, including on-site leased workers from Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Services Corp., and PDS Technical Services, Inc., Aurora, Illinois (TA–W–73,682) and Hartford Financial Services Group, Incorporated, Medical Bill Processing and Production Center Support, including on-site leased workers from Rose International, Aerotek, Professional Staffing Services, Vantage Staffing, Volt Services Group, Adecco, Synergy Services Corp., and PDS Technical Services, Inc., Syracuse, New York (TA–W–73,682A), who became totally or partially separated from employment on or after March 10, 2009, through June 10, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27761 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,499; TA–W–71,499A; TA–W–71,499B]

Sara Lee Corporation Including On-Site Leased Workers From EDS, Hewitt Packard, Sapphire Technology, and TekSystems Downers Grove, Illinois; Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounts, Payroll, and Employee Master Data Departments Including On-Site Leased Workers From ADECCO, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, TekSystems, the Brighton Group, Trasys, VIP Staffing, and Workforce Temps, Earth City, MO; Sara Lee Corporation; Information Technology Department, Including On-Site Leased Workers From Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, Snelling Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps Mason, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 7, 2009, applicable to workers of Sara Lee Corporation, including on-site leased workers from EDS, Hewitt Packard, Sapphire Technology, and TekSystems, Downers Grove, Illinois (TA–W–71,499). The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65799).

At the request of a former worker, the Department reviewed the certification for workers of the subject firm. The workers provide shared financial services and information technology.

The review revealed that workers at the Mason, Ohio and Earth City, Missouri locations of the subject firm are eligible to be included in this certification.

Accordingly, the Department is amending this certification to include workers providing shared financial and information technology services at Sara Lee Corporation, Mason, Ohio and Sara Lee Corporation, Earth City, Missouri.

The amended notice applicable to TA–W–71,499, TA–W–71,499A, and TA–W–71,499B are hereby issued as follows:

All workers of Sara Lee Corporation, including on-site leased workers from EDS, Hewitt Packard, Sapphire Technology, and TekSystems, Downers Grove, Illinois (TA–W–71,499), who became totally or partially separated from employment on or after June 30, 2008, through October 7, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

All workers of Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounts, Payroll, and Employee Master Data Departments, including on-site leased workers from Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstand, RGP, RHI, Sapphire Technology, Select Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Earth City, Missouri (TA–W–71,499A), who became totally or partially separated from employment on June 30, 2008, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

All workers of Sara Lee Corporation, Information Technology Department, including on-site leased workers from Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstand, RGP, RHI, Sapphire Technology, Select Staffing, Snelling Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Mason, Ohio (TA–W–71,499B), who became totally or partially separated from employment on or after June 30, 2008, through February 2, 2009, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 19th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27757 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,952]

General Motors Company, Formerly Known as General Motors Corporation, Orion Assembly Plant, Including On-Site Leased Workers From Aerotek Automotive, Ryder and Premier Manufacturing Support Services, Lake Orion, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 17, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Orion Assembly Plant, Lake Orion, Michigan. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21355). The notice was amended on August 25, 2010 to include on-site leased workers from Aerotek Automotive. The notice was published in the **Federal Register** on September 7, 2010 (75 FR 54388).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assembled the Chevrolet Malibu and Pontiac G6.

New information shows that workers leased from Ryder and Premier Manufacturing Support Services were employed on-site at the Lake Orion, Michigan location of General Motors Company, formerly known as General Motors Corporation, Orion Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Ryder and Premier Manufacturing Support Services working on-site at the Lake Orion, Michigan location of General Motors Company, formerly known as General Motors Corporation, Orion Assembly Plant.

The amended notice applicable to TA–W–71,952 is hereby issued as follows:

All workers of General Motors Company, formerly known as General Motors Corporation, Orion Assembly Plant, including on-site leased workers from Aerotek Automotive, Ryder and Premier Manufacturing Support Services, Lake Oregon, Michigan, who became totally or partially separated from employment on or

after August 6, 2008, through March 17, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 25th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27759 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,523]

SA Industries 2, Inc., Formerly Known as Gates Corporation, Fluid Power Division, Including On-Site Leased Workers From Corporate Services, Inc., and the Workplace, Inc., Rockford, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 31, 2009, applicable to workers of Gates Corporation, Fluid Power Division, a subdivision of Tomkins PLC, including on-site leased workers from Corporate Services, Inc. and The Workplace, Inc., Rockford, Illinois. The notice was published in the **Federal Register** on September 22, 2009 (74 FR 48304).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hydraulic hose coupling components.

New information shows that in early October 2010, SA Industries 2, Inc. purchased the business of the Rockford, Illinois location of the Gates Corporation, Fluid Power Division, a subsidiary of Tomkins PLC and is now known only as SA Industries 2, Inc. Since the October purchase, the Rockford, Illinois location is no longer referred to as the Fluid Power Division or is a subsidiary of Tomkins PLC. The on-site leased workers from Corporate Services, Inc., and The Workplace, Inc. are no longer employed at the Rockford, Illinois location of SA Industries 2, Inc., formerly known as Gates Corporation, Fluid Power Division, a subsidiary of Tomkins PLC.

Accordingly, the Department is amending this certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of hydraulic hose coupling components to Mexico.

The amended notice applicable to TA–W–71,523 is hereby issued as follows:

All workers of SA Industries 2, Inc., formerly known as Gates Corporation, Fluid Power Division, a subsidiary of Tomkins PLC, Rockford Illinois, who became totally or partially separated from employment on or after July 1, 2008, through July 31, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27758 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of October 12, 2010 through October 15, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,760	Propex Operating Company, LLC, Propex, Inc., Carpet Backing, Leased Workers from Advantage Staffing.	Bainbridge, GA	March 19, 2009.
73,811	Schrupp Industries, Inc	Parker, PA	March 26, 2009.
73,935	Pratt-Read Corporation	Shelton, CT	April 15, 2009.
74,482	Airolite, LLC, Greenheck Fan Corporation	Marietta, OH	July 9, 2009.
74,568	Cardone Industries, Plant #20	Philadelphia, PA	August 17, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,347	Summit Polymers, Inc., Technical Center	Portage, MI	January 22, 2009.
74,068	Redbox Automated Retail, LLC, Coinstar, Inc., Leased Workers from LaSalle Network.	Downers Grove, IL	May 10, 2009.
74,225	Efficient Technology, Inc.	Redondo Beach, CA	June 9, 2009.
74,247	Trinity Containers, LLC	Quincy, IL	June 2, 2009.
74,253	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Phoenix, AZ	June 3, 2009.
74,253A	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Costa Mesa and El Segundo, CA.	June 3, 2009.
74,253B	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Atlanta, GA	June 3, 2009.
74,253C	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Lenexa, KS	June 3, 2009.
74,253D	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Louisville, KY	June 3, 2009.
74,253E	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Minneapolis, MN	June 3, 2009.
74,253F	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Omaha, NE	June 3, 2009.
74,253G	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Bedford, NH	June 3, 2009.

TA–W No.	Subject firm	Location	Impact date
74,253H	International Business Machines (IBM), Global Tech., Unix System, Support Disney, Teleworker.	Englewood Cliffs, NJ	June 3, 2009.
74,452	Leisure Arts, Inc., Liberty Media, Publishing Division, Leased Workers from Express Employment.	Little Rock, AR	July 30, 2009.
74,578	Solon Manufacturing Company	Rhinelander, WI	July 4, 2010.
74,578A	A/P Staffing and Employment Options, Working at Solon Manufacturing Company.	Rhinelander, WI	August 30, 2009.
74,589	Rexam Closure, Closure Division, Leased Workers from Perry Personnel Plus, Inc. & Adecco.	Constantine, MI	August 27, 2009.
74,636	Deluxe Laboratories, Inc., Deluxe Entertainment Services Group, Inc., Adecco, etc.	Hollywood, CA	September 15, 2009.
74,643	Disetronic Sterile Products, Inc., Roche Diagnostics Operations, Inc., Seaside Assoc. & Adecco.	Portsmouth, NH	September 16, 2009.
74,645	Panasonic Semiconductor Development Center, Panasonic Corporation of North America.	Mount Laurel, NJ	September 17, 2009.
74,680	Stanley Black and Decker, Formerly Stanley Bostitich/CDIY Division.	East Greenwich, RI	September 8, 2009.
74,707	EBI Holdings, LLC, D/B/A Biomet Spine, Trauma, Osteobiologics and Bracing/Biomet, Inc.	Parsippany, NJ	October 7, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,515	Miniature Precision Components	Prairie Du Chien, WI	January 15, 2009.
74,618	Young's Furniture Manufacturing Company, Inc.	Whitesburg, TN	September 9, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
74,371	Hewitt Associates, LLC, Point Solutions Absence Management Division.	New Britain, CT.	
74,587	The Ripley Group, Inc.	Los Angeles, CA.	
74,687	Burns Industrial Group	Hinckley, OH.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,091	Basic Aluminum Castings Co. (The)	Cleveland, OH.	
73,433	Moog Components Group	Blacksburg, VA	
73,684	Graphic Packaging International, Inc., Consumer Products Division.	Lawrenceburg, TN	
73,693	Sony Ericsson Mobile Communications (USA), Inc., North America Region.	Research Triangle Park, NC	
73,697	Federal Coach, LLC, J.B. Poindexter & Co., On-Site Leased Workers from Snelling Personnel.	Fort Smith, AR	
73,783	Scot Industries, Inc	Lonestar, TX	
73,856	Accent Marketing Services, LLC, MDC Partners, Inc.	Monroe, LA	
74,032	Biolab, A Chemtura Company, Chemtura Corporation	Ashley, IN	
74,066	Ceva Logistics	Plainfield, IN	
74,244	John Hancock Life Insurance (U.S.A.), Investment Division, The Manulife Financial Corporation.	Boston, MA	
74,276	MedUS Services, LLC, HealthNow New York Inc	Endicott, NY	
74,566	Bob Evans Farms, Inc. an Ohio Corporation, Bob Evans Farms, Inc., a Delaware Corporation.	Galva, IL	
74,646	American Municipal Power	Marietta, OH	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
74,520	Automation Engineering	Fort Smith, AR	
74,521	Johnson Material Handling	Hackett, AR	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
74,268	The Peltier Glass Company, Crossville, Inc	Ottawa, IL	

I hereby certify that the aforementioned determinations were issued during the period of October 12, 2010 through October 15, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's website at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: October 22, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–27756 Filed 11–2–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 15, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 15, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 22nd day of October 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/12/10 and 10/15/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74708	Caire, Inc. (Workers)	Plainfield, IN	10/13/10	09/24/10
74709	TeleTech (Company)	Greenville, SC	10/13/10	10/08/10
74710	Kasco/Sharp Tech (Company)	Atlanta, GA	10/14/10	10/04/10
74711	Silicon Valley Community Newspapers (Workers)	San Jose, CA	10/14/10	09/13/10
74712	Xerox Corporation (Workers)	Lewisville, TX	10/14/10	10/13/10
74713	Lifetime Coatings (Workers)	Quincy, IL	10/14/10	09/20/10
74714	Quest Diagnostics (Workers)	West Norristown, PA	10/14/10	10/03/10
74715	Kaiser Permanente (State/One-Stop)	Oakland, CA	10/14/10	09/29/10
74716	Dell Financial Services (Workers)	Austin, TX	10/14/10	10/08/10
74717	Borders Customer Contact Center (Company)	LaVergne, TN	10/14/10	10/06/10
74718	SecurAmerica (Workers)	Atlanta, GA	10/14/10	10/07/10
74719	Forrest City Machine Works (State/One-Stop)	Forrest City, AR	10/14/10	10/12/10

APPENDIX—Continued

[TAA petitions instituted between 10/12/10 and 10/15/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74720	Environ Biocomposites Manufacturing, LLC (State/One-Stop).	Mankato, MN	10/14/10	10/11/10
74721	Dillard's, Inc. (State/One-Stop)	Little Rock, AR	10/14/10	10/12/10
74722	Allied Marketing Group (Company)	Dallas, TX	10/14/10	10/08/10

[FR Doc. 2010–27755 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,503]

Compass Group USA, Inc., Canteen, Webster City, Iowa; Notice of Negative Determination on Reconsideration

On September 21, 2010, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 29, 2010 (75 FR 60139).

The initial investigation resulted in a negative determination based on the finding that the subject firm did not, during the investigation period, shift to a foreign country services like or directly competitive with the cafeteria services or vending machine services supplied by the workers or acquire from a foreign country services like or directly competitive with the cafeteria services or vending machine services supplied by the workers; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive food services or a shift in service/acquisition of such food services abroad; and that the workers did not supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the afore-mentioned article or service.

In the request for reconsideration, the petitioner stated that the workers of the subject firm were service workers who provided food services to employees of Electrolux Home Products, Inc., Electrolux Major Appliances Division, Webster City, Iowa, who have been certified eligible for Trade Adjustment Assistance (TA–W–70,123, signed June 25, 2009). The petitioner went on to assert that the situation of the Compass Group workers was the same as that of employees of Premier Manufacturing Support Services, a services provider to General Motors, Spring Hill, Tennessee, who were certified eligible to apply for TAA on March 12, 2010 (TA–W–72,379).

The difference in the outcome of the two cases results from the difference in the companies' relationships to the production processes at the respective Electrolux and General Motors plants. The workers of Premier Manufacturing Support Services provided services (janitorial, maintenance, and hazardous waste disposal) that were directly involved in the production process at General Motors, Spring Hill, Tennessee. In contrast, the workers of the subject firm provided services (cafeteria services and vending machine services) that are not directly involved in the production process at Electrolux Home Products, Inc., Electrolux Major Appliances Division, Webster City, Iowa.

During the course of the reconsideration investigation this office inquired into the relationship between Electrolux and the subject firm. It was determined that Electrolux exercised no day-to-day operational control over the employees of the subject firm. Consequently, the workers cannot be considered employees of Electrolux, but only of the subject firm, Compass Group USA.

Furthermore, it should be noted that employees of American Food and Vending, Spring Hill, Tennessee, who provided food services to employees at that same General Motors plant in Spring Hill, Tennessee, were denied TAA certification (TA–W–72,606, signed March 19, 2010).

In the request for reconsideration, the petitioner also asserted that the decision in the subject case is "contrary to the intent of the U.S. Congress in light of the changes [regarding service providers] it made to trade adjustment assistance by passage of the Trade Globalization Adjustment Assistance Act of 2009" and that in making those changes "one can only conclude that the U.S. Congress intended a broad interpretation" of the phrase "service used in the production of articles or in the supply of service, * * *."

This office does not find that argument compelling and is not prepared to certify the workers in this case on the basis of the broad reading of the law given by the petitioner.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Compass Group USA, Inc., Canteen, Webster City, Iowa.

Signed at Washington, DC, this 22nd day of October 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27760 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,116]

Washington Department of Transportation, Olympic Division, Aberdeen Maintenance Office, Chehalis Drawbridge Tenders, Aberdeen, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 9, 2010, the Washington State Labor Council, AFL–CIO, requested administrative reconsideration of the negative determination regarding workers'

eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject public agency. The determination was issued on June 17, 2010, and the Notice of Determination was published in the **Federal Register** on July 1, 2010 (75 FR 38142).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Washington Department of Transportation, Olympic Division, Aberdeen Maintenance Office, Chehalis Drawbridge Tenders, Aberdeen, Washington, was based on the finding that the public agency (the Chehalis Drawbridge) that is the subject of this case did not acquire services like or directly competitive to drawbridge operation and maintenance services from a foreign country.

In the request for reconsideration the petitioning union official stated that the workers of the subject firm should be eligible for TAA because the initial decision was based on a misinterpretation of the new language for certification of public entities. The petitioner alleged that the bridge tenders lost their jobs due to the closure of several upstream facilities (notably the Weyerhaeuser complex, for which there are several current certifications), and those plant closures lessened river traffic to the point that the bridge operated by the workers laid off by the subject agency could go unattended. The petitioner refers to the bridge and its tenders as a secondary supplier which he believes should qualify for benefits because of their relationship to the certified Weyerhaeuser facilities upriver from the bridge.

The group eligibility requirements for workers of a Public Agency can only be satisfied if the criteria as depicted in the initial decision are met.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 8th day of October, 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–27762 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Comment Request; Review of Productivity Statistics

ACTION: Notice of solicitation of comments.

SUMMARY: The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for publishing measures of labor productivity and multifactor productivity for major sectors and industries of the United States economy. BLS periodically conducts formal reviews of its programs in order to assess their content, methodology, efficiency, and effectiveness. To enhance the quality and relevance of productivity data, BLS is soliciting comments on the scope and coverage of these data, on the methods used in constructing them, and on areas of interest for future program development.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before December 3, 2010.

ADDRESSES: Send comments to Michael J. Harper, Office of Productivity and Technology, Bureau of Labor Statistics, Room 2150, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by e-mail to: *optfeedback@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Michael J. Harper, Office of Productivity and Technology, Bureau of Labor Statistics, telephone number 202–691–5600, or by e-mail at *optfeedback@bls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for publishing measures of labor productivity and multifactor productivity for major sectors and industries of the United States economy. The Office of Productivity and Technology (OPT) differs from other BLS programs in that it does not conduct surveys to collect data. Instead, it produces productivity estimates from published and unpublished data collected and compiled by other BLS programs, the Bureau of Economic Analysis, the Census Bureau, other Federal statistical agencies, and the Board of Governors of the Federal Reserve System.

Labor productivity is defined as output per hour worked. BLS reports quarterly on productivity growth and its components (output and hours) and on other measures, such as unit labor costs and hourly compensation. These measures are produced for the business, nonfarm business, and manufacturing sectors, and for nonfinancial corporations. The quarterly measures are designated by the Office of Management and Budget as a Principal Federal Economic Indicator. BLS also produces annual measures of labor productivity for about 400 detailed industries. BLS labor productivity data are available at the following Internet address: *http://www.bls.gov/lpc/.*

BLS also produces estimates of multifactor productivity (MFP), which is defined as output per unit of combined inputs. The combined inputs include hours and capital services; in some cases, additional inputs include labor composition and intermediate goods and services. BLS reports MFP growth, along with its components (output, capital, hours, *etc.*) and other measures such as capital-labor ratios, capital user costs, and labor composition indexes. These measures are designed to analyze the effects of technological change on economic growth, the substitutability of inputs, and changes in the composition of inputs and outputs. BLS produces annual measures of multifactor productivity for private business, private nonfarm business, and manufacturing sectors and for many detailed industries. BLS MFP data are available at the following Internet address: *http://www.bls.gov/mfp/.*

II. Productivity Coverage and Methods

The quarterly nonfarm business labor productivity measures are constructed within the conceptual framework of the

U.S. National Income and Product Accounts (NIPAs) published by the Bureau of Economic Analysis (BEA). The output data are based on a value-added concept and come from product-side estimates of Gross Domestic Product.

The primary source of hours data is the BLS Current Employment Statistics (CES) program, which collects hours paid for nonsupervisory workers. These data are adjusted using data from the Current Population Survey, the National Compensation Survey, and other sources to account for differences between the desired concept of hours (hours worked for all employed persons) and the CES concept (hours paid for production and nonsupervisory employees).

For detailed industries, annual output measures represent the total value of goods and services produced, and are based primarily on data from the U.S. Census Bureau. These measures use a sectoral output concept, which differs from real gross output in that it excludes output that is shipped to other establishments in the same industry. As with the nonfarm business sector productivity, industry hours are constructed primarily from payroll data from the BLS CES survey, supplemented with data from the CPS and other Federal data sources.

Multifactor productivity is estimated in a conceptual framework based on the economic theory of the firm. This framework guides the construction and interpretation of the measures. For the private business and nonfarm business sectors, value added output is compared to inputs of labor and capital. For detailed industries, sectoral output is compared to capital and labor inputs as well as intermediate inputs of energy, non-energy materials and business services provided by establishments outside of each industry or sector.

III. Desired Focus of Comments

Comments and recommendations are requested from the public on the following aspects of the BLS productivity measurement program:

- The scope and amount of detail covered by and published in the productivity datasets.
- The concepts and frameworks used in measuring outputs, inputs, and productivity.
- The sources of data used in productivity measurement.
- Areas of research that the BLS productivity program should emphasize.

In your recommendations to the productivity program, it would be particularly helpful if you could explain how the changes would make the data more accurate or more useful.

Signed at Washington, DC, this 28th day of October 2010.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–27727 Filed 11–2–10; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

[Docket No. 2010–4]

Copyright Office; Federal Copyright Protection of Sound Recordings Fixed Before February 15, 1972

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: Congress has directed the Copyright Office to conduct a study on the desirability and means of bringing sound recordings fixed before February 15, 1972, under Federal jurisdiction. Currently, such sound recordings are protected under a patchwork of State statutory and common laws from their date of creation until 2067. This notice requests written comments from all interested parties regarding Federal coverage of pre-1972 sound recordings. Specifically, the Office seeks comments on the likely effect of Federal protection upon preservation and public access, and the effect upon the economic interests of rights holders. The Office also seeks comments on how the incorporation of pre-1972 sound recordings into Federal law might best be achieved.

DATES: Initial written comments must be received in the Office of the General Counsel of the Copyright Office no later than December 20, 2010. Reply comments must be received in the Office of the General Counsel of the Copyright Office no later than December 3, 2010.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/sound/comments/comment-submission-index.html.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, each comment must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted on the Copyright Office Web site, along with names and organizations.

If electronic submission of comments is not feasible, comments may be delivered in hard copy. If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room LM–401, James Madison Building, 101 Independence Ave., SE., Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, SE., Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM–403, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Chris Weston, Attorney Advisor. Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Introduction

The Copyright Office is conducting a study on "the desirability of and means for bringing sound recordings fixed before February 15, 1972, under federal jurisdiction." When it enacted the Omnibus Appropriations Act of 2009, Congress directed the Register of Copyrights to conduct such a study and seek comments from interested parties. H. Comm. On Appropriations, H.R. 1105, Public Law 111–8 [Legislative Text and Explanatory Statement] 1769

(Comm. Print 2009). With this notice, the Copyright Office explains the background to the study and seeks public comment on whether pre-1972 sound recordings should be brought within the Federal copyright statute. The Office also poses a number of questions on specific topics relevant to the overall inquiry.

Background

Sound recordings are "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes or other phonorecords, in which they are embodied." 17 U.S.C. 101. Until 1972, sound recordings were not among the works of authorship protected by the Federal copyright statute; they enjoyed protection only under State law. In 1971, Congress passed the Sound Recording Amendment, which provided that sound recordings first fixed on or after February 15, 1972, would be eligible for protection under Federal copyright law. Sound recordings first fixed prior to that date (pre-1972 sound recordings) continued to be protected under State law.

In 1976, when Congress passed the Copyright Revision Act, it created a unitary system of copyright, by bringing unpublished works (until then protected by State law) under the Federal copyright law, and preempting all State laws that provided rights equivalent to copyright. 17 U.S.C. 301(a). However, it explicitly excluded State laws concerning pre-1972 sound recordings from the general preemption provision, allowing those laws to continue in effect until 2047. 17 U.S.C. 301(c). That date was later extended by the Copyright Term Extension Act (CTEA) until 2067. Public Law 105–298, 112 Stat. 2827 (1998). On February 15, 2067, all State law protection for pre-1972 sound recordings will be preempted by Federal law and will effectively cease.

Thus, there are currently two primary regimes of protection for sound recordings: State law protects pre-1972 recordings, and Federal copyright law protects sound recordings of U.S. origin first fixed on or after February 15, 1972.

Federal law also protects pre-1972 sound recordings of foreign origin that were eligible for copyright restoration under the Uruguay Round Agreements Act (URAA). Public Law 103–465, 108 Stat. 4809, 4973 (1994). This legislation, passed in 1994 in order to implement U.S. obligations under the TRIPS ("Trade Related Aspects of Intellectual Property") Agreement, "restored" copyright protection to certain works of foreign origin that were in the public domain in the United States on the effective date, which for most works was January 1, 1996. Because most other countries provide a 50-year term of protection for sound recordings, generally only those foreign sound recordings fixed in 1946 and after were eligible for restoration under the URAA.

One consequence of the continued protection under State law of pre-1972 sound recordings is that there are virtually no sound recordings in the public domain in the United States. Pre-1972 sound recordings, no matter how old, can have State law protection until 2067, so that some sound recordings will conceivably be protected for more than 170 years. Even pre-1972 foreign sound recordings that were ineligible for copyright restoration because their term of protection had expired in their home countries are eligible for State law protection, at least in New York. *See Capitol Records, Inc.* v. *Naxos of America, Inc.,* 830 N.E.2d 250 (N.Y. 2005). Those sound recordings that do have Federal copyright protection will not enter the public domain for many years. For example, sound recordings copyrighted in 1972 will not enter the public domain until the end of 2067.

State law protection for pre-1972 sound recordings is provided by a patchwork of criminal laws, civil statutes and common law. Almost all States have criminal laws that prohibit duplication and sale of recordings done knowingly and willfully with the intent to sell or profit commercially from the copies. Most States also have some form of civil protection, sometimes under the rubric of "common law copyright," sometimes under "misappropriation" or "unfair competition," and sometimes under "right of publicity." Occasionally these forms of protection are referred to collectively as "common law copyright" or "common law protection," but in fact not all civil protection for sound recordings is common law—some States have statutes that relate to unauthorized use of pre-1972 sound recordings—and a true "common law copyright" claim differs from a claim grounded in unfair competition or right of publicity. In *Capitol Records, Inc.* v. *Naxos of America, Inc.,* the New York Court of Appeals (the highest court of the State) explained that a common law copyright claim in New York "consists of two elements: (1) The existence of a valid copyright; and (2) unauthorized reproduction of the work protected by copyright." *Id.* at 563. It went on to state that "[c]opyright law is distinguishable from unfair competition, which in addition to unauthorized copying and distribution requires competition in the marketplace or similar actions designed for commercial benefit." *Id.*

The scope of civil protection varies from State to State, and even within a State there is often uncertainty because there are few court decisions that have defined the scope of the rights and the existence and scope of exceptions. What is permissible in one State may not be in another. This uncertainty is compounded by the unsettled state of the law concerning the activities that subject an entity to a State's jurisdiction.

In general, Federal law is better defined, both as to the rights and the exceptions, and more consistent than State law. In some respects Federal law provides stronger protection. For example, owners of copyrighted works who timely register are eligible for statutory damages and attorneys fees. 17 U.S.C. 412, 504, and 505. In addition, copyright-protected sound recordings are eligible for protection under 17 U.S.C. 1201, which prohibits circumvention of technological protection that protects access to a copyrighted work. At the same time Federal law provides a more consistent and well-articulated set of exceptions. While some States include exceptions in their laws protecting sound recordings, the Federal "fair use" and library and archives exceptions—17 U.S.C. 107 and 108, respectively—are likely much more robust and effective in providing safety valves for the unauthorized but socially valuable use of copyrighted works.

The Copyright Office Study

Faced with the uncertain patchwork of State laws that cover pre-1972 recordings, libraries, archives and educational institutions have voiced serious concerns about their legal ability to preserve pre-1972 recordings, and provide access to them to researchers and scholars.[1] A 2005 study concluded that copyright owners had, on average, made available on CD only 14 percent of the sound recordings they control that were released from 1890 through 1964.[2] Reissues of recordings from before World War II are particularly scarce. While the statistics and conclusions from that report are now five years old, the Copyright Office knows of no reason to believe that the

[1] *See generally* Rob Bamberger and Sam Brylawski, National Recording Preservation Board, The State of Recorded Sound Preservation in the United States: A National Legacy At Risk in the Digital Age (2010).

[2] Tim Brooks, National Recording Preservation Board, Survey of Reissues of U.S. Recordings 7 (2005). For more recent years in that period, the percentage of recordings that were available reached 33 percent.

situation has changed significantly since that time.

Copies of many recordings from these eras reside in libraries and archives. Their custodians, however, are concerned that without the certainty of Federal copyright exceptions, the reproduction and distribution activities necessary to preserve and provide access to these recordings will lack clear legal bases. As a result, some have urged that consideration be given to bringing pre-1972 sound recordings under Federal copyright law, so that users have to contend with only a single set of laws.

When it directed the Register of Copyrights to conduct a study on the desirability of and means for bringing sound recordings fixed before February 15, 1972 under Federal jurisdiction, Congress specifically stated:

> The study is to cover the effect of federal coverage on the preservation of such sound recordings, the effect on public access to those recordings, and the economic impact of federal coverage on rights holders. The study is also to examine the means for accomplishing such coverage.

H.R. 1105, Public Law 111–8 [Legislative Text and Explanatory Statement] 1769. As part of the study, the Register is to provide an opportunity for interested parties to submit comments. The Register's report to Congress on the results of the study is to include any recommendations that the Register considers appropriate.

The body of pre-1972 sound recordings is vast. Commercially released "popular" recordings come most readily to mind—from Rudy Vallee to Frank Sinatra and Ella Fitzgerald to the Beatles and the Rolling Stones. But pre-1972 commercial recordings encompass a wide range of genres: ragtime and jazz, rhythm and blues, gospel, country and folk music, classical recordings, spoken word recordings and many others. There are, in addition, many unpublished recordings such as journalists' tapes, oral histories, and ethnographic and folklore recordings. There are also recordings of old radio broadcasts, which were publicly disseminated by virtue of the broadcast, but in many cases are technically unpublished under the standards of the U.S. Copyright Act.

The Copyright Office requests that parties with an interest in the question of whether to protect pre-1972 sound recordings as part of the Federal copyright statute submit their comments on the issue and, in those comments, respond to the specific questions below. A party need only address those issues on which it has information or views, but the Office asks that all answers be as comprehensive as possible.

Specific Questions

Preservation of and Access to Pre-1972 Sound Recordings

The following questions are meant to elicit information about how Federal protection of pre-1972 sound recordings will affect preservation and public access.

Preservation

1. Do libraries and archives, which are beneficiaries of the limitations on exclusive rights in section 108 of the Copyright Act, currently treat pre-1972 sound recordings differently from those first fixed in 1972 or later ("copyrighted sound recordings") for purposes of preservation activities? Do educational institutions, museums, and other cultural institutions that are not beneficiaries of section 108 treat pre-1972 sound recordings any differently for these purposes?

2. Would bringing pre-1972 sound recordings under Federal law—without amending the current exceptions—affect preservation efforts with respect to those recordings? Would it improve the ability of libraries and archives to preserve these works; and if so, in what way? Would it improve the ability of educational institutions, museums, and other cultural institutions to preserve these works?

Access

3. Do libraries and archives currently treat pre-1972 sound recordings differently from copyrighted sound recordings for purposes of providing access to those works? Do educational institutions, museums, and other cultural institutions treat them any differently?

4. Would bringing pre-1972 sound recordings under Federal law—without amending the current exceptions—affect the ability of such institutions to provide access to those recordings? Would it improve the ability of libraries and archives to make these works available to researchers and scholars; and if so, in what way? What about educational institutions, museums, and other cultural institutions?

5. Currently one group of pre-1972 recordings does have Federal copyright protection—those of foreign origin whose copyrights were restored by law. (*See* the discussion of the URAA above.) In order to be eligible for restoration, works have to meet several conditions, including: (1) They cannot be in the public domain in their home country through expiration of the term of protection on the date of restoration; (2) they have to be in the public domain in the United States due to noncompliance with formalities, lack of subject matter protection (as was the case for sound recordings) or lack of national eligibility; and (3) they have to meet national eligibility standards, *i.e.,* the work has to be of foreign origin. 17 U.S.C. 104A(h)(6). In determining whether a work was in the public domain in its home country at the time it became eligible for restoration, one has to know the term of protection in that country; in most countries, sound recordings are protected under a "neighboring rights" regime which provides a 50-year term of protection. As a result, most foreign sound recordings first fixed prior to 1946 are not eligible for restoration. To be of foreign origin, a work has to have "at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, [must have been] first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country." 17 U.S.C. 104A(h)(6)(D).

Does the differing protection for this particular group of recordings lead to their broader use? Have you had any experience with trying to identify which pre-1972 sound recordings are (or may be) so protected? Please elaborate.

6. Are pre-1972 sound recordings currently being treated differently from copyrighted sound recordings when use is sought for educational purposes, including use in connection with the distance education exceptions in 17 U.S.C. 110(2)? Would bringing pre-1972 sound recordings under Federal law affect the ability to make these works available for educational purposes; and if so, in what way?

7. Do libraries and archives make published and unpublished recordings available on different terms? What about educational institutions, museums, and other cultural institutions? Are unpublished works protected by State common law copyright treated differently from unpublished works protected by Federal copyright law? Would bringing pre-1972 sound recordings under Federal law affect the ability to provide access to unpublished pre-1972 sound recordings?

Economic Impact

Likely economic impact is an important consideration in determining whether pre-1972 sound recordings should be brought under Federal law, and how that change might be accomplished. The questions below are intended to elicit information regarding

what revenue expectations copyright owners have with respect to pre-1972 sound recordings, and how these expectations would be affected by bringing these recordings under Federal protection. These questions are also intended to elicit information concerning the determination of ownership in such recordings.

Value of the Recordings

8. Are there commercially valuable sound recordings first fixed before 1923 (*e.g.,* that would be in the public domain if the ordinary Federal term of protection applied) that would be adversely affected? Please describe these recordings, including whether or not they are currently under commercial exploitation (and if not, why not) and elaborate on the nature and extent of their commercial value.

9. Are there commercially valuable sound recordings first fixed from 1923–1940 that would be adversely affected? Please describe these recordings, including whether or not they are currently under commercial exploitation (and if not, why not) and elaborate on the nature and extent of their commercial value.

10. With regard to commercial recordings first fixed after 1940: What is the likely commercial impact of bringing these works under Federal copyright law?

11. Would there be any negative economic impact of such a change, *e.g.,* in the scope of rights, or the certainty and enforceability of protection?

12. Would there be any positive economic impact of such a change, *e.g.,* in the scope of rights, or the certainty and enforceability of protection?

13. What would be the economic impact of bringing pre-1972 sound recordings into the section 114 statutory licensing mechanism applicable to certain digital transmissions of sound recordings? Would there be other advantages or disadvantages in bringing pre-1972 sound recordings within the scope of the section 114 statutory license?

14. Does the uncertainty of different regimes under State law make it less practical for rights holders to bring suit under State law? Are you aware of any infringement suits concerning pre-1972 sound recordings brought in the past 10 years?

15. Would business arrangements concerning sampling of sound recordings be affected by bringing pre-1972 recordings under Federal law; and if so, how would they be affected? Are pre-1972 sound recordings currently treated differently with respect to sampling?

Ownership of Rights in the Recordings

It is worthwhile to explore State law principles applicable to authorship and ownership of rights in sound recordings to determine whether there would be any tension with Federal copyright law principles.

16. Under Federal law the owner of the sound recording will generally be, in the first instance, the performer(s) whose performance is recorded, the producer of the recording, or both. Do State laws attribute ownership differently? If so, might that lead to complications?

17. Under Federal law, some copyrighted sound recordings qualify as works made for hire, either because (1) they are works prepared by employees in the scope of their employment, or (2) they were specially ordered or commissioned, if the parties agree in writing that the works will be works made for hire, and the works fall within one of nine specific categories of works eligible to be commissioned works made for hire. 17 U.S.C. 101.[3] If a work qualifies as a work made for hire, it is the employer or commissioning party who is the legal author and initial rights holder, rather than the individual creator of the work. Prior to the January 1, 1978, the courts recognized the work for hire doctrine with respect to works created by employees in the course of their employment, and particularly from the mid-1960s on, they recognized commissioned works made for hire, under such standards as whether the work was created at the hiring party's "instance and expense" or whether the hiring party had the "right to control" or exercised "actual control" over the creation of the work.

To what extent does State law recognize the work made for hire doctrine with respect to sound recordings? To what extent does State law recognize commissioned works for hire, and under what standard? Have State laws in this respect changed over time? Is there any likelihood that, if Federal standards were applied, ownership of pre-1972 sound recordings would be attributed differently? Is there any reason to believe that, if pre-1972 sound recordings were to become protected under Federal copyright law, their ownership would then become subject to Federal work-made-for-hire standards?

[3] The types of works that can qualify as commissioned works for hire include: A contribution to a collective work, a part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, answer material for a test, or an atlas. 17 U.S.C. 101(2).

18. Under Federal copyright law, ownership of rights is distinct from ownership of the material object in which the copyrighted work is embodied. Transferring ownership of such an object, including the "original," *i.e.,* the copy or phonorecord in which the copyrighted work was first fixed, does not convey rights in the copyright. 17 U.S.C. 202. A transfer of copyright ownership must be made in a writing signed by the owner of the rights or her authorized agent. *Id.* 204.

Some State laws provide (or for a period of time provided) that transferring the original copy of a work could operate as a transfer of copyright ownership, unless the rights holder specifically reserved the copyright rights. To what extent have these State law principles been applied with respect to "master recordings"? How if at all would they affect who would own the Federal statutory rights, if pre-1972 sound recordings were brought under Federal law?

19. If pre-1972 sound recordings were to be given protection under the Federal copyright statute, how would or should copyright ownership of such recordings be determined? Has the issue arisen with respect to pre-1978 unpublished works that received Federal statutory copyrights when the Copyright Act of 1976 came into effect?

20. What other considerations are relevant in assessing the economic impact of bringing pre-1972 sound recordings under Federal protection?

Term of Protection and Related Constitutional Considerations

Term of Protection

21. If pre-1972 sound recordings are brought under Federal copyright law, should the basic term of protection be the same as for other works—*i.e.,* for the life of the author plus 70 years or, in the case of anonymous and pseudonymous works and works made for hire, for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first? Can different treatment for pre-1972 sound recordings be justified?

22. Currently, States are permitted to protect pre-1972 sound recordings until February 15, 2067. If these recordings were incorporated into Federal copyright law and the ordinary statutory terms applied, then all works fixed prior to 1923 would immediately go into the public domain. Most pre-1972 sound recordings, including all published, commercial recordings, would experience a shorter term of protection. However, as the date of the recording approaches 1972, the terms under

Federal and State law become increasingly similar. For example, a sound recording published in 1940 would be protected until the end of 2035 instead of February 15, 2067; one published in 1970 would be protected until the end of 2065 instead of February 15, 2067. In the case of one category of works—unpublished sound recordings whose term is measured by the life of author—there would actually be an extension of term if the author died after 1997. For example, if the author of an unpublished pre-1972 sound recording died in 2010, that sound recording would be protected under Federal law until the end of 2080.

In the 1976 Copyright Act, Congress made all unpublished works being brought under Federal law subject to the ordinary statutory term that the 1976 Act provided for copyrighted works: life of the author plus 50 years (later extended by the CTEA to life of the author plus 70 years). However, Congress was concerned that for some works, applying the ordinary statutory copyright terms would mean that copyright protection would have expired by the effective date of the 1976 Copyright Act, or would expire soon thereafter. Congress decided that removing subsisting common law rights and substituting statutory rights for a "reasonable period" would be "fully in harmony with the constitutional requirements of due process." H.R. Rep. No. 94-1476, at 138–39 (1976). Accordingly, the 1976 Copyright Act included a provision that gave all unpublished works, no matter how old, a minimum period of protection of 25 years, until December 31, 2002. 17 U.S.C. 303. If those works were published by that date, they would get an additional term of protection of 25 years, to December 31, 2027 (later extended by the CTEA to 2047).

If pre-1972 sound recordings were brought under Federal copyright law, should a similar provision be made for those recordings that otherwise would have little or no opportunity for Federal copyright protection? If so, what would be a "reasonable period" in this context, and why? If not, would the legislation encounter constitutional problems (*e.g.,* due process, or Takings Clause issues)?

Increasing the Availability of Pre-1972 Sound Recordings

23. If the requirements of due process make necessary some minimum period of protection, are there exceptions that might be adopted to make those recordings that have no commercial value available for use sooner? For example, would it be worthwhile to consider amending 17 U.S.C. 108(h) to allow broader use on the terms of that provision throughout any such "minimum period?" Do libraries and archives rely on this provision to make older copyrighted works available? If not, why not?

24. Are there other ways to enhance the ability to use pre-1972 sound recordings during any minimum term, should one be deemed necessary?

25. How might rights holders be encouraged to make existing recordings available on the market? Would a provision like that in section 303—an extended period of protection contingent upon publication—be likely to encourage rights holders to make these works publicly available?

Partial Incorporation

26. The possibility of bringing pre-1972 sound recordings under Federal law only for limited purposes has been raised. For example, some stakeholders seek to ensure that whether or not pre-1972 sound recordings receive Federal copyright protection, they are in any event subject to the fair use doctrine and the library and archives exceptions found in sections 107 and 108, respectively, of the Copyright Act. Others would like to subject pre-1972 sound recordings to the section 114 statutory license, but otherwise keep them within the protection of State law rather than Federal copyright law.

Is it legally possible to bring sound recordings under Federal law for such limited purposes? For example, can (and should) there be a Federal exception (such as fair use) without an underlying Federal right? Can (and should) works that do not enjoy Federal statutory copyright protection nevertheless be subject to statutory licensing under the Federal copyright law? What would be the advantages or disadvantages of such proposals?

Miscellaneous Questions

27. Could the incorporation of pre-1972 sound recordings potentially affect in any way the rights in the underlying works (such as musical works); and if so, in what way?

28. What other uses of pre-1972 recordings, besides preservation and access activities by libraries and other cultural institutions, might be affected by a change from State to Federal protection? For example, to what extent are people currently engaging in commercial or noncommercial use or exploitation of pre-1972 sound recordings, without authorization from the rights holder, in reliance on the current status of protection under State law? If so, in what way? Would protecting pre-1972 sound recordings under Federal law affect the ability to engage in such activities?

29. To the extent not addressed in response to the preceding question, to what extent are people currently refraining from making use, commercial or noncommercial, of pre-1972 sound recordings in view of the current status of protection under State law; and if so, in what way?

30. Are there other factors relevant to a determination of whether pre-1972 sound recordings should be brought under Federal law, and how that could be accomplished?

Dated: October 29, 2010.

David O. Carson,

General Counsel.

[FR Doc. 2010–27775 Filed 11–2–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 3, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be

provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers, and Stockyard Administration (N1–545–08–9, 4 items, 2 temporary items). Records of standing committees, including routine policy administrative files and non-substantive reports. Proposed for permanent retention are agendas, minutes, substantive reports, annual summaries, and records documenting official board and committee accomplishments.

2. Department of Agriculture, Office of the Chief Economist (N1–16–10–6, 1 item, 1 temporary item). Master file of an electronic information system used to manage world agriculture supply and demand estimates and records.

3. Department of Agriculture, Office of the Chief Financial Officer (N1–16–10–7, 2 items, 2 temporary items). Master files of an electronic information system containing individual employee pay records.

4. Department of the Army, Agency-wide (N1–AU–10–86, 1 item, 1 temporary item). Master files of an electronic information system used to create, manage, maintain, and process the lifecycle for all parts estimated or manufactured at Watervliet Arsenal. Included are inventory forms, tooling transfers, issue and return receipts, work order requests, and operational process approvals.

5. Department of the Army, Agency-wide (N1–AU–10–90, 1 item, 1 temporary item). Master files of an electronic information system used to enable applicants to apply online for agency job vacancies.

6. Department of Education, Office of Management (N1–441–09–15, 3 items, 3 temporary items). Records of the Federal Student Aid program, including master files of electronic information systems used to provide oversight, compliance, and improvement services and monitor the performance of schools that participate in Title IV programs.

7. Department of Education, Office of Management (N1–441–09–16, 6 items, 6 temporary items). Master files of electronic information systems used to support the servicing, consolidation, and collection of Federal student aid obligations. The data includes financial statements, promissory notes, payment history, and other related documents.

8. Department of Education, Office of Postsecondary Education (N1–441–09–19, 4 items, 4 temporary items). Records relating to institutions seeking accreditation, including petitions, reports, accrediting decisions, and related correspondence. Also included are master files of an electronic information system containing applications, petitions, and agency reports used in the accreditation process.

9. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–10–8, 1 item, 1 temporary item). Master files of an electronic information system used to administrate registration for educational and training sessions.

10. Department of Health and Human Services, Food and Drug Administration (N1–88–09–4, 48 items, 47 temporary items). Records of the Center for Veterinary Medicine, including subject files; correspondence; working group files; animal drug pre-marketing and marketing applications and related documentation; master files of an electronic system used to track loans of drug master files; investigational food additive files; food additive petitions; generally recognized as safe notifications and petitions; animal drug experience reports; medicated feed mill licensing files; and master files of an electronic system containing aquaculture information extracted from animal drug applications. Proposed for permanent retention are approved new animal drug product lists (Green Book).

11. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–8, 2 items, 2 temporary items). Master files of an electronic information system containing case information regarding

suspended and debarred contractors, and related paper case files.

12. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–18, 2 items, 2 temporary items). Case files containing voluntary enrollment forms and correspondence, and master files of an electronic information system containing victim and alien offender data to facilitate victim notification.

13. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–19, 1 item, 1 temporary item). Master files of a legacy electronic information system containing case management information for alien detention and removal.

14. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–20, 2 items, 2 temporary items). Master files of an electronic information system containing information about selectees for vacant positions.

15. Department of Justice, Tax Division (N1–60–09–1, 1 item, 1 temporary item). Memoranda documenting settlements in tax cases from the 1950s and 1960s.

16. Department of Justice, Justice Management Division (N1–60–10–14, 2 items, 2 temporary items). Record copy of and background information for the Security Program Operating Manual.

17. Department of Justice, United States Attorneys' Offices (N1–118–09–2, 1 item, 1 temporary item). Master files of electronic information systems used to compile intelligence information from other existing systems for case research and investigations.

18. Department of the Treasury, Internal Revenue Service (N1–58–10–5, 3 items, 3 temporary items). Master files, outputs, and system documentation of an electronic information system used to collect data and statistics about revenue from enforcement activities.

19. Department of the Treasury, Internal Revenue Service (N1–58–10–12, 1 item, 1 temporary item). Credit Bureau audit records used to fulfill information requests from credit bureau vendors.

20. Department of the Treasury, Internal Revenue Service (N1–58–10–13 1 item, 1 temporary item). Master files of an electronic information system used to extract data from other systems and track case inventory of statistics of income for large- and mid-sized business.

21. Department of Veterans Affairs, Veterans Health Administration (N1–15–10–7, 5 items, 5 temporary items). Records relating to the credentialing of agency employees and health care facilities providing care for veterans.

22. Defense Logistics Agency, Agency-wide (N1–361–10–4, 4 items, 4 temporary items). Master files and outputs of electronic information systems used to track inventories, ordering, and distribution of map products.

23. Environmental Protection Agency, Agency-wide (N1–412–09–18, 1 item, 1 temporary item). Master files of an electronic information system used to disseminate beach water quality and swimming advisory data.

24. Federal Maritime Commission, Office of the Managing Director (N1–358–09–9, 4 items, 4 temporary items). Administrative records including commission orders, policies, and standard operating procedures. Included is the intranet website containing employee forms, telephone directory, agency policies, notifications, and links to agency web applications.

25. U.S. Agency for International Development, Office of the Inspector General (N1–286–09–9, 1 item, 1 temporary item). Master files of an electronic information system used to manage correspondence and workflow.

Dated: October 27, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–27766 Filed 11–2–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 1, 2010, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 1, 2010, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Cayetano Santos (Telephone 301–415–7270 or E-mail *Cayetano.Santos@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 [75 FR 65038–65039].

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 27, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27813 Filed 11–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on AP1000 will hold a meeting on December 1, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, December 1, 2010—8:30 a.m. Until 5 p.m.

The Subcommittee will review open issues associated with the revisions to the AP1000 Design Control Document (DCD). The Subcommittee will hear presentations by and hold discussions with Westinghouse, the NRC staff, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or E-mail: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 28, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27823 Filed 11–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on December 1, 2010, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 1, 2010—1:30 p.m. Until 5 p.m.

The Subcommittee will review the license renewal application for Salem Nuclear Generating Station, Units 1 and 2 and the staff's associated draft Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with PSEG Nuclear LLC, the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Kathy Weaver (Telephone 301–415–6236 or E-mail: *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: October 28, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–27811 Filed 11–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013; NRC–2010–0343]

STP Nuclear Operating Company South Texas Project Electric Generating Station, Units 3 and 4 Request for Exemption Environmental Assessment and Finding of No Significant Impact

By letters dated March 23, 2010 (STPNOC 2010a), and July 21, 2010 (STPNOC 2010b), STP Nuclear Operating Company (STPNOC) submitted a request for an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.10: License required; limited work authorization. The U.S. Nuclear Regulatory Commission (NRC or the staff) is considering issuance of this exemption as it relates to STPNOC's application for combined licenses (COLs) for South Texas Project Electric Generating Station (STP) Units 3 and 4, which is currently under review by the NRC. The exemption would authorize STPNOC to install two crane foundation

retaining walls (CFRWs) prior to issuance of the COLs. Granting this exemption would not constitute a commitment by the NRC to issue COLs for STP Units 3 and 4; STPNOC would install the CFRWs assuming the risk that its COL application may later be denied. NRC has prepared this environmental assessment (EA) for the exemption request in accordance with the requirements of 10 CFR 51.21. Based on this EA, the NRC has reached a Finding of No Significant Impact. The details of the NRC staff's safety review of the exemption request will be provided in the safety evaluation document associated with that determination.

Environmental Assessment

Background

By letter dated January 8, 2010, the NRC notified STPNOC that installation of the CFRWs was considered construction under 10 CFR 50.10(a)(1), therefore requiring issuance of a limited work authorization (LWA) or COLs before their installation (NRC 2010a). In accordance with 10 CFR 50.12(b), STPNOC has requested an exemption that would permit the construction of the CFRWs prior to the issuance of COLs for STP Units 3 and 4 (STPNOC 2010).

Identification of the Proposed Action

The proposed action, as described in STPNOC's request for an exemption to 10 CFR 50.10, would allow STPNOC to install two CFRWs for STP Units 3 and 4, prior to issuance of COLs. According to STPNOC, the CFRWs are non-safety related, reinforced concrete walls that would facilitate excavation activities by retaining soil next to permanent plant structures in the excavations. STPNOC states that the CFRWs are required to accommodate the reach of a heavy-lift crane needed to place reactor components into the excavations. Installation of the CFRWs would include the following activities:

- A full-depth and -width slurry excavation would be made, with the excavation maintained by the slurry;
- Reinforcing would be placed in the slurry-filled trench;
- Concrete would be placed in the slurry-filled trench from the bottom-up; and
- Tiebacks and whalers would be installed to stabilize the CFRWs, as excavation for permanent plant structures proceeds.

As construction of the permanent plant structures proceeds, the CFRWs would be abandoned in place following crane use. After abandonment, the CFRWs would have no function during operation of STP Units 3 and 4.

Need for the Proposed Action

In its exemption request, STPNOC stated that the proposed exemption is needed because installation of the CFRWs must occur before excavation for permanent plant structures, and compliance with 10 CFR 50.10, i.e., obtaining an LWA, would result in undue hardship or other costs that are significantly in excess of those contemplated during the 2007 LWA rulemaking. According to the exemption request, installation of the CFRWs is needed to allow STPNOC to complete certain on-site activities in parallel with the licensing process, so that it can begin construction promptly upon issuance of COLs.

Environmental Impacts of the Proposed Action

This EA evaluates the environmental impacts of STPNOC's proposed installation of the CFRWs, including the non-radiological and radiological impacts that may result from granting the requested exemption. This evaluation is based on STPNOC's exemption request, dated March 23, 2010, and on information provided by STPNOC in support of its COL application for proposed STP Units 3 and 4, primarily Revision 3 of the environmental report (ER) (STPNOC 2009). According to STPNOC's exemption request, the environmental impacts of installing the CFRWs are within the scope of preconstruction activities described in Chapters 3 and 4 of STP Units 3 and 4 ER. Certain facilities, such as a concrete batch plant, lay down areas, parking lots, and temporary buildings, would be required for preconstruction activities at the STP site, and as such, are not exclusive to the installation of the CFRWs. It is expected that these facilities would already be in place and supporting preconstruction activities, and as such, this EA does not include the environmental impacts of such facilities.

Description of the Site

The STP site is located in a rural area of Matagorda County, Texas, approximately 10 miles (mi) north of Matagorda Bay, 70 mi south-southwest of Houston, and 12 mi south-southwest of Bay City. The proposed location of STP Units 3 and 4 is within the site boundaries of the existing STP Units 1 and 2, approximately 1,500 feet (ft) north and 2,150 ft west of the center of Units 1 and 2. The STP site comprises 12,220 acres (ac) immediately west of the Colorado River, approximately 10 mi upstream of the river's confluence with Matagorda Bay. The Main Cooling Reservoir, a man-made impoundment that is the normal heat sink for waste heat generated by STP Units 1 and 2, occupies approximately 7,000 ac of the STP site, and about 1,750 ac are currently occupied by Units 1 and 2 and associated facilities. The remainder of the site is undeveloped land or is used for agriculture and cattle grazing. The area that would be affected on a long-term basis as a result of permanent facilities for proposed Units 3 and 4 would be approximately 300 ac. An additional approximately 240 ac would be disturbed for temporary construction facilities.

Nonradiological Impacts

Land Use Impacts

Installation of each CFRW would disturb an area approximately 890 ft long by 13 ft wide, which is approximately 23,140 square ft (0.54 ac) for both CFRWs. This would be a minor portion of the 12,220-ac STP site, and would be located in an area that was previously disturbed during construction of STP Units 1 and 2. As such, the NRC staff concludes that land use impacts from installation of the CFRWs would not be significant.

Surface and Groundwater Impacts

Installation of the CFRWs would have insignificant impacts on groundwater flow and surface water quality. While the purpose of the CFRWs is for building Units 3 and 4, they would remain in place after construction and could slightly reduce the permeability of the affected area. The completed CFRWs would each be approximately 3 ft wide, 890 ft long and 80 ft deep. In the vicinity of the STP site, the Shallow Aquifer's base is between 90 and 150 ft below ground surface (STPNOC 2009). Because there would be a gap between the bottom of the CFRWs and the top of the Shallow Aquifer, groundwater flow would not be significantly impacted.

Sediment carried with stormwater from the disturbed areas could impact surface water quality. STPNOC would be required to implement environmental controls specified in its Clean Water Act Section 402(p) Texas Pollutant Discharge Elimination System (TPDES) general permit for construction of STP Units 3 and 4 (STPNOC 2009). In its exemption request, STPNOC has stated that it would employ best management practices (BMPs) during installation of the CFRWs in accordance with these regulatory and permit requirements (STPNOC 2010), which would limit the impacts of ground disturbance to surface water quality. BMPs would be

described in a Stormwater Pollution Prevention Plan (SWPPP) that would be submitted to and approved by the Texas Council on Environmental Quality (TCEQ) in accordance with STPNOC's TPDES general permit (STPNOC 2009). With these controls, the NRC staff concludes that impacts to surface water quality from installation of the CFRWs would not be significant.

Terrestrial Resources Impacts

As stated above, the proposed action would be a small portion of the 12,220–ac STP site, and land disturbance for the CFRWs would occur in previously disturbed areas on the STP site. Therefore, the staff concludes there would be no impacts to terrestrial species or their habitat associated with the proposed action.

Aquatic Resources Impacts

Impacts to aquatic resources from the proposed action would occur from erosion and sedimentation associated with site stormwater management. As stated above, as part of its SWPPP, STPNOC would employ BMPs to minimize impacts from stormwater runoff to ditches and wetlands. STPNOC plans to implement new detention ponds and drainage capacity to accommodate surface water runoff in areas disturbed by site preparation and construction activities (STPNOC 2009). Impacts from any stormwater runoff reaching ditches and wetlands would be minimal and temporary. As such, the staff concludes that impacts to aquatic resources from installation of the CFRWs would not be significant.

Threatened and Endangered Species Impacts

Potential impacts to threatened and endangered species from the proposed action result from land disturbances to terrestrial species. Two species listed as threatened or endangered under the Endangered Species Act of 1973, as amended, that occur on or in the vicinity (within 10 miles) of the STP site are the Federally endangered Northern Aplomado falcon (*Falco femoralis septentrionalis*) and the Federally threatened American alligator (*Alligator mississippiensis*). The Federally endangered whooping crane (*Grus americana*), a species of special concern to Texas resource agencies and environmental groups, has not been observed on the STP site.

These birds may migrate through the area and fly over the STP site, but are unlikely to use the inland habitats found onsite. Because no impacts are expected to occur for terrestrial species or their habitat, the proposed action would have no impacts on the Northern Aplomado falcon, the American alligator, or their habitats. The staff concludes there would be no effects on federally threatened or endangered species as a result of the proposed action.

Cultural and Historic Resources Impacts

According to the environmental report contained in STPNOC's COL application for STP Units 3 and 4, there are no cultural and historic resources at the STP site (STPNOC 2009). In support of its COLs application, STPNOC consulted with the Texas Historical Commission and received concurrence on its findings in January 2007 (STPNOC 2006, 2009). The NRC's independent review of cultural resources in support of the environmental review for STPNOC's COLs application also did not identify any cultural and historical resources that would be impacted by construction and operation of proposed STP Units 3 and 4 (NRC 2010b). The area where the CFRWs would be installed was previously disturbed during construction of STP Units 1 and 2, and any resources that may have existed prior to construction of Units 1 and 2 would have been destroyed during land clearing and construction activities (STPNOC 2010). Therefore, the staff concludes that no environmental impacts to cultural and historic resources are expected from installation of the CFRWs. STPNOC has procedures in place to protect undiscovered historic or archaeological resources if discovered during site preparation and construction activities, and such procedures would apply to the proposed action (STPNOC 2008).

Air Quality Impacts

Installation of the CFRWs would result in temporary impacts on local air quality from vehicle and construction equipment emissions, and fugitive dust caused by earth-moving activities. As stated in the ER for the COL application, to minimize impacts to air quality, STPNOC would implement mitigation measures to minimize fugitive dust and vehicle and equipment emissions, including water suppression, covering truck loads and debris stockpiles, use of soil adhesives to stabilize loose dirt surfaces, minimizing material handling, limiting vehicle speed, and visual inspection of emission control equipment (STPNOC 2009). Construction equipment would be serviced regularly and operated in accordance with local, State, and Federal emission requirements (STPNOC 2009). Emissions from activities associated with installation of the CFRWs would vary based on the level and duration of the specific activity, but the overall impact on air quality is expected to be temporary and limited in magnitude. The staff concludes that the proposed action would not significantly contribute to air quality impacts at the STP site.

Nonradiological Health Impacts

Nonradiological health impacts to the public and workers from the proposed action would include exposure to fugitive dust, and vehicle and construction equipment exhaust, occupational injuries, and noise; as well as the transport of materials and personnel to and from the STP site. Adherence to Federal and State regulations regarding air quality, construction worker health, and noise would minimize nonradiological health impacts. Mitigation measures, such as operational controls and practices, worker training, use of personal protective equipment, and fugitive dust and exhaust emissions control measures, would further reduce impacts from the proposed action. Based on the number of shipments of building materials and the number of workers that would be transported to the STP site for site preparation and construction activities (STPNOC 2009), the staff concludes that nonradiological health impacts from transportation associated with installing the CFRWs would be minimal. STPNOC has estimated that 75 workers would be needed to install the CFRWs (STPNOC 2010). This would be a small fraction of the 2,400 workers needed during peak preconstruction activities. Accordingly, the staff concludes that nonradiological health impacts from the proposed action would not be significant.

Nonradioactive Waste Impacts

Nonradioactive waste impacts from the proposed action include impacts to land, water, and air from storage of excavated material, runoff to ditches and wetlands, and emissions from vehicles and construction equipment. Excavated materials would be stored onsite in borrow or spoil areas not to exceed 240 ac for the entire STP Units 3 and 4 project (STPNOC 2009). Surface water runoff from development activities would be controlled by implementation of a SWPPP (STPNOC 2010). Regulated practices for managing air emissions from construction equipment and temporary stationary sources, BMPs for controlling fugitive dust, and vehicle inspection and traffic management plans, would minimize impacts to air. With the above controls

in place, the staff concludes that impacts of nonradioactive waste from the proposed action would not be significant.

Socioeconomic Impacts and Environmental Justice

Potential socioeconomic impacts due to the proposed action include physical impacts such as transportation, aesthetics, and air quality, and social impacts including demographics, economy, infrastructure, and community services. In its exemption request (STPNOC 2010), STPNOC stated that 75 workers would be needed to install the CFRWs. The peak number of workers required for preconstruction activities at the STP site would be 2,400 (STPNOC 2009). The proposed action would occur concurrently with other preconstruction activities, and therefore would not significantly affect the size of the STP Units 3 and 4 labor force. Given the small number of workers involved in installation of the CFRWs, the staff concludes that the proposed exemption would not have measurable socioeconomic impacts.

With regard to environmental justice, due to the lack of significant environmental impacts resulting from the proposed action, the staff concludes that the proposed exemption would not have disproportionately high and adverse impacts to minority and low-income populations in the vicinity of the STP site.

Summary

Based on the foregoing, the staff concludes that granting the proposed exemption that would permit installation of the CFRWs prior to the issuance of COLs would not result in significant changes in nonradiological impacts to land use, surface and groundwater resources, terrestrial and aquatic resources, threatened and endangered species, socioeconomic factors and environmental justice, cultural and historic resources, air quality, nonradiological human health, and nonradioactive waste.

Radiological Impacts

Radiological Health Impacts

Sources of radiation exposure from existing STP Units 1 and 2 for construction workers include exposure from direct radiation and liquid and gaseous radiological effluents (STPNOC 2009). In support of the environmental review for the COL application, NRC staff estimated the annual direct dose to a construction worker would be approximately 10 millirem (mrem), assuming 2,080 hours worked at the STP site per year (NRC 2010c). The maximum radiological dose to construction workers from gaseous and liquid pathways combined would be approximately 9 mrem. Therefore, the estimated annual dose to construction workers would be approximately 19 mrem based on an occupancy of 2,080 hours per year (STPNOC 2009), which is less than the 100 mrem annual dose limit to an individual member of public found in 10 CFR 20.1301. As such, the staff concludes that radiological impacts to construction workers as a result of the proposed action would be minimal. Accordingly, the staff concludes that there would be no significant radiological health impacts associated with the proposed exemption.

Summary

Based on the foregoing, the staff concludes that granting the proposed exemption that would permit installation of the CFRWs prior to the issuance of COLs would not result in a significant increase in occupational radiation exposure. The staff concludes that there would be no significant radiological health impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed exemption (*i.e.,* the "no-action" alternative). If NRC were to deny the exemption request, STPNOC would not be allowed to install the CFRWs before the COLs are issued, and would need to wait until a decision is made on its COL application before installing the CFRWs. Denial of the exemption request would avoid the environmental impacts discussed in this EA, unless NRC grants the COLs, in which case the impacts would be incurred but they would be delayed until issuance of the COLs.

Agencies and Persons Consulted

The NRC staff consulted with a number of Federal, State, regional, Tribal, and local organizations regarding the environmental impacts of granting the COLs for proposed STP Units 3 and 4, which includes the environmental impacts of installation of CFRWs and other construction activities. A complete list of organizations contacted can be found in Appendix B of the draft environmental impact statement (DEIS) for COLs for STP Units 3 and 4 (NRC 2010c). A partial list of Federal and State agencies contacted includes: U.S. Army Corps of Engineers; Advisory Council on Historic Preservation; U.S. Environmental Protection Agency (Region 6 and headquarters); National Marine Fisheries Service; U.S. Fish and Wildlife Service; Texas Commission on Environmental Quality; Texas Historical Commission; Texas Parks and Wildlife Department; and Texas State Historic Preservation Office. Comments from these agencies regarding the overall COLs action were incorporated into the DEIS, and if they were applicable to construction activities similar to installation of the CFRWs, they have been included in this EA.

Finding of No Significant Impact

The NRC staff has prepared this EA for the proposed action. On the basis of this EA, the NRC staff has determined that there would be no significant environmental impacts associated with granting the exemption, and an environmental impact statement need not be prepared.

Additional Information

STPNOC's exemption request is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS accession number for the exemption request is ML100880055. The ADAMS accession number for the EA is ML101580541. The ADAMS accession number for the DEIS for STP Units 3 and 4 (NUREG–1937, Vols. 1 and 2) is ML100700576. If you do not have access to ADAMS or have problems accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, or 301–415–4737, or via e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of October, 2010.

For the U.S. Nuclear Regulatory Commission.

Scott Flanders,

Division Director, Division of Site and Environmental Reviews, Office of New Reactors.

References

STP Nuclear Operating Company (STPNOC). 2006. Letter from S. Dannhardt, STPNOC, to B. Martin, Texas Historical Commission, dated December 12, 2006, "Subject: South Texas Projects Units 3 and 4." ADAMS Accession No. ML092100145.

STP Nuclear Operating Company (STPNOC). 2008. Letter from M. McBurnett, STPNOC, to NRC, dated June 9, 2008, "Cultural or Historical Artifact Discovery During Construction." ADAMS Accession No. ML081640213.

STP Nuclear Operating Company (STPNOC). 2009. *South Texas Project Units 3 and 4 Combined License Application, Part 3, Environmental Report.* Revision 3, Bay

City, Texas. ADAMS Accession No. ML092931600.

STP Nuclear Operating Company (STPNOC). 2010a. Letter from M. McBurnett, STPNOC, to NRC, dated March 23, 2010, "Request for Exemption to Authorize Installation of Crane Foundation Retaining Walls." ADAMS Accession No. ML100880055.

STP Nuclear Operating Company (STPNOC). 2010b. Letter from Scott Head, STPNOC, to NRC, dated July 21, 2010, "Revised Request for Exemption to Authorize Installation of Crane Foundation Retaining Walls." ADAMS Accession No. ML102070274.

U.S. Nuclear Regulatory Commission (NRC). 2000. *Environmental Standard Review Plan—Review Plans for Environmental Reviews for Nuclear Power Plants.* NUREG–1555, Washington, DC Includes 2007 updates.

U.S. Nuclear Regulatory Commission (NRC). 2010a. Letter from M. Johnson, NRC, to M. McBurnett, STPNOC, dated January 8, 2010, "South Texas Project Nuclear Power Plant Units 3 and 4 Request for a Limited Work Authorization for Installation of Crane Foundation Retaining Walls." ADAMS Accession No. ML093350744.

U.S. Nuclear Regulatory Commission (NRC). 2010b. Letter from R. Whited, NRC, to M. Wolfe, Texas Historical Commission, dated March 19, 2010, "Section 106 Consultation and Notification of the Issuance of the Draft Environmental Impact Statement for the South Texas Projects, Units 3 and 4, Combined License Application Review. ADAMS Accession No. ML100490740.

U.S. Nuclear Regulatory Commission (NRC). 2010c. *Draft Environmental Impact Statement for Combined Licenses (COLs) for South Texas Project Electric Generating Station, Units 3 and 4.* NUREG–1937, Vol. 1 and 2, Washington, DC Accession No. ML100700576.

[FR Doc. 2010–27764 Filed 11–2–10; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Collection Renewal

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for extension, without change, of a currently approved information collection. In compliance with the Paperwork Reduction Act of 1995 (44 USC Chapter 35), the Peace Corps invites the general public to comment on the renewal, without change to the Peace Corps Career Information Consultation (CIC) Waiver Form (OMB Control No. 0420–0531). This process is conducted in accordance with 5 CFR 1320.10.

DATES: Comments must be submitted on or before January 3, 2011.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Denora Miller can be contacted by telephone at 202–692–1236 or e-mail at *pcfr@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller, at Peace Corps address above.

SUPPLEMENTARY INFORMATION: Proposal to renew a currently approved collection of information:

OMB Control Number: 0420–0531.

Title: Career Information Consultation (CIC) Waiver Form.

Type of Review: Regular—extension, without change, currently approved collection.

Respondents: Returned Peace Corps Volunteers and professionals in specific career fields.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Total annual reporting burden: 208 hours.
b. Estimated average burden response: 5 minutes.
c. Frequency of response: Annually.
d. Estimated number of likely respondents: 2,500.

General description of collection: Returned Volunteer Services needs this information to update contact information for individuals who volunteer to share information about their career field, their past or current employer(s), and their career and educational paths with current and returned Peace Corps Volunteers. These individuals voluntarily provide this information in assisting with employment re-entry for Returned Peace Corps Volunteers. This is a service outreach part of transitioning from the Peace Corps to the business world. The individuals who provide the information are offering to assist, mentor or network for jobs.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on October 28, 2010.

Garry W. Stanberry,

Deputy Associate Director for Management.

[FR Doc. 2010–27752 Filed 11–2–10; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63207; File No. SR–NASDAQ–2010–134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Additional Criteria for Listing Commodity Stockpiling Companies That Have Indicated That Their Business Plan is To Buy and Hold Commodities

October 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2010, The NASDAQ Stock Market LLC ("Nasdaq" 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to adopt additional criteria for listing companies that have indicated that their business plan is to buy and hold commodities and to provide transparency to the criteria Nasdaq will apply in doing so.

The text of the proposed rule change is below. Proposed new language is in *italic;* proposed deletions are in brackets.[3]

5101. Preamble to the Rule 5100 Series.

No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

IM–5101–1. Use of Discretionary Authority

No change.

IM–5101–2. Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

No change.

IM–5101–3. Listing of Companies Whose Business Plan is to Purchase and Stockpile Raw Materials or Other Commodities

In the case of a Company whose business plan is to complete an initial public offering and use the proceeds to purchase and stockpile quantities of a raw material or other commodity ("*commodity stockpiling companies*" *or* "*CSCs*"*), Nasdaq will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.*

(a) Within 18 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement, the Company must invest at least 85% of the net proceeds of the initial public offering in the raw material or other commodity identified in the registration statement, or return the unused amount pro-rata to its shareholders. The unused amount will be calculated based upon the sum of: a) monies spent by the CSC on acquiring the raw material or other commodity during the 18 month period; and b) monies contracted to be spent by the CSC on acquiring the raw material or other commodity over the ensuing 12 months.

(b) The Company must publish, or facilitate access to, at no cost and in an easily accessible manner, regular pricing information regarding the raw material or other commodity from a reliable, independent source, at least as frequently as current industry practice for the pricing of such raw material or other commodity, and no less frequently than twice per week.

(d) The Company must publish its Net Market Value ("*NMV*"*) on a daily basis, or where pricing information for the raw material or other commodity is not available on a daily basis, no less frequently than twice per week. NMV is determined by multiplying the volume of the raw material or other commodity held in inventory by the last spot price published or otherwise relied upon by the Company, plus cash and other assets, less any liabilities. In addition, if the spot price of the raw material or other commodity fluctuates by more than 5%, the Company shall publish its NMV within one business day of such fluctuation.*

(c) The Company must publish the quantity of the raw material or other commodity held in inventory, the average price paid and the Company's NMV within two business days of any change in inventory held. Where the Company contracts to purchase or sell a material quantity of the raw material or other commodity, such information must be disclosed in a Form 8–K filing within four business days.

(e) The Company must employ the services of one or more independent third-party storage facilities, to safeguard the physical holdings of the raw material or other commodity that the Company acquires. Such facility should provide services consistent with those provided by custodians and these must include: storage and safeguarding; insurance; transfer of the raw material or other commodity in and out of the facility; visual inspections, spot checks and assays; confirmation of deliveries to supplier packing lists; and reporting of transfers and of inventory to the CSC and its auditors. Review of the third-party storage facility, including all lending, sales and delivery arrangements, must be overseen by a committee of Independent Directors.

(f) In addition to meeting the requirements in the Rule 5600 Series, the Company must create a committee comprised solely of Independent Directors who shall consider, at least quarterly, whether the Company's purchasing activities have had a measurable impact on the market price of the raw material or other commodity and shall report such determinations and make subsequent recommendations to the Board of Directors. The independent directors may rely upon, and shall have the authority to engage and pay, an industry expert in conducting this review. Should the Board of Directors disagree with, or not accept, the recommendations of this committee, the Company will be required to file a Form 8–K with the SEC outlining the relevant events, committee of independent directors' determinations and recommendations, and rationale for the Board's determination.

* * * * *

IM–5605–3. Audit Committee Charter

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A–3(b)(2), (3), (4) and (5) under the Act. Rule 10A–3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company *and commodity stockpiling company* audit committees that must also be set forth in audit committee charters for these Companies.

5605(c)(2) Audit Committee Composition

(A) No change.

5605(c)(2)(B) Non-Independent Director for Exceptional and Limited Circumstances

No change.

IM–5605–4. Audit Committee Composition

No change.

5605(c)(3) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A–3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A–3(c) under the Act), concerning responsibilities relating to: (i) Registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisors, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. *Audit committees for commodity stockpiling companies must also establish procedures for the identification and management of potential conflicts of interest, and must review and approve any transactions where such potential conflicts have been identified. This should include any material amendment to the*

management agreement, including any change with respect to the compensation of the manager.

IM–5605–5. The Audit Committee Responsibilities and Authority

Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A–3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A–3(c) under the Act), concerning responsibilities relating to registered public accounting firms; complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisors; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. *Audit committees for commodity stockpiling companies must also establish procedures for the identification and management of potential conflicts of interest, and must review and approve any transactions where such potential conflicts have been identified. This should include any material amendment to the management agreement, including any change with respect to the compensation of the manager.*

* * * * *

(b) Not applicable [sic].

(c) Not applicable [sic].

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

Nasdaq wants to list companies whose business plan is to complete an initial public offering and use the proceeds to purchase and stockpile quantities of a specified commodity. As a result, Nasdaq proposes to adopt IM–5101–3, which will set forth criteria designed to afford investors in CSCs additional protection.

As a threshold matter, a CSC will be required to meet all applicable initial listing requirements. Thus, for initial listing, companies seeking to list on the Nasdaq Global Market must have a minimum market value of listed securities of $75 million and companies seeking to list on the Nasdaq Capital Market must have a minimum market value of listed securities of $50 million.[4] However, due to their special characteristics, including:

- There might not be an underlying futures market in the particular raw material or other commodity to be stockpiled;
- It may be impractical to appoint a custodian for certain types of raw material or commodity; and
- Their structure as corporations, not exchange traded funds.

Nasdaq believes that a separate set of listing standards is appropriate and will impose the following additional criteria for listing a CSC:[5]

(a) The CSC must represent that unless at least 85% of the net proceeds of the offering are used to acquire the raw material or other commodity within 18 months of the effectiveness of the registration statement, it will return the unused amount to its common stockholders. The unused amount will be calculated based upon the sum of: (a) Monies spent by the CSC on acquiring the raw material or other commodity during the 18 month period; and (b) monies contracted to be spent by the CSC on acquiring the raw material or other commodity over the ensuing 12 months.

(b) The CSC shall publish, or otherwise facilitate access to (at no-cost in an easily accessible manner), regular pricing information in the raw material or other commodity from a reliable, independent source at least as frequently as current industry practice for pricing of such raw material or other commodity, and no less frequently than twice per week.

(c) The CSC shall publish its Net Market Value ("NMV")[6] on a daily basis, or where pricing information for the raw material or other commodity is not available on a daily basis, no less frequently than twice per week. NMV is determined by multiplying the volume of the raw material or other commodity held in inventory by the last spot price published, plus cash and other assets, less any liabilities. In the event that the spot price of the raw material or other commodity fluctuates by more than 5%, the CSC shall publish its revised NMV within one business day of such fluctuation.

(d) The CSC shall publish information concerning the quantity of the raw material or other commodity that it holds in inventory no later than two business days after taking delivery of or removing such raw material or other commodity from its warehouse.

(e) The CSC must retain independent third-party storage facilities that provide services consistent with those provided by custodians. These services must include:

a. Storage and safeguarding;

b. Insurance;

c. Transfer of the raw material or other commodity in and out of the facility;

d. Visual inspections, spot checks and assays;

e. Confirmation of deliveries to supplier packing lists;

f. Reporting of transfers and of inventory to the CSC and its auditors.

Review of the third-party storage facility, including all lending, sales and delivery arrangements, must be overseen by a committee of independent directors.

(f) The CSC shall create a committee comprised solely of independent directors, which shall consider not less than quarterly, whether the CSC's purchasing activities have had a measurable impact on the price of the raw material or other commodity and shall report such determinations and make subsequent recommendations to the Board of Directors. The independent directors may rely upon, and shall have the authority to engage and pay, an independent industry expert in conducting this review. Should the Board of Directors disagree with, or not accept, the recommendations of this committee, the Company will be required to file a Form 8–K with the SEC outlining the relevant events, committee of independent directors' determinations and recommendations, and rationale for the Board's determination.

(g) The Audit Committee charter shall include the responsibility to establish procedures for the identification and management of potential conflicts of

[4] Rules 5405(b)(3)(A) and 5505(b)(2)(A). Note that given the nature of these companies, they will not satisfy the alternative initial listing requirements because of the income and operating history requirements of those standards.

[5] These criteria were in places derived from protections Nasdaq has built into the rules relating to Special Purpose Acquisition Companies.

[6] NMV differs from Net Asset Value ("NAV") as NMV reflects the market price of indium, whereas NAV reflects the lower of cost or market price.

interest where such conflicts might act to the detriment of investors, and to review and approve any transactions where such conflicts have been identified. This should include any material amendment to the management agreement, including any change with respect to the compensation of the manager.

Nasdaq believes that these additional requirements will help protect investors by ensuring that CSCs remain committed to their described investment objectives and strategy; that adequate information will be available to investors on an ongoing basis regarding the value of their underlying investment; and that additional safeguards will exist in the form of independence and oversight of certain activities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Sections 6(b)(5) of the Act,[8] in particular. Section 6(b)(5) requires, among other things, that a registered national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these requirements in that it imposes additional requirements on CSCs, which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices on the part of the CSC and their promoters.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve or disapprove 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–NASDAQ–2010–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–134. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–134 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27722 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63197; File No. SR–NASDAQ–2010–136]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to Access Service Fees

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") ,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7015, related to fees governing pricing for NASDAQ members using The NASDAQ Stock Market LLC and the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options, to apply only to The NASDAQ Stock Market LLC. The Exchange also proposes to create a new Rule 7053 which would include Access Services applicable only to NOM.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. *The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Rule 7053.*

(a) Nasdaq Information Exchange (QIX)

Port pair (plus optional proprietary quote information port).	$1,200 per month.
ECN direct connection port pair.	$1,200 per month.
Unsolicited message port.	$1,000 per month.

(b) Financial Information Exchange (FIX)

[Options] *Ports*	Price
FIX Trading Port	$500/port/month.
FIX Port for Services Other than Trading.	$500/port/month.

(c) Computer to Computer Interface (CTCI)

Stations

Fee component	Fee
1st Station	$200/Station/month.
Each Additional Station.	$600/Station/month.

The bandwidth-based fees in the table below apply to CTCI subscribers that have not transitioned off of Nasdaq-supported circuits.

Bandwidth

Fee component	Fee
Single 56kb line with single hub and router (for remote disaster recovery sites only)	$900/month.
Option 1:	
Dual 56kb lines (one for redundancy) and single hub and router	$1,000/month.
Option 2:	
Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual router (one for redundancy).	$1,200/month.
Option 3:	
Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$2,500/month.
Bandwidth Enhancement Fee (for T1 subscribers only):	
Per 64kb increase above 128kb T1 base	$200/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Installation Fee	$2,000 per site for dual hubs and routers. $1,000 per site for single hub and router.
Relocation Fee (for the movement of TCF/IP-capable lines within a single location)	$1,700 per relocation.

(d) New Nasdaq Workstation

Nasdaq Workstation Trader	$475 per user per month (including data entitlement package).
Nasdaq Workstation Post Trade	See Rule 7015(e).

(e) Specialized Services Related to FINRA/NASDAQ Trade Reporting Facility

CTCI fee	$575/month.
WebLink ACT or Nasdaq Workstation Post Trade	$375.00/month (full functionality) or $200.00/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.)
ACT Workstation	$525/logon/month.

(f) TradeInfo

Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.

(g) Other Port Fees

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

• $500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $,000 per month.

• An additional $200 per month for each port used for entering orders or quotes over the Internet.

• An additional $600 per month for each port used for market data delivery over the Internet.

(h) VTE Terminal Fees

• Each ID is subject to a minimum commission fee of $100 per month unless it executes a minimum of 100,000 shares.

• Each ID receiving market data is subject to pass-through fees for use of these services. Pricing for these services is determined by the exchanges and/or market center.

• Each ID that is given web access is subject to a $100 monthly fee.

* * * * *

7053. NASDAQ Options Market—Access Services

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market.

(a) Financial Information Exchange (FIX)

Ports	*Price*
FIX Trading Port	*$500/port/month.*
FIX Port for Services Other than Trading.	*$500/port/month.*

(b) TradeInfo

• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.

(c) Other Port Fees

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

• $500 per month for each port pair.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to separate its equity and options fees which are assessed for connectivity to systems operated by NASDAQ.

Currently Rule 7015, titled Access Services, contains fees assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. Rule 7015 applies to both The NASDAQ Stock Market LLC members, conducting an equities business, and NOM members, conducting an options business. Access Services fees relate to ports used to: Enter orders into the NASDAQ trading systems; receive market data; enter quotes; and enter trade reports into the FINRA/NASDAQ Trade Reporting Facility.

The Exchange is proposing to add the following language to Rule 7015 so that it applies solely to The NASDAQ Stock Market LLC members: "The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Rule 7053." The Exchange is proposing to list those Access Service Fees which would apply to NOM members in a separate Rule.

The Exchange proposes to create a new Rule 7053, titled "NASDAQ Options Market—Access Services" which would apply to NOM members conducting an options business. Specifically, this proposed new Rule would include pricing for the Financial Information Exchange or "FIX", TradeInfo and pricing for Other Port Fees. The pricing in Rule 7053 would be the same pricing that is currently assessed to NOM members today in Rule 7015 for FIX pricing,[3] TradeInfo[4] and applicable portion of Other Fees.[5]

The Exchange also proposes to make a technical amendment to Rule 7015 in section (b), titled Financial Information Exchange (FIX), to change the word "Options" to the word "Ports" to clarify information contained in that section does not relate to options trading but rather that term is used to define the fee categories in that section.

The remaining sections of Rule 7015 which are not proposed in new Rule 7053 do not apply to NOM members. Fees which are currently contained in Rule 7015 that were not duplicated in new proposed Rule 7053 are not available on the NOM system. Those fees are available to members transacting equities only.[6] Today, the Exchange only assesses the applicable fees contained in Rule 7015 that apply to The NASDAQ Stock Market LLC members and/or NOM members, respectively. In other words, members transacting options only are assessed fees available on the NOM system. In creating this new Rule 7053, the Exchange is not changing which members are assessed certain fees, but rather the Exchange is proposing to separate the equities and options fees into two separate Rules.

The Exchange believes that creating two separate Rules for Access Service pricing, one related to The NASDAQ Stock Market LLC and one related to NOM, would provide more clarity for members as well as ease of reference.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes the proposed amendments to Rule 7015 and the addition of proposed new Rule 7053 provides more clarity to The NASDAQ Stock Market LLC and NOM members as to the Access Service Fees which are applicable to each market. The Exchange believes that creating different Rules applicable to the equities and options markets for Access Service Fees provides ease of reference for members of each market. Also, the technical amendment should serve to avoid confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[3] For FIX pricing, the Exchange would assess: A Fix Trading Port fee of $500 per month per port; and a FIX Port for Services Other than Trading fee of $500 per month, per port.

[4] Currently, NOM members not subscribing to the Nasdaq Workstation using TradeInfo are charged a fee of $95 per user per month. TradeInfo allows users to scan for their Nasdaq-listed orders submitted in Nasdaq. Users can then perform actions on their orders. Users can scan for all orders in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.). For example, after scanning for open orders the user is then able to select an open order and is allowed to make corrections to the order or cancel the order. TradeInfo also allows the users to scan other orders, such as executed, cancelled, broken, rejected and suspended orders.

[5] Currently, NOM members are assessed the $500 per month fee for each port pair. The remaining "Other Port Fees" are not applicable to NOM members today; those fees apply to members of The NASDAQ Stock Market LLC. To further clarify, only certain features are available on the NOM system. The Other Port Fees that exist in Rule 7015 that were not duplicated in new proposed Rule 7053 are not available on the NOM system but rather are available to members transacting equities only.

[6] The Commission notes that this is illustrated in note 5. *See supra* note 5 (clarifying that only certain features are available on the NOM system).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–NASDAQ–2010–136 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–136. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–136 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27688 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63202; File No. SR–CBOE–2010–080]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Trade Options on Leveraged Exchange-Traded Notes and To Broaden the Definition of "Futures-Linked Securities"

October 28, 2010.

I. Introduction

On August 31, 2010, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder,[2] a proposed rule change to: (a) Permit the trading of options on leveraged (multiple or inverse) exchange-traded notes ("ETNs"), and (b) broaden the definition of "Futures-Linked Securities." On September 9, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 16, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The purpose of CBOE's proposed rule change is to amend Interpretation and Policy .13 to Rule 5.3 to: (a) Permit the trading of options on leveraged (multiple or inverse) ETNs,[4] and (b) broaden the definition of "Futures-Linked Securities."

Leveraged ETN Options

Multiple leveraged ETNs seek to provide investment results that correspond to a specified multiple of the percentage performance of a particular Reference Asset on a given day. Inverse leveraged ETNs seek to provide investment results that correspond to the inverse (opposite) of the percentage performance of a particular Reference Asset by a specified multiple on a given day. Multiple leveraged ETNs and inverse leveraged ETNs differ from traditional ETNs in that they do not merely correspond to the performance of a given Reference Asset, but rather attempt to match a multiple or inverse of a Reference Asset's performance.

The Barclays Long B Leveraged S&P 500 TR ETN ("BXUB"), the Barclays Long C Leveraged S&P 500 TR ETN ("BXUC") and the UBS AG 2x Monthly Leveraged Long Exchange Traded Access Securities ("E–TRACS") linked to the Alerian MLP Infrastructure Index due July 9, 2040 ("MLPL") currently trade on the NYSE Arca Stock Exchange and are examples of multiple leveraged ETNs. In addition, the Barclays ETN + Inverse S&P 500 VIX Short-Term Futures ETN ("XXV") currently trades on the NYSE Arca Stock Exchange and is an example of an inverse leveraged ETN.

Currently, Interpretation and Policy .13 to Rule 5.3 provides that securities deemed appropriate for options trading

[3] *See* Securities Exchange Release No. 62880 (September 9, 2010), 75 FR 56628.

[4] ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing. Index-Linked Securities are non-convertible debt of an issuer that have a term of at least one year but not greater than thirty years. Index-Linked Securities are traded as a single, exchange-listed security. As such, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

shall include shares or other securities ("Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities," and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities") that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");
- Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in Interpretation and Policy .06 to this Rule 5.3), or a basket or index of any of the foregoing ("Currency Reference Asset");
- Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");
- Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) futures ("Futures Reference Asset"); and
- Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income References Assets, or Futures Reference Assets ("Multifactor Reference Asset").

For purposes of Interpretation and Policy .13 to this Rule 5.3, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets together with Multifactor Reference Assets, collectively are referred to as "Reference Assets."

In addition, Index-Linked Securities must meet the criteria and guidelines for underlying Securities set forth in Interpretation and Policy .01 to this Rule 5.3; or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash, or cash equivalents, satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

The Exchange proposes to amend Interpretation and Policy .13 to Rule 5.3 to expand the type of Index-Linked Securities that may underlie options to include leveraged (multiple or inverse) ETNs. To affect this change, the Exchange proposes to amend Rule 5.3.13 by adding the phrase, "or the leveraged (multiple or inverse) performance" to each of the subparagraphs ((A) through (F)) in that section which set forth the different eligible Reference Assets.

The Exchange's current continuing listing standards for ETN options will continue to apply. Specifically, under Interpretation and Policy .16 to Rule 5.4, ETN options shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series or option contracts of the class covering such Securities whenever the underlying Securities are delisted and trading in the Securities is suspended on a national securities exchange, or the Securities are no longer an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934). In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities in any of the following circumstances: (1) The underlying Index-Linked Security fails to comply with the terms of Interpretation and Policy .13 to Rule 5.3; (2) in accordance with the terms of Interpretation and Policy .01 to Rule 5.4, in the case of options covering Index-Linked Securities when such options were approved pursuant to Interpretation and Policy .13 to Rule 5.3, except that, in the case of options covering Index-Linked Securities approved pursuant to Interpretation and Policy .13(3)(B) to Rule 5.3 that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are "NMS" stocks as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to Interpretation and Policy .13 to Rule 5.3, the value of the Reference Asset is no longer calculated; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable. Expanding the eligible types of ETNs for options trading under Interpretation and Policy .13 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [5] or margin.[6]

The Exchange has represented that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in leveraged (multiple and inverse) ETN options.

It is expected that The Options Clearing Corporation will seek to revise the Options Disclosure Document ("ODD") to accommodate the listing and trading of leveraged (multiple and inverse) ETN options.

Definition of "Futures-Linked Securities"

The second change being proposed by the Exchange's filing is to amend the definition of "Futures-Linked Securities" set forth in Rule 5.3.13(1)(E). Rule 5.3 sets forth generic listing criteria for securities that may serve as underlyings for listed options. Currently, the definition of "Futures-Linked Securities" is limited to securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE

[5] *See* Rules 4.11, *Position Limits*, and 4.12, *Exercise Limits*.

[6] *See* Rule 12.3, *Margin Requirements*.

Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) futures. The Exchange is proposing to revise the definition of "Futures-Linked Securities" to provide that they are securities that pay at maturity a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts ("Futures Reference Asset"). All ETNs eligible for options trading must still be principally traded on a national securities exchange and an "NMS Stock."

III. Commission Findings

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Leveraged ETN Options

The Commission notes that the Exchange has represented that, similar to its imposition of higher margin requirements for options on leveraged ETFs,[10] the Exchange will impose higher margin requirements for leveraged ETNs, as allowed under CBOE Rules 12.3(h) and 12.10. The Exchange will also issue a Regulatory Circular announcing the new margin requirements prior to listing and trading options on leveraged ETNs.

In addition, pursuant to the proposed rule change, the Exchange represented that the current listing standards for ETN options will continue to apply. The Exchange has also represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading of options on leveraged ETNs.

The Commission believes that these representations are adequate to protect investors. Furthermore, the Commission believes that the ability to trade options on leveraged ETNs will provide investors with additional risk management tools. Therefore, the Commission believes that this proposed rule change is appropriate.

Broaden the Definition of "Futures-Linked Securities"

The Commission believes that this proposal will provide a more efficient process for the Exchange to list and trade options on ETNs. The Exchange will be able to list and trade options overlying newly introduced ETNs that do not fall within the current definition of "Futures-Linked Securities," without first filing a rule change proposal with the Commission to change the definition of "Futures-Linked Securities" to include each specific new product. The Commission notes that all ETNs that underlie options traded on the Exchange must still be principally traded on a national securities exchange and must be an "NMS stock." In addition, pursuant to the proposed rule change, the Exchange represented that the current listing standards for options on ETNs will continue to apply to options on ETNs that fall within the proposed definition of "Futures-Linked Securities." The Exchange has also represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading of options on ETNs. Therefore, the Commission believes that this proposed rule change is appropriate.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the propose rule change (SR–CBOE–2010–080), as modified by Amendment No. 1, be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27768 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* CBOE Regulatory Circulars RG09–97 (August 31, 2009), RG09–132 (November 20, 2009). *See also* FINRA Regulatory Notices 09–53 (August 2009), 09–65 (November 2009).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63194; File No. SR–NSCC–2010–12]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Procedures Related to the Automated Customer Account Transfer Service

October 27, 2010.

Pursuant to Section 19(b)(4) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 15, 2010, The National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's Rules so that in certain circumstances shares delivered to a Member through NSCC's Continuous Net Settlement System ("CNS") would be allocated to a Member's buy-in delivery obligation in a security before being allocated to satisfy an Automated Customer Account Transfer Service ("ACATS") delivery obligation in the same security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

NSCC's ACATS enables Members to effect automated transfers of customers' accounts among themselves.[5] For ACATS transfers processed through CNS,[6] long and short positions are passed against Members' positions at The Depository Trust Company ("DTC") and available securities are delivered by book-entry movements from short Members' accounts at DTC and to long Members' accounts at DTC. On August 16, 2010, the Commission approved enhancements to ACATS.[7] Pursuant to Procedure VII of NSCC's Rules, except with respect to securities that are subject to certain corporate action events, Members with failing long positions in a particular security may issue a Notice of Intention to Buy-In ("Buy-In Notice") that specifies a quantity of securities not exceeding such long positions that it intends to buy-in. Generally, deliveries of securities to fulfill CNS long positions, which represent securities NSCC owes Members, are processed in an order determined by an algorithm and are allocated to Members' long positions as they are received by NSCC. A Buy-In Notice affects the priority in which securities are allocated, and Members with long CNS positions that have issued Buy-In Notices have high priority to receive shares of the security. Members with short CNS positions, which represent securities those Members owe NSCC, are passed the liability for the shares subject to the Buy-In Notice and have the opportunity to deliver the shares to CNS to avoid being subject to a buy-in execution.

Upon implementation of the enhancements to ACATS, deliveries or receives in a particular security processed through CNS will be deemed by NSCC to satisfy a Member's ACATS receive or deliver obligation before satisfying other CNS-related obligations for that Member in the same security. However, in the limited situation where a Member is receiving securities being delivered pursuant to a Buy-In Notice it has issued and that Member also has an ACATS receive obligation in that same security on that same day, deliveries of the security to the Member will first satisfy its ACATS receive obligation. Any remaining shares in the security being delivered to the Member will then be applied to satisfy the delivery obligation under the Buy-In Notice. If the number of remaining shares delivered in the security are insufficient to cover the obligation under the Buy-In Notice but do satisfy the delivering Member's CNS short position, then the delivering Member will be deemed to have satisfied its buy-in obligation. Consequently, if the receiving Member elects to execute the buy-in for the security as permitted in the Rules, NSCC as the central counterparty will have a market exposure in that security equal to the amount of shares that were first allocated to satisfy the ACATS delivery obligation.

To address this scenario, NSCC is amending Procedure VII to make clear that for either (a) long positions against which a Buy-In Notice is due to expire that day but for which positions were not satisfied the previous day and (b) long positions against which a buy-in notice is due to expire the following day, deliveries of securities through CNS will be applied first to satisfy the buy-in delivery obligation for the security. Only after the buy-in delivery obligation is satisfied will shares in the security be deemed to satisfy any ACATS delivery obligation. Any additional shares delivered in the security will then be applied to remaining delivery obligations.[8]

NSCC intends to implement enhancement to ACATS as approved in Exchange Act Release 34–62726 [9] and as modified by this proposed rule change on or about October 29, 2010. The date of implementation would be announced by Important Notice.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder applicable to NSCC because the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in its possession or control or for which it is responsible and, in general, protect investors and the public interest by modifying NSCC's Rules so that in certain circumstances shares delivered to a Member through CNS would be allocated to a Member's buy-in delivery obligation in a security before being allocated to satisfy an ACATS delivery obligation in the same security.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(4) [12] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[5] ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[6] CNS is an ongoing accounting system which nets today's settling trades with yesterday's closing positions to produce a net short or long position for a particular security for a particular Member. NSCC is the counter party in all transactions. The positions are then passed against the Member's designated depository positions and available securities are allocated by book-entry movement. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on such things as priority groups, age of position within a priority group, and random numbers within age groups.

[7] Securities Exchange Act Release No. 34–62726 (August 16, 2010), 75 FR 162 (August 23, 2010) (SR–NSCC–2010–05).

[8] The proposed changes to NSCC's Rules can be found in Exhibit 5 to proposed rule change SR–NSCC–2010–12 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-12.pdf.*

[9] *Supra* note 7.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(4).

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

• Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NSCC–2010–12 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2010–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-12.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSCC–2010–12 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27687 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63198; File No. SR–Phlx-2010–151]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option Customer and Professional orders to away markets for execution.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the effectiveness of SR–C2–2010–006.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Customer and Professional orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange proposes to assess a Routing Fee of $.21 per contract in Customer option orders and $.46 per contract in Professional option orders that are routed to C2 Options Exchange, Inc. ("C2"). The Exchange is proposing to caption these proposed fees "C2."

The Exchange is proposing these fees in order to recoup most clearing charges which are incurred by the Exchange when orders are routed to these away markets as well as a transaction charge which is assessed by C2.[5]

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing Customer and Professional orders to each destination market. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] *See* C2 Fees Schedule.

Customer and Professional orders routed from the Phlx XL II system. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the effectiveness of SR–C2–2010–006.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act [7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer and Professional orders to C2 on behalf of its members. The Exchange also believes that the proposed fees to both Customers and Professionals are equitable because it will be uniformly applied to all Customers and Professionals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–Phlx–2010–151 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–151. 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 website (*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 website viewing and printing in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–151 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27689 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63206; File No. SR–BX–2010–073]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the $0.50 Strike Program

October 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 27, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC ("BOX"), specifically BOX's $0.50 Strike Price Program (the "$0.50 Strike Program" or "Program") [3] to: (i) Expand the $0.50 Strike Program for strike prices below $1.00; (ii) extend the $0.50 Strike Program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes to those overlying 20 individual stocks. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, at the Commission's Public Reference Room, and also on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 60814 (October 13, 2009), 74 FR 53535 (October 19, 2009) (SR–BX–2009–63); and 61811 (March 31, 2010), 75 FR 17802 (April 7, 2010) (SR–BX–2010–25) (notice of filing and immediate effectiveness permitting concurrent listing of $3.50 and $4 strikes for classes in the $0.50 Strike and $1 Strike Programs).

Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Chapter IV, Section 6, Supplementary Material .06 of the BOX Rules to expand the $0.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $0.50, beginning at $0.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $0.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by BOX.

Currently, Chapter IV, Section 6, Supplementary Material .06 of the BOX Rules permits strike price intervals of $0.50 or greater beginning at $1.00 where the strike price for the class is $3.50 or less, but only for options classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months. Further, the listing of $0.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by BOX. BOX is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[4]

The number of $0.50 strike options traded on BOX has continued to increase since the inception of the Program. There are now approximately 25 options classes in the $0.50 Strike Program and they are listed, and traded, across all options exchanges including BOX; two of which are classes chosen by BOX for the $0.50 Strike Program. This proposed rule change would expand $0.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, suppose an investor wanted to invest in 5,000 shares of Sirius Satellite ("SIRI") on July 13, 2010. The closing price for SIRI on that day was $ 0.9678. If the investor wanted to buy a call option as an alternative to purchasing the shares outright for about $4,800, the lowest strike price available was the $1 strike, an out-of-the-money option. However, if a $0.50 strike series had been available, the investor would have been able to control 5,000 shares by purchasing 50 exercisable in-the-money $0.50 strike call options. BOX notes that a 3-month SIRI call option with an implied volatility of 50 has a theoretical value of $0.47,[5] or $47 per contract. Thus, by investing in options with a $0.50 strike price, the investor could have benefited from the same upside potential as the stock purchase, but at a cost of only $2,350 (50 contracts at $47 per contract).

Similarly, if an investor wanted to hedge a position in SIRI stock with put options, the lowest available strike price at the time was $1, an in-the-money option. If a $0.50 strike series had been available, the investor could have used 50 out-of-the-money puts for a fraction of the cost of buying 50 put options with a $1 strike price. BOX believes that investors deserve the opportunity to hedge downside risk in stocks trading less than $1.00 in the same manner as investors have with stocks trading greater than $1.00.

Increasing the threshold for the price of the underlying security from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks priced under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24, that investor would be able to choose the $4.50 strike which is 6% out-of-the-money or the $5.00 strike which is 17.92% out-of-the- money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal, if this investor had a choice to hedge the position with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money, as compared to 41%, and would improve her return by gaining more premium, while also benefiting from 29% of upside return in the underlying equity.

By increasing the number of securities underlying options classes in the Program from 5 individual stocks to 20 individual stocks would allow BOX to offer investors additional opportunities to use the $0.50 Strike Program. BOX notes that $0.50 strikes have had no material impact on capacity. Further, BOX has observed the popularity of $0.50 strikes. Expanding the $0.50 Strike Program will allow investors to better enhance returns and manage risk because they are provided significantly greater flexibility in trading options that overlie lower priced stocks. Expanding the Program will also allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk needs.

The Exchange also proposes making a corresponding amendment to Chapter IV, Section 6, Supplementary Material .02(b) of the BOX Rules to add $5 and $6 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $0.50 Strike Program, the following series are excluded from this prohibition: strike prices of $2, $3, and $4. BOX proposes to add $5 and $6 to that list to account for the proposal to expand the $0.50 Strike Program to strike prices of up to $5.50.

Finally, the Exchange proposes to remove the following sentence: Additionally, for an option class selected for the $1 Strike Price Program, BOX may not list $1 Strike Prices on any series having greater than nine (9)

[4] *See* Chapter IV, Section 6, Supplementary Material .02(b) referring to the $1 Strike Program.

[5] Using a Black Scholes pricing model.

months until expiration. This sentence should have been removed when the Exchange expanded the $1 Strike Price Program in a limited fashion to allow BOX to list new series in $1 intervals up to $5 in long-term option series in up to 200 option classes on individual stocks.[6]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that amending the current $0.50 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity, which does not exist today, to minimize losses associated with declining stock prices. With the increase in actively traded, low-priced securities, BOX believes that amending the $0.50 Strike Program to allow a $0.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investors additional opportunity to minimize and manage risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–073. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–073 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27701 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 61041 (November 20, 2009), 74 FR 53535 (November 30, 2009) (SR–BX–2009–73).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[11] *See* Securities Exchange Act Release No. 63132 (October 19, 2010), 75 FR 65541 (October 25, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63199; File No. SR–NASDAQ–2010–139]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the effectiveness of SR–C2–2010–006.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in [brackets].

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

* * * * *

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com Web site.

Exchange	Customer	Firm	MM
BATS	$0.36	$0.55	$0.55
BOX	$0.06	$0.55	$0.55
CBOE	$0.06	$0.55	$0.55
ISE	$0.06	$0.55	$0.55
ISE Select Symbols* of 100 or more contracts	$0.26	$0.55	$0.55
NYSE Arca Penny Pilot	$0.50	$0.55	$0.55
NYSE Arca Non Penny Pilot	$0.06	$0.55	$0.55
NYSE AMEX	$0.06	$0.55	$0.55
PHLX (for all options other than PHLX Select Symbols)	$0.06	$0.55	$0.55
PHLX Select Symbols**	$0.30	$0.55	$0.55
C2	*$0.21*	*$0.55*	*$0.55*

*These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

**These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on away markets ("routing fees").

NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange.

The Exchange proposes to assess new fees for routing contracts to markets other than the NASDAQ Options Market to Rule 7050. The Exchange is proposing to assess a $.21 per contract fee for Customer option orders, a $.55 per contract fee for Firm and Market Maker option orders that are routed to C2 Options Exchange, Inc. ("C2"). The Exchange is proposing to caption these proposed fees "C2."

The Exchange is proposing these fees in order to recoup clearing and transaction charges incurred by the Exchange when orders are routed to C2.[3] Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of Customer, Firm and Market Maker orders. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative upon the effectiveness of SR–C2–2010–006.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* C2 Fees Schedule.

[4] 15 U.S.C. 78f.

general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that this fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing customer orders to C2 on behalf of its members. The Exchange also believes that the proposed fees are equitable because they will be uniformly applied to all customers.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–NASDAQ–2010–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–139. 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 Web site viewing and printing in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–139 and should be submitted on or before November 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27690 Filed 11–2–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

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 January 3, 2011.

ADDRESSES: Send all comments regarding whether this information collection is 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 Audrey L. Farley, SES Candidate, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Audrey L. Farley, Office of Financial Assistance, 202–205–7006, *audrey.farley@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The information collected through these forms from future Intermediary lenders will be used to determine eligibility and to properly evaluate the merits of each application for a direct loan. In addition, the information will be collected for the purpose of providing direct loan funds under the Intermediary Lending Pilot Program (ILPP) to eligible Intermediaries, which in turn will be used to provide loans to start-up, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies or equipment.

Title: "Intermediary Lending Pilot Program (ILPP)."

Description of Respondents: Private, Non-Profit Organizations or Community Development Corporations; and an Agency or Non-Profit entity established by a Native American Tribal Government.

Form Number: N/A.

Annual Responses: 200.

Annual Burden: 3,200.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–27730 Filed 11–2–10; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0071]

Future Systems Technology Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Ninth Panel Meeting.

DATES: December 13, 2010, 10 a.m.–5 p.m.

Location: Omni Shoreham Hotel Washington, DC, Diplomat Room.

ADDRESSES: 2500 Calvert Street, NW., Washington, DC 20008.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: The Panel, under the Federal Advisory Committee Act of 1972, as amended, shall report to and provide the Commissioner of Social Security independent advice and recommendations on the future of systems technology and electronic services at the agency five to ten years into the future. The Panel will recommend a road map to aid SSA in determining what future systems technologies may be developed to assist in carrying out its statutory mission. Advice and recommendations can relate to SSA's systems in the area of Internet application, customer service, exchange of data between SSA, the Centers for Medicare and Medicaid to implement the provisions of Patient Protection and Affordable Care Act; or any other area that would improve SSA's ability to serve the American people.

Agenda: The Panel will meet on Monday, December 13, 2010 from 10 a.m. until 5 p.m. The agenda will be available on the Internet at *http://www.ssa.gov/fstap/index.htm* or available by e-mail or fax on request, one week prior to the starting date.

During the ninth meeting, the Panel may have experts address items of interest and other relevant topics to the Panel. This additional information will further the Panel's deliberations and the effort of the Panel subcommittees.

The Panel will hear Public comments on Monday, December 13, 2010, from 4:30 p.m. until 5 p.m. Individuals interested in providing comments in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify. Individuals providing public comment are limited to a maximum five-minute, verbal presentation. In lieu of public comments provided in person, individuals may provide written comments to the panel for their review and consideration. Comments in written or oral form are for informational purposes only for the Panel. Public comments will not be specifically addressed or receive a written response by the Panel.

For individuals that are hearing impaired and in need of sign language services please contact the Panel staff as outlined below at least 10 business days prior to the meeting so that timely arrangements can be made to provide this service.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

Mail addressed to SSA, Future Systems Technology Advisory Panel, Room 800, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–0001; Telephone at 410–965–9951; Fax at 410–965–0201; or e-mail to *FSTAP@ssa.gov*.

Dianne L. Rose,

Designated Federal Officer, Future Systems Technology Advisory Panel.

[FR Doc. 2010–27685 Filed 11–2–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7224]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Thursday, November 18, 2010, at the U.S. Department of State, 2201 C Street NW., Room 1105, Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on India's infrastructure—opportunities and challenges for U.S. business. A discussion of sectoral issues will focus on women and economic security. Subcommittee reports and discussions will be led by the Economic Sanctions Subcommittee and the Investment Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Monday, November 15, their name, professional affiliation, valid government-issued ID number (*i.e.,* U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*Boothsl@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U. S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Thursday, November 10th. Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Deputy Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–2231 or *EnochT@state.gov.*

Dated: October 28, 2010.

Maryruth Coleman,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2010–27790 Filed 11–2–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Labor and World-class Workforce, which will be held at 501 3rd Street NW., Washington, DC, 20001. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to effectively manage the evolving transportation needs, challenges, and opportunities of the global economy. The subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socio-economic dynamics of the world's technologically advanced economies. Among other matters, the subcommittee will examine certain issues affecting the future employment requirements of the aviation industry in order to finalize the proposals for the final meeting of the FAAC on December 15, 2010: (1) The need for science, technology, engineering, and math skills in the industry; (2) the creation of a culture of dignity and respect in the workplace by incorporating core workers' human rights conventions into international aviation agreements; (3) the creation of a biannual Aviation Industry Workforce-Management Summit endorsed and implemented by the Secretary of Transportation; and (4) the need to improve labor management relations within the aviation industry by increasing resources available to the National Mediation Board to help improve the collective bargaining process in the airline industry.

DATES: The meeting will be held on November 15, 2010, from 10 a.m. to 2:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Communications Workers of America Building, 501 3rd Street, NW., Washington, DC 20001. Persons desiring to attend but unable to do so may listen in via teleconference. Call-in information will be provided upon registration. (*See* below for registration instructions.)

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-Class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. In order to ensure such comments can be considered by the subcommittee before its November 15, 2010, meeting, public comments must be filed by 5 p.m. Eastern Standard Time on Monday, November 8, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the FAAC Subcommittee on Labor and World-class Workforce taking place on November 15, 2010, from 10 a.m. to 2:30 p.m. Eastern Standard Time, at the Communications Workers of America Building, 501 3rd Street, NW., Washington, DC, 20001 and via teleconference. A call-in number and pass code will be issued upon registration. Background information may be found at the FAAC Web site, located at *http://www.dot.gov/faac/.* The agenda includes—

1. Ratification of minutes from previous meeting.

2. Finalization of the subcommittee's recommendations for presentation at the final meeting of the FAAC on December 15, 2010.

Registration

The meeting room can accommodate up to 50 members of the public. Persons desiring to listen to the discussion must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and access will be limited to the first 50 persons to pre-register and receive a confirmation of their pre-registration.

The telephone conference can accommodate up to 25 members of the public. Persons desiring to listen to the discussion must preregister through e-mail to *FAAC@dot.gov.* The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and access will be limited to the first 25 persons to preregister and receive a confirmation of their preregistration.

No arrangements are being made for video transmission or for oral statements or questions from the public during the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at *http://www.dot.gov/faac/.*

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on Monday, November 8, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Acting Executive Director for Strategic Performance and Organizational Success, Office of the Assistant Administrator for Human Resources, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–3456, extension 7472; or Regis P. Milan, Office of Aviation Analysis, U.S. Department of Transportation; Room W86–309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–2349.

Issued in Washington, DC, on October 29, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–27726 Filed 11–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Aviation Safety; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation, Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Aviation Safety, which will be held at the offices

of the General Aviation Manufacturers Association, in Washington, DC. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Aviation Safety will address and make recommendations to the Secretary for action. This is the fifth meeting of the subcommittee.

DATES: The meeting will be held on November 17, 2010, from 8:30 a.m. to 11:30 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the offices of the General Aviation Manufacturers Association, 8th Floor, 1400 K Street, Washington, DC 20533.

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Subcommittee on Aviation Safety should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Aviation Safety, the term "Safety" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its November 17, 2010, meeting, public comments must be filed by 5 p.m. Eastern Standard Time on November 12, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Subcommittee on Aviation Safety meeting taking place on November 17, 2010, from 8:30 a.m. to 11:30 a.m. Eastern Standard Time, at the offices of the General Aviation Manufacturers Association, 8th Floor, 1400 K Street, Washington, DC 20533. The agenda includes—

1. Ratification of minutes from previous meeting.

2. Finalization of the subcommittee's recommendations for presentation at the final meeting of the FAAC on December 15, 2010.

Registration

The meeting room can accommodate up to 20 members of the public. Persons desiring to attend in person must pre-register by November 12, 2010, through e-mail to *FAAC@dot.gov.* The term "Registration: Safety" should be listed in the subject line of the message, and admission will be limited to the first 20 persons to pre-register and receive a confirmation of their pre-registration. Minutes of the meeting will be taken and will be made available to the public.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on November 12, 2010.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Director, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC; 202–267–9612. *Tony.Fazio@FAA.gov.*

Issued in Washington, DC, on October 29, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–27731 Filed 11–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Nueces County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent (NOI) to prepare an EIS.

SUMMARY: FHWA is issuing this notice to advise the public that the NOI to prepare an environmental impact statement (EIS) for proposed improvements to United States Highway 181/State Highway 286 (Crosstown Expressway), in Nueces County, Texas, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Gregory S. Punske, P.E. District Engineer, Federal Highway Administration, Texas Division, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 536–5960.

SUPPLEMENTARY INFORMATION: On April 6, 2007, TxDOT and FHWA announced their revised Notice of Intent to prepare an EIS pursuant to 40 CFR 1508.22 and 43 TAC Sec. 2.5 (e) (2) for a proposal to replace the existing US 181 Harbor Bridge and construct improvements to SH 286, in Nueces County, Texas. The project limits were defined as the limits of the schematic design. The project limits were as follows: The northern limit was the US 181 and Beach Avenue interchange located north of the Corpus Christi Ship Channel but south of the Nueces Bay Causeway; the southern limit was the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit was the Interstate Highway (IH) 37/US 181 intersection with Shoreline Boulevard; and the western limit was the IH 37 and Nueces Bay Boulevard interchange. The project limits totaled approximately 7.5 miles in length from north to south along US 181 and SH 286, and 2.1 miles in length from east to west along IH 37. The study limits were defined as the limits of potential impacts from the proposed action. The study limits were as follows: the northern limit was the US 181 and SH 35 interchange just south of Gregory; the southern limit was the SH 286 and SH 358 (South Padre Island Drive) interchange; the eastern limit was Shoreline Boulevard; and the western limit was the IH 37 and SH 358 (North Padre Island Drive) interchange. The EIS was in the preliminary stages of development. Scoping meetings were held for representatives from various cooperating agencies and for the public. The scoping meeting for the representatives from various cooperating agencies was held May 17, 2007, at the TxDOT Corpus Christi District Office in Corpus Christi, Texas. The scoping meeting for the public was held May 17, 2007, at the Oveal Williams Senior Activity Center in Corpus Christi, Texas.

FHWA and TxDOT have decided to rescind the revised Notice of Intent because of changes in the scope (managed toll lanes) and limits. We intend to publish a new NOI in the future, which will describe the new project scope and limits. The review of the project under the new NOI will also comply with the requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) Section 6002 environmental review process. All 6002 procedures for the proposed project will be followed in the future as the project proceeds with a new scope and limits. Comments or questions concerning the rescission of this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 27, 2010.

Gregory S. Punske,

District Engineer, Austin, Texas.

[FR Doc. 2010–27719 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0307]

Pipeline Safety: Emergency Preparedness Communications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing an Advisory Bulletin to remind operators of gas and hazardous liquid pipeline facilities that they must make their pipeline emergency response plans available to local emergency response officials. PHMSA recommends that operators provide their emergency response plans to officials through their required liaison and public awareness activities. PHMSA intends to evaluate the extent to which operators have provided their emergency plans to local emergency officials when PHMSA performs future inspections for compliance with liaison and public awareness code requirements.

FOR FURTHER INFORMATION CONTACT: John Hess by phone at 202–366–4595 or by e-mail at *john.hess@dot.gov.* Information about PHMSA may be found at *http://phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal regulations for both gas and hazardous liquid pipelines require operators to have written procedures for responding to emergencies involving their pipeline facility. Because pipelines are often located in public space, the regulations further require that operators include procedures for planning with emergency and other public officials to ensure a coordinated response. Under 49 CFR 192.605, 192.615, and 195.402, operators must include in their emergency plans provisions for coordinating with appropriate fire, police, and other public officials both preplanned drills and actual responses to pipeline emergencies. Operators must also establish and maintain liaison with the emergency officials to, among other things, acquaint the officials and the operator with their respective responsibilities and resources in planning for and responding to emergencies.

Under §§ 192.616 and 195.440, operators must also develop and implement a written continuing public education program that follows the American Petroleum Institute's (API) Recommended Practice (RP) 1162. Incorporated by reference, API RP 1162 further requires operators to develop their emergency response plans with appropriate emergency officials to include in such plans information about how emergency officials can access the operator's emergency response plan, and to conduct emergency response drills.

Advisory Bulletin (ADB–10–08)

To: Owners and Operators of Hazardous Liquid and Gas Pipeline Systems.

Subject: Emergency Preparedness Communications.

Advisory: To further enhance the Department's safety efforts, PHMSA is issuing this Advisory Bulletin about emergency preparedness communications between pipeline operators and emergency responders.

To ensure a prompt, effective, and coordinated response to any type of emergency involving a pipeline facility, pipeline operators are required to maintain an informed relationship with emergency responders in their jurisdiction.

PHMSA reminds pipeline operators of these requirements, and in particular, the need to share the operator's emergency response plans with emergency responders. PHMSA recommends that operators provide such information to responders through the operator's liaison and public awareness activities, including during joint emergency response drills. PHMSA intends to evaluate the extent to which operators have provided local emergency responders with their emergency plans when PHMSA performs future inspections for compliance with relevant requirements.

Issued in Washington, DC, on October 28, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–27774 Filed 11–2–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

Authority: 31 CFR 357.45.

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is announcing a new fee schedule applicable to transfers of U.S. Treasury book-entry securities maintained on the National Book-Entry System (NBES) that occur on or after January 3, 2011.

DATES: *Effective Date:* January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Kevin Hawkins or Kristina Yeh, Bureau of the Public Debt, Department of the Treasury at (202) 504–3550.

SUPPLEMENTARY INFORMATION: Treasury has established a fee structure for the transfer of Treasury book-entry securities maintained on NBES. Treasury reassesses this fee structure periodically, based on our review of the latest book-entry costs and volumes.

For each Treasury securities transfer or reversal sent or received on or after January 3, 2011, the basic fee will increase from $0.31 to $0.38. The Federal Reserve will also increase its fee for Federal Reserve funds movement from $0.06 to $0.07. This will result in a combined fee of $0.45 for each transfer of Treasury book-entry securities. The surcharge for an off-line Treasury book-entry securities transfer will remain $33.00. The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of securities transfers. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning fees for book-entry transfers of Government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will take effect on January

3, 2011, for book-entry transfers on NBES:

TREASURY–NBES FEE SCHEDULE [1]—EFFECTIVE JANUARY 3, 2011

[In dollars]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	0.38	N/A	0.07	0.45
On-line transfer received	0.38	N/A	0.07	0.45
On-line reversal transfer originated	0.38	N/A	0.07	0.45
On-line reversal transfer received	0.38	N/A	0.07	0.45
Off-line transfer originated	0.38	33.00	0.07	33.45
Off-line transfer received	0.38	33.00	0.07	33.45
Off-line account switch received	0.38	0.00	0.07	0.45
Off-line reversal transfer originated	0.38	33.00	0.07	33.45
Off-line reversal transfer received	0.38	33.00	0.07	33.45

[1] Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–27699 Filed 11–2–10; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,
November 3, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011–2012 Biennial Specifications and Management Measures; Amendment 16–5; and Amendment 23; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–0489–01]

RIN 0648–BA01

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011–2012 Biennial Specifications and Management Measures; Amendment 16–5; and Amendment 23

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action would establish the 2011–2012 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This action revises the collection of management measures in the groundfish fishery regulations that are intended to keep the total catch of each groundfish species or species complex within the harvest specifications. This action also includes regulations to implement Amendments 16–5 and 23 to the PCGFMP. Amendment 16–5 would revise existing rebuilding plans, create a new rebuilding plan for Petrale sole, which was declared overfished on February 9, 2010, and revise status determination criteria and a harvest control rule for flatfish. This action is consistent with and partially implements Amendment 23 to the PCGFMP. Amendment 23 would make the PCGFMP consistent with the revised National Standard 1 Guidelines (74 FR 3178, January 16, 2009).

DATES: Comments must be received no later than 5 p.m., local time on December 3, 2010.

ADDRESSES: You may submit comments, identified by the RIN number 0648–BA01, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Becky Renko.
- *Mail:* William Stelle, Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, Attn: Becky Renko.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

National Marine Fisheries Service (NMFS) will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Information relevant to this proposed rule, which includes a draft environmental impact statement (DEIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206–526–6110, fax: 206–526–6736, or e-mail: *becky.renko@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the **Federal Register** Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm* and at the Council's Web site at *http://www.pcouncil.org.*

Background

The Pacific Coast Groundfish fishery is managed under the PCGFMP. The PCGFMP was prepared by the Council, approved on July 30, 1984, and was implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 660, subparts C through G, implement the provisions of the PCGFMP.

The amount of each Pacific Coast groundfish species or species complex that is available for harvest in a specific year is referred to as a harvest specification. The PCGFMP requires the harvest specifications and management measures for groundfish to be set at least biennially. This proposed rule, which proposes the Council's preferred alternative, would set 2011–2012 harvest specifications and management measures for the 90-plus groundfish species or species complexes managed under the PCGFMP. The groundfish fishery regulations include a collection of management measures intended to keep the total catch of each groundfish species or species complex within the harvest specifications. The management measures would be revised by this action.

The following groundfish species have been declared as overfished and are currently being managed under rebuilding plans: Bocaccio south of 40°10′ north latitude; canary rockfish; cowcod south of 40°10′ north latitude; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish. This action also updates the existing overfished species rebuilding plans.

Petrale sole was declared overfished on February 9, 2010. The proposed action adds a new rebuilding plan for petrale sole under Amendment 16–5 to the PCGFMP. In addition, also under Amendment 16–5, the proposed action modifies status determination criteria in the PCGFMP for flatfish and adds to the PCGFMP a new precautionary harvest control rule for flatfish.

On January 16, 2009, NMFS adopted revisions to its guidelines implementing Magnuson-Stevens Act National Standard 1 (74 FR 3178) to prevent and end overfishing and rebuild fisheries. The proposed action would implement a new fishery specification framework under Amendment 23 to the PCGFMP including: Overfishing limits (OFLs), an acceptable biological catch (ABC) that incorporates a scientific uncertainty buffer in specifications, annual catch limits (ACLs), and annual catch targets (ACTs). These new specifications are designed to better account for scientific and management uncertainty and to prevent overfishing. Amendment 23 also removes dusky and dwarf-red rockfish from the list of species in the groundfish fisheries.

On April 29, 2010, the District Court for the Northern District of California ruled that the 2009–2010 harvest specifications for three overfished species (cowcod, darkblotched, and yelloweye) violated the MSA and ordered that NMFS apply its 2008 harvest levels for these species in 2010. (*Natural Resources Defense Council* v.

Locke (N.D. Cal., 2010) here after refered to as *NRDC* v. *Locke.*) On July 8, 2010, NMFS revised the harvest specifications for yelloweye rockfish, cowcod and darkbloched rockfish to be consistent with the court order (75 FR 38030). The court further ordered NMFS to publish new specifications within one year of its ruling.

This proposed rule is based on the Council's final decisions on the 2011 and 2012 biennial specifications and management measures, and on Amendment 23 and Amendment 16–5 at its June 2010 meeting. The supporting rationale described in this proposed rule is based on the DEIS prepared by the Council and other documents developed as part of the Council's decision process. NMFS has not made its final determination regarding its approval of the two amendments or whether the proposed specifications are consistent with the PCGFMP, the Magnuson-Stevens Act, and other applicable law, including the April 29, 2010 Court Order on Remedy in *NRDC* v. *Locke.*

Specification and Management Measure Development Process

The process for setting the 2011 and 2012 biennial harvest specifications began in 2009 with the preparation of stock assessments. A stock assessment is the scientific and statistical process where the status of a fish population or subpopulation (stock) is assessed in terms of population size, reproductive status, fishing mortality, and sustainability. In the terms of the PCGFMP, stock assessments generally provide: (1) An estimate of the current biomass (reproductive potential); (2) an F_{MSY} or proxy (a default harvest rate for the fishing mortality rate that is expected to achieve the maximum sustainable yield), translated into exploitation rate; (3) an estimate of the biomass that produces the maximum sustainable yield (B_{MSY}); and, (4) a precision estimate (*e.g.,* confidence interval) for current biomass estimate. Each stock assessment is prepared by a stock assessment scientist then reviewed by the Council's stock assessment review panel (STAR—The STAR panel is a key part of a process designed to review the technical merits of stock assessments and is responsible for determining if a stock assessment document is sufficiently complete) and the Council's Scientific and Statistical Committee (SSC).

In each biennial period, the Council and NMFS consider a number of full stock assessments, where each stock assessment model is critically examined and possibly updated. They also use stock assessment updates to update an existing assessment by incorporating the most recent data. A stock assessment update must carry forward the fundamental structure from the model that was previously reviewed and endorsed by a STAR panel. Stock assessment updates are prepared for stocks that have been determined to have a stable model approach to data analysis and modeling.

For overfished stocks a rebuilding analysis is also prepared. The rebuilding analysis is used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to B_{MSY} (or its proxy) within a specified time-frame. Minimum requirements for rebuilding analyses for routine situations have been established by the SSC and are applied with computer package developed by Dr André Punt (University of Washington). The SSC encourages analysts to explore alternative calculations and projections that may more accurately capture uncertainties in stock rebuilding and which may better represent stock-specific concerns. In the event of a discrepancy between the calculations resulting from Dr André Punt's program, the SSC groundfish subcommittee will review the issue and recommend which results to use. The SSC also encourages explicit consideration of uncertainty in projections of stock rebuilding, including comparisons of alternative states of nature using decision tables to quantify the impact of model uncertainty. The rebuilding analyses include: An estimation of B_0 (the unfished biomass and hence B_{MSY} or its proxy); the selection of a method to generate future recruitment; the specification of the mean generation time; a calculation of the minimum possible rebuilding time (T_{MIN}); and, the identification and analysis of alternative harvest strategies and rebuilding times.

At the Council's June, September and November 2009 meetings, new stock assessments, stock assessment updates and rebuilding analyses were made available to the Council as was an SSC report on whether the SSC considered the documents to be the "best available science" suitable for use in setting biennial harvest specifications. The Council considered the information brought forward from its advisory bodies and public comment before approving the new stock assessments, stock assessment updates and rebuilding analyses for setting the 2011 and 2012 biennial harvest specifications.

The biennial harvest specifications and management measures are developed over the course of three Council meetings. At its November 2009 meeting the Council recommended an initial range of harvest specifications and management measures based on the new stock assessments, new rebuilding analyses, recommendations of its advisory bodies, and public comment. Using the Council's initial harvest specifications and management measure recommendations, the Council's advisory bodies developed initial alternatives for a draft Environmental Impact Statement (EIS).

A holistic or integrated approach was taken in the development of alternatives in the Draft EIS for this action. The newly adopted rebuilding analyses were used to develop a range of alternatives driven by the annual catch limits (ACLs) for overfished species. The interrelated nature of the Pacific Coast groundfish stocks makes the consideration of holistic alternatives necessary. The degree of interaction between overfished species and other stocks is such that "rebuilding as quickly as possible while taking into account the needs of fishing communities" is not possible based solely on a species-by species approach.

At its April 2010, meeting, the Council made recommendations on overfishing limits (OFLs) for all groundfish stocks and stock complexes. At this same meeting, the Council made recommendations on preferred 2011 and 2012 acceptable biological catches (ABCs) that incorporate scientific uncertainty buffers for all groundfish stocks and stock complexes, and preferred 2011 and 2012 ACLs for all non-overfished groundfish stocks and stock complexes. A preliminary analysis of the holistic alternatives relative to the biological and socio-economic environment and consistent with the requirements of NEPA was further developed and made available to the public, the Council, and the Council's advisory bodies prior to the June 2010 meeting. Additional information that further refined the analysis was provided at the Council's June meeting. At its June 2010 meeting, the Council considered the holistic alternatives, the analysis, reports provides by its advisory bodies and public comment before making final recommendations on the groundfish harvest specifications, rebuilding plan revisions for overfished groundfish species, and groundfish fishery management measures.

The alternative actions considered by the Council were consistent with the harvest specification framework proposed under Amendment 23 to the PCGFMP, which contemplates setting an OFL, an ABC that incorporates a scientific uncertainty buffer, and an ACL for each groundfish stock and stock

complex. A final decision regarding approval of Amendment 23 is expected by January 1, 2011. The alternative actions considered by the Council were also consistent with Amendments 20 and 21 to the PCGFMP which were approved August 9, 2010 and which are expected to be fully implemented by January 1, 2011. The components of these PCGFMP amendments and the relationship of each to the biennial harvest specifications are further discussed below.

Decision Process

To best inform the decision process, an analysis was prepared that contrasted the Council's preliminary preferred alternative against the other alternatives relative to the Council's stated goals and objectives for rebuilding. The Council's goals and objectives for rebuilding plans are identified in section 4.5.3.1 of the PCGFMP: "The overall goals of rebuilding programs are to (1) achieve the population size and structure that will support the maximum sustainable yield within a specified time period that is as short as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock of fish within the marine ecosystem; (2) minimize, to the extent practicable, the adverse social and economic impacts associated with rebuilding, including adverse impacts on fishing communities; (3) fairly and equitably distribute both the conservation burdens (overfishing restrictions) and recovery benefits among commercial, recreational, and charter fishing sectors; (4) protect the quantity and quality of habitat necessary to support the stock at healthy levels in the future; and (5) promote widespread public awareness, understanding and support for the rebuilding program." These overall goals are derived from and consistent with the requirements of the Magnuson-Stevens Act. The first goal mirrors Magnuson-Stevens Act National Standard 1 and the requirements for rebuilding overfished stocks found at Magnuson-Stevens Act section 304(e)(4)(A). The second goal, to minimize adverse impacts to fishing communities is required by Magnuson-Stevens Act National Standard 8. The third goal is required by Magnuson-Stevens Act section 304(e)(4)(B). The fourth and fifth goals represent additional policy preferences of the Council that recognize the importance of habitat protection to the rebuilding of some fish stocks and the desire for public outreach and education on the complexities—biological, economic, and social issue—involved with rebuilding overfished stocks.

Each rebuilding analysis is based on parameters from the stock assessment and projects the future status of the stock based on the rebuilding alternatives being considered by the Council using Monte Carlo simulation techniques. There is considerable scientific uncertainty involved with these projections, which the rebuilding analysis expresses as the probability of the stock being rebuilt in any given year. The rebuilding analysis estimates the shortest time to rebuild, referred to as $T_{MIN.}$ T_{MIN} is the time it takes to rebuild the stock, with a 50 percent probability, if all fishing caused mortality is ceased. The Council's policy for rebuilding is established with a T_{TARGET}. T_{TARGET} is the year in which the Council expects the stock to rebuild with at least a 50 percent probability under the chosen rebuilding strategy. A particular T_{TARGET} is determined by the productivity of the stock, its current status (a.k.a, "status and biology"), and the allowable harvest associated with a particular rebuilding strategy. The target abundance for rebuilding is the biomass level that produces maximum sustainable yield (B_{MSY}).

Section 304(e)(4) of the Magnuson-Stevens Act provides: That any fishery management plan, plan amendment, or proposed regulations for rebuilding an overfished fishery shall—"(A) specify a time period for rebuilding the fishery that shall—(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and (ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictates otherwise".

Because so many of the groundfish stocks are intermixed in different proportions, making adjustments to protect one stock may increase the impacts on other stocks. The Council's integrated rebuilding strategy, when taking into account the biology of the stocks and the needs of the fishing communities, centers on pushing fishing effort off of the more sensitive rebuilding species and on to the less sensitive rebuilding species (*i.e.,* off of species with longer rebuilding times and onto species able to rebuild more quickly). This concept was adopted in Amendment 16–4 to the PCGFMP as the best way of taking into account the biology of the stocks and the needs of fishing communities in a holistic fashion that simultaneously considers all rebuilding species and groundfish sectors.

Section 4.5.3.2 of the PCGFMP provides the following general guidance on the needs of the fishing communities: "Fishing communities need a sustainable fishery that: Is safe, well-managed, and profitable; provides jobs and incomes; contributes to the local social fabric, culture, and image of the community; and helps market the community and its services and products."

The rockfish rebuilding plans are challenging as overfished rockfish indirectly affect fishing opportunities by constraining the harvest of target stocks; they affect multiple commercial and recreational fishery sectors; it is difficult to lessen fishing impacts on one rockfish species without affecting another; some rockfish populations are so slow growing that even small increases in the long-term harvest rate can delay rebuilding for a number of years. The Council has approached this challenging situation using a comprehensive approach to analyzing rebuilding alternatives and impacts to fishing communities.

Because the rebuilding results in revenue losses in the short-term and often in the medium-term, the communities that bear the greatest short-term and medium-term revenue impact are those most dependent on groundfish and the least resilient. To avoid disastrous short-term consequences for fishing communities, harvest levels above the T_{MIN} level were considered. The harvest specifications and management measures in the Council's preliminary preferred and final preferred alternatives considered were generally similar to those in place at the start of 2010, with some increased opportunity to the California recreational and nearshore fixed gear fisheries south of 40°10' north latitude. The remaining alternatives recommended for analysis by the Council were more restrictive, to provide a meaningful analysis of the shortest time possible to rebuild overfished stocks.

In its recommendations for overfished species rebuilding plans and groundfish harvest specifications and management measures for 2011 and 2012, the Council was clear that it did not expect fishing community needs (described in Section 4.5.3.2 of the PCGFMP) could be met by the rebuilding plans and management measures being recommended. While the Council could not meet the needs of fishing

communities, the Council took them into account as directed by the Magnuson-Stevens Act and recommended harvest specifications and management measures that could allow fishing businesses and communities to operate at a level that could provide for the continued existence of fishing businesses and communities. Opportunities for economic growth or profit would only be allowed if they were consistent with the adopted rebuilding policies. The Council expressed particular interest in seeing the success of new trawl fishery management measures (trawl rationalization) and the expected long-term benefits. The supporting draft EIS for this action assesses, through the analysis of integrated rebuilding alternatives, the needs of groundfish fishing communities, the dependence of fishing communities on overfished species, and the vulnerability of fishing communities to further near-term reductions in groundfish harvest.

The Council and fisheries science are just beginning to consider approaches for transitioning to ecosystem based fisheries management. Models for assessing impacts on the marine environment are being developed. Given that this area of marine science is in development, the respective impact of the rebuilding alternatives on ecosystem structure and function cannot be described by science at this time.

At the start of each biennial management cycle, NMFS and the Council establish fishery management measures that are expected to allow as much harvest of the healthy species ACLs as possible without exceeding allowable harvest levels for co-occurring overfished species. At the start of the biennial period, the management measures are based on the best scientific information available at the time. However, as catch data and new scientific information become available during the fishing year, NMFS and the Council's knowledge may change. Catch data vary in quality and abundance both before and during the season, and catch of the most constraining overfished species may also occur in fisheries not managed under the PCGFMP.

Managing a coastwide fishery to ensure that ACLs of overfished species are not exceeded is particularly difficult because of the low ACLs. If new information received during the season reveals that total catch is occurring at a faster pace than initially anticipated, management action would be needed to keep the harvest of healthy stocks and the incidental catch of overfished species at or below their specified ACLs. If these inseason adjustments to management measures are dramatic, such as an early closure of a fishery, then the effects of management actions on the fishing communities can be severe. To prevent major inseason changes in management measures, the 2011–2012 overfished species ACLs account for management uncertainty in order to minimize the potential need for dramatic inseason measures. In other words, currently available scientific information is used to design management measures that are projected to result in overfished species harvest levels that are somewhat lower than their ACLs. In addition, for some overfished species (yelloweye rockfish and POP) annual catch targets (ACTs) have been proposed. ACTs provide an additional buffer to account for uncertainty and unexpected occurrences within the fishery. This additional measure helps prevent ACLs from being exceeded. Even with these safeguards, information that becomes available during the fishing year from activities within the fishery and from activities outside the fishery (*i.e.* research fishing mortality) may reveal that previously set management measures need to be revised inseason. If that is the case, management measures will be appropriately adjusted inseason.

District Court Ruling in *NRDC* v. *Locke*

NRDC challenged the 2009–2010 groundfish harvest specifications (74 FR 9,874, March 6, 2009), asserting that the harvest specifications for seven overfished species of Pacific groundfish: darkblotched rockfish, cowcod, yelloweye rockfish, canary rockfish, bocaccio, Pacific Ocean Perch, and widow rockfish violated the Magnuson-Stevens Act, 16 U.S.C. 1801–1891, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C.A. 4321 *et seq.* The 2009–2010 harvest specifications revised the Amendment 16–4 rebuilding periods for four of the seven overfished species in accordance with the PCGFMP's rebuilding framework. The Court upheld the integrated approach, but determined that the 2009–2010 harvest specifications for darkblotched rockfish, cowcod, and yelloweye rockfish violated the Magnuson-Stevens Act by failing to rebuild the species in as short a time as possible and ordered the agency to develop, within one year of the Order, revised rebuilding plans for those species that are consistent with the MSA.

With respect to yelloweye rockfish, the court vacated the OY of 17 metric tons (mt) for 2009–2010 and established an OY of 14 mt for 2010, consistent with the "ramp down" strategy that the agency adopted in the 2007–2008 specifications. The court likewise vacated the 2009–2010 cowcod OY of 4 mt and the darkblotched rockfish OYs of 285 mt and 291 mt for 2009 and 2010 stating that they do not rebuild in time periods that are as short as possible. For these two species, the court established OY levels consistent with the most recent levels in 2007–2008.

On July 8, 2010, NMFS revised the harvest specifications for yelloweye rockfish, cowcod and darkblotched rockfish to be consistent with the court order (75 FR 38030) and projected impacts to darkblotched rockfish in 2010 are being actively managed to prevent exceeding 290 mt.

The court also agreed with NRDC's argument that NMFS' decisions regarding the rebuilding plans were arbitrary and capricious because the agency relied on economic data from 1998, before any of the species at issue in the case were declared overfished, and did not use 2002 data that was available to it. The court ruled that the 1998 data was not the best available scientific information, and distorted current revenue losses by comparing them to revenues resulting from fishing losses before fishing was constrained to rebuild overfished species. The use of the 1998 data, the court opined, "weight[ed] the Agency's analysis in favor of short-term economic interests and against conservation, in violation of the MSA." NMFS used a different approach in this biennial cycle.

PCGFMP Amendment 23

On January 16, 2009, NMFS published a final rule in the **Federal Register** to implement new requirements in the Magnuson-Stevens Reauthorization Act by amending the National Standard Guidelines (50 CFR 600.310) for National Standard 1. National Standard guidelines aid in the development and review of fishery management plans (plans), plan amendments, and regulations prepared by the regional Fishery Management Councils and the Secretary of Commerce. National Standard 1 establishes the relationship between conservation and management measures, preventing overfishing, and achieving OY from each stock, stock complex or fishery. The National Standard 1 guidelines also address the classification of stocks within a fishery management plan, and the new requirement in the MSRA that fishery management plans include annual catch limits (ACLs) to prevent overfishing. Amendment 23 to the PCGFMP is intended to modify the harvest specification framework in the PCGFMP

to be consistent with the revised National Standard 1 guidelines. An approval decision on Amendment 23 is expected prior to January 1, 2011. Therefore, the harvest specifications being considered for 2011 and 2012 are consistent with the provisions of Amendment 23.

To better account for scientific and management uncertainty and to prevent overfishing, the revised National Standard 1 guidelines introduced new fishery management concepts including: OFL, ACL, ACT, and accountability measures (AMs), and defined the term ABC. The concept of OY remains in the PCGFMP as revisions to National Standard 1 did not alter the definition of OY.

Under the Amendment 23 framework the OFL is an estimate of the maximum amount of annual catch of a stock or stock complex from all sources (includes landed and discarded catch) that does not result in overfishing. Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the stock's capacity to produce MSY (an estimate of the largest long-term average annual catch or yield that can be taken from each stock under prevailing ecological and environmental conditions) on a continuing basis. This level is also referred to as the maximum fishing mortality threshold (MFMT) in the PCGFMP. The OFL is comparable to the ABC specification used in the Pacific Coast groundfish fishery from 1999 through 2010.

The term ABC is redefined under proposed Amendment 23 as an annual catch specification that is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. Proposed Amendment 23 revises the descriptions of species categories used in the development of the ABC. The first category (category 1) includes those species where relatively data-rich quantitative stock assessment can be conducted on the basis of catch-at-age, catch-at-length or other data. OFLs and overfished/rebuilding thresholds can generally be calculated for these species. The second category (category 2) includes species for which some biological indicators are available, including a relatively data-poor quantitative assessment or non-quantitative assessments. The third category (category 3) includes minor species which are caught and where the only available information is on the landed biomass.

For species that have had relatively data-rich quantitative stock assessments prepared (category 1 stocks), the Council chose to determine ABC based on the SSC-recommended framework for estimating the relative risk of overfishing the stock (referred to as the P* approach). The SSC quantified the scientific uncertainty in the estimate of OFL (σ) and presented a range of probabilities of overfishing (P*). Each P* value links to a corresponding fraction that is used to reduce the OFL and to derive an ABC. As the P* value is reduced, the probability of the ABC being greater than the "true" OFL becomes lower. The Council then determines its preferred level of risk aversion by selecting an appropriate P* value. Amendment 23 provides that the P*-Sigma approach for quantifying scientific uncertainty will be the default approach for category 1 species unless an SSC-recommended method is adopted by the Council during the biennial specification process.

For stocks with data-poor stock assessments or no stock assessments (category 2 and 3 stocks), proposed Amendment 23 recognizes that there is greater scientific uncertainty in the estimate of OFL. Therefore, the scientific uncertainty buffer is generally greater than that recommended for stocks with quantitative stock assessments. It may be determined using straight percentage reductions (25% for category 2 or 50% for category 3) or using the P* approach with larger sigma values. The Council adopted an upper limit on P* for all three categories of 0.45. For category 2 and 3 species, Amendment 23 provides that either the P*-Sigma approach or the straight percentage reduction from OFL will be used unless the Council adopts an SSC-recommended approach during the biennial specification process.

The ACL is a harvest specification set equal to or below the ABC threshold which considers conservation objectives, socio-economic concerns, management uncertainty and other factors. All sources of fishing-related mortality including landings, discard mortality, and catches in exempted fishing permit activities are counted against the ACL. In addition, research fishing catches are counted against the ACL. Sector-specific ACLs may be specified, particularly in cases where a sector has a formal, long-term allocation of the harvestable surplus of a stock or stock complex. The new ACL values are comparable to the OY specification used in the Pacific Coast groundfish fishery from 1999 through 2010.

The ACTs are management targets set below the ACL to address management uncertainty. The term "catch" includes fish that are retained for any purpose, as well as mortality of fish that are discarded. Therefore, for fisheries where estimates are not available in a timely enough manner to manage retained and discarded catch (bycatch) inseason, targets may be specified. In addition, a sector-specific ACT may serve as a harvest guideline for a sector or used strategically in a rebuilding plan to attempt to reduce mortality of an overfished stock more than the rebuilding plan limits prescribe. These targets account for landings and bycatch estimates such that the total of landings and bycatch will not exceed the stock or stock complex's ACL. Since the annual catch target is a target and not a limit it can be used in lieu of harvest guidelines or strategically to accomplish other management objectives. Sector-specific annual catch targets can also be specified to accomplish management objectives.

The AMs are management controls that prevent ACLs or sector-ACLs from being exceeded, where possible, and correct or mitigate overages if they occur. If a stock or stock complex's catch exceeds its ACL, AMs will be invoked as specified in the PCGFMP. If ACLs are exceeded more often than 1 in 4 years, then AMs, such as catch monitoring and inseason adjustments to fisheries, need to improve or additional AMs may need to be implemented. The development of harvest specifications for 2011–2012 is discussed later in the preamble to this proposed rule, while the harvest specifications are provided in Tables 1a through 2d.

Amendment 23 adds an additional species category identified as ecosystem component (EC) species. These species are not "in the fishery" and therefore not actively managed. EC species are not targeted in any fishery and are not generally retained for sale or personal use. EC species are not determined to be subject to overfishing, approaching an overfished condition, or overfished, nor are they likely to become subject to overfishing or overfished in the absence of conservation and management measures. Amendment 23 does not propose that any species currently in the PCGFMP be designated as an EC species. Amendment 23 removes dusky rockfish and red-dwarf rockfish from the PCGFMP as there are no recorded landings of these species in the groundfish fishery.

PCGFMP Amendments 20 and 21

Amendment 20 established a program to "rationalize" the groundfish limited entry trawl fishery. Rationalization of a fishery is designed to create a sustainable level of fishing from both the resources conservation and economic perspective through the use of harvest shares and cooperatives. The

program being implemented under Amendment 20 to the PCGFMP uses quota shares, or catch allocation, to allow individuals to harvest specific amounts of groundfish. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch (retained and discarded). NMFS approved Amendment 20 on August 9, 2010, and expects to fully implement it prior to January 1, 2011, so the harvest specifications and management measures being considered for 2011 and 2012 are consistent with the provisions of Amendment 20.

For the purposes of Amendment 20, the limited entry trawl fishery has been divided into three distinct sectors (shoreside, mothership, and catcher/processor). An individual fishing quota (IFQ) program is created for the shoreside sector and harvester cooperatives are created for the catcher/processor and mothership sectors. Formal allocations (to and among the trawl sectors) necessary to support the trawl rationalization program have been adopted under Amendment 21 to the PCGFMP.

Amendment 21 to the PCGFMP modifies the PCGFMP framework by specifying formal, long term allocations for the following species: Lingcod, Pacific cod, sablefish south of 36° north latitude, Pacific ocean perch (POP), widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10′ north latitude, shortspine thornyhead (north and south of 34°27′ north latitude), longspine thornyhead north of 34°27′ north latitude, darkblotched rockfish, minor slope rockfish (north and south of 40°10′ north latitude), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and other flatfish. Because Amendment 21 has been approved, the harvest specifications being considered for 2011 and 2012 are consistent with the provisions of Amendment 21. Long term, formal allocations are expected to provide more stability to the trawl fishery sectors by reducing the risk of the trawl sector being closed as a result of a non-trawl or recreational fishery exceeding an allocation or harvest guideline.

Species that are not formally allocated under Amendment 21 will continue to be addressed through short-term allocations that are to be decided through the biennial harvest specifications and management measure process. IFQ species with trawl and non-trawl allocations established through the biennial harvest specifications include the following species: canary rockfish, bocaccio, cowcod, yelloweye rockfish, and minor shelf rockfish north and south. In addition to allocations specified under the Amendment 21 provisions for 2011 and 2012, trawl and non-trawl allocations are being specified through the biennial harvest specifications for the following: minor nearshore rockfish north and south, and longnose skate. Species being managed under trip limits and without trawl and non-trawl allocations are: Shortbelly rockfish, longspine thornyhead south of 34°27′ north latitude, black rockfish (Washington-Oregon), California scorpionfish, cabezon (California only), kelp greenling, and the "other fish" complex.

Amendment 21 also provides for the use of fishery set-asides. Fishery set-asides are not formal allocations but rather amounts that are not available to the other fisheries during the fishing year. Set-asides for the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery are deducted from the limited entry trawl fishery allocation. Set-asides for the Pacific Coast treaty Indian tribal harvest, and exempted fishing permits (EFPs) are deducted from the ACL. Set-aside amounts could change through the biennial harvest specifications and management measures process. The set-aside amounts will be specified in the footnotes to Tables 1a through 2b of this subpart.

In addition to a new groundfish allocation framework, Amendment 21 would establish Pacific Halibut trawl mortality limits to restrict the incidental catch of Pacific halibut in limited entry trawl fisheries. The trawl mortality limit may be adjusted downward or upward through the biennial harvest specifications and management measures process. Trawl individual bycatch quota (IBQ) for halibut will be issued for the Shorebased IFQ Program north of 40°10′ north latitude. A portion of the overall trawl mortality limit (10 mt) is a set-aside for the at-sea whiting fisheries (catcher/processor and mothership) and the Shorebased IFQ Program south of 40°10′ north latitude, where halibut IBQ is not required. The set-aside amount of Pacific halibut to accommodate the incidental catch in the trawl fishery south of 40°10′ north latitude and in the at-sea whiting fishery may be adjusted in the biennial harvest specifications and management measures process. The use of a trawl mortality limit for Pacific halibut in Area 2A trawl fisheries is consistent with the Magnuson-Stevens Act mandate to minimize bycatch, while providing increased benefits to Area 2A fishers targeting Pacific halibut.

Under Amendment 20, up to 10 percent of unused IFQ quota pounds in a vessel's account may be carried over for use in the next fishing year. Similarly, in order to cover an overage (landings that exceed the amount of quota pounds held in a vessel account) that is within 10 percent of the quota pounds that have been in the vessel account during the year, the vessel owner may use that amount from the quota pounds he will receive in the following fishing year to account for the overage in the current year. The rationale for the carryover as presented in the Amendment 20 EIS is to provide increased flexibility to fishery participants. During the biennial harvest specification and management process the Council discussed how the carry-over provision works in relationship to the 2011–2012 harvest specifications, this provision is further discussed below.

OFL Policy

The OFL is the MSY harvest level associated with the current stock abundance. When setting the 2011 and 2012 OFLs for category 1 species, the F_{MSY} harvest rate or a proxy was applied to the estimated exploitable biomass. 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 is also referred to as the F_{MSY} control rule or maximum fishing mortality threshold (MFMT) harvest rate. For category 2 species, OFLs are typically set at a constant level and monitoring is necessary to determine if this level of catch is causing a slow decline in stock abundance. It is difficult to estimate overfished and overfishing thresholds for the category 2 species a priori, but indicators of long-term, potential overfishing can be identified. Average catches are generally used to determine the OFL for category 3 species.

For 2011 and 2012, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (F_{MSY}). A proxy is used because there is insufficient information for most Pacific Coast groundfish stocks to establish a species-specific F_{MSY}. In 2011 and 2012, the following default harvest rate proxies, based on the Council's SSC recommendations, were used: $F_{30\%}$ for flatfish, $F_{40\%}$ for Pacific Whiting, $F_{50\%}$ for rockfish (including thornyheads), and $F_{45\%}$ for other groundfish such as

sablefish and lingcod. The OFL for groundfish species with stock assessments are derived by multiplying the harvest rate proxy by the current estimated biomass. A rate of $F_{40\%}$ is a more aggressive rate than $F_{45\%}$ or $F_{50\%}$.

The PCGFMP 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. 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 flatfish, a new proxy of $F_{30\%}$ is being used for the 2011–2012 specifications. Following the 2009 scientific peer review of the petrale sole assessment by the Council's stock STAR panel, the STAR panel prepared a report which recommended that the SSC review the estimates of F_{MSY} and B_{MSY} produced by the petrale sole assessment and investigate alternatives to the proxies of $F_{40\%}$ and $B_{40\%}$. The SSCs groundfish sub-committee further considered the proxies produced by the petrale sole assessment and recommended that proxies of $B_{25\%}$ for B_{MSY} and $F_{30\%}$ for F_{MSY} be established for all west coast flatfish.

The overfished threshold or minimum stock size threshold (MSST) is the estimated biomass level of the stock relative to its unfished biomass (*i.e.,* depletion level) below which the stock is considered overfished. The current default proxy MSST for all the actively managed groundfish stocks and stock complexes, other than the assessed flatfish species, is 25 percent of the unfished biomass ($B_{25\%}$), which is 62.5 percent of the B_{MSY} target of $B_{40\%}$. The default proxy MSST for the assessed flatfish species is being revised from $B_{25\%}$ to $B_{12.5\%}$ which is 50 percent of the B_{MSY} target of $B_{25\%}$.

The full SSC endorsed the groundfish subcommittee's recommendation to establish new proxies of $B_{25\%}$ for B_{MSY} and $F_{30\%}$ for F_{MSY} for flatfish. The values were based on a number of considerations, including evaluation of information on flatfish productivity (steepness) for assessed west coast flatfish, published meta-analyses of other flatfish stocks, and recommendations on appropriate proxies for F_{MSY} and B_{MSY} in the scientific literature. The SSC however did not endorse the use of a species-specific estimate of B_{MSY} and F_{MSY} for petrale sole because of high variability in the estimates between repeat assessments for other stocks and the sensitivity of the estimates to assumptions concerning stock structure.

For the 2011–2012 biennial specification process, two new methodologies were evaluated for determining OFL from data-poor stocks (unassessed category 2 species and category 3 species). In January 2010, the SSC Groundfish Subcommittee and Groundfish Management Team (GMT) examined yield estimates from the Depletion-Corrected Average Catch (DCAC) and the Depletion-Based Stock Reduction Analysis (DB–SRA) for 31 groundfish stock assessments. The DCAC and DB–SRA were developed by stock assessment scientists from the Northwest Fishery Science Center (NWFSC) and the Southwest Fishery Science Center. The DCAC provides an estimate of sustainable yield (the OFL) for data-poor stocks of uncertain status. DCAC adjusts historical average catch to account for one-time "windfall" catches that are the result of stock depletion, producing an estimate of yield that was likely to be sustainable over the same time period. Advantages of the DCAC approach to determining sustainable yield for data-poor stocks include: (1) Minimal data requirements, (2) biologically-based adjustment to catch-based yield proxies with transparent assumptions about relative changes in abundance, and (3) simplicity in computing. The DB–SRA extends the DCAC by (1) restoring the temporal link between production and biomass and (2) evaluating and integrating alternative hypotheses regarding changes in abundance during the historical catch period. This method combines DCAC's distributional assumptions regarding life history characteristics and stock status with the dynamic models and simulation approach of stochastic stock reduction analysis. The SSC Groundfish Subcommittee endorsed application of DCAC and DB–SRA to derive the OFL for unassessed groundfish stocks. Although the Council would like further analysis, the Council did recognize that the DB–SRA and the DCAC methods used by the GMT were the best available scientific information for determining OFLs for category 2 and 3 stocks.

Proposed OFLs for 2011 and 2012

For the 2011 and 2012 biennial specification process, 8 stock assessments and 4 stock assessment updates were prepared. Full stock assessments, those that consider the appropriateness of the assessment model and that revise the model as necessary, were prepared for the following stocks: Bocaccio, widow rockfish, lingcod, cabezon, yelloweye rockfish, petrale sole, splitnose rockfish and greenstriped rockfish. Stock assessment updates, those that run new data through an existing model without changing the model, were prepared for: Canary rockfish, cowcod, darkblotched rockfish, and POP. Each new stock assessment includes a base model and two alternative models. The alternative models are developed from the base model by bracketing the dominant dimension of uncertainty (*e.g.,* stock-recruitment steepness or R_0, natural mortality rate, survey catchability, recent year-class strength, weights on conflicting CPUE series, etc.) and are intended to be a means of expressing uncertainty within the model for decision makers by showing the contrast in management implications. Once a base model has been bracketed on either side by alternative model scenarios, capturing the overall degree of uncertainty in the assessment, a 2-way decision table analysis (states-of-nature versus management action) is used to present the repercussions of uncertainty. As noted above, the SSC makes recommendations to the Council on the appropriateness of using the different stock assessments for management purposes, after which the Council considers adoption of the stock assessments, use of the stock assessment for the development of rebuilding analysis, and the OFLs resulting from the base model runs of the stock assessments. Tables 1a and 2a present the specifications for each stock while the footnotes to these tables describe how the proposed specifications were derived.

For species that did not have new stock assessments or updates prepared, the Council considered an OFL derived from the most recent stock assessment or update, the results of rudimentary stock assessments, or the historical landings data approved by the Council for use in setting harvest specifications. Detailed information on how the OFLs for species without any new stock assessments were derived are provided in the footnotes to Table 1a and Table 2a. The stock assessment cycle and the process for adoption of final OFLs for Pacific whiting are detailed below.

Species that are not overfished and for which new stock assessments or stock assessment updates were prepared and recommended for use in setting harvest specifications by the Council include: Lingcod, greenstriped rockfish,

splitnose rockfish, Cabezon. Specific information on the OFLs for species associated with these new stock assessments and assessment updates are provided in the footnotes to Table 1a and Table 2a.

For the overfished species, new assessments were prepared for bocaccio, petrale sole, widow rockfish, yelloweye rockfish and stock assessment updates were prepared for canary rockfish, cowcod, darkblotched, POP. The following stock assessment summaries pertain to the new stock assessments or stock assessment updates for stocks that have been declared overfished.

Bocaccio (Sebastes Paucispinis)

A new stock assessment was prepared for the bocaccio stock between the U.S.-Mexico border and Cape Blanco, OR, using the Stock Synthesis 3.03a model. Changes in the model from the prior assessment include: A northern expansion of the modeled area from Cape Mendocino, CA, to Cape Blanco, OR; and the extension of the catch history from 1950 to 1892. Assessment scientists have treated bocaccio as independent stocks north and south of Cape Mendocino. The southern stock, which has been declared overfished, occurs south of Cape Mendocino. Although the range extends considerably further north, there is some evidence that there are two demographic clusters of bocaccio. The northern stock is found north of 48° north latitude in northern Washington and Canada, with a relative rarity of bocaccio (particularly smaller fish) in the region between Cape Mendocino and the Columbia River mouth.

Since the early 2000s, the bocaccio spawning output has been increasing steadily. Spawning output in 2009 was estimated at 2,209,900 mt (~95 percent confidence: 1,546,440—2,873,360 mt). Bocaccio depletion was estimated to be 28.12 percent (0.18—0.37 percent) of its unfished biomass in 2009. There are clear signs that the stock is rebuilding at a relatively rapid rate. Recovery may be taking place more rapidly in the south, and recovery in the central/northern California region may be dependent on an influx of fish from the southern area.

Model uncertainty regarding natural mortality rates and estimates of selectivity for the NMFS triennial trawl survey continue to be problematic. Since 2001, large scale area closures have affected the spatial distribution of fishing mortality and truncated several abundance indices (recreational CPUE indices), confounding the interpretation of survey indices as well as fishery dependent and independent length frequency data. Data from relatively recent, short-term surveys do not yet appear to be informative with respect to trends in abundance, although they are informative with respect to cohort strength.

At the September 2009 Council meeting, the SSC endorsed the use of the 2009 bocaccio assessment for status determination and management in the Council process. The SSC supported the extension of the assessment area as biologically appropriate given the current understanding of stock structure, but also recognized that the boundary extension raises issues with respect to area management. Approximately 6 percent of the coastwide bocaccio catch has occurred historically between Cape Mendocino and Cape Blanco while only 1 percent has been taken from the California/Oregon border to Cape Blanco. The SSC indicated that there was no conservation issue north of the 40°10′ north latitude management boundary at Cape Mendocino, based on these low bocaccio catches in the area. Therefore, the SSC did not recommend changing the area where bocaccio are designated as overfished. The SSC indicated that management should be based on a pro-rata allocation using the historical catch distribution north and south of 40°10′ north latitude. The bocaccio OFL of 737 mt for 2011 and 732 mt for 2012 was based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment. For setting harvest specifications, six percent of the assessed biomass was estimated to occur north of 40°10′ north latitude. The projected OFLs from the assessment were adjusted accordingly.

Canary Rockfish (Sebastes Pinniger)

A stock assessment update was prepared for the coastwide canary rockfish stock using the Stock Synthesis 3.03a model. Consistent with the Terms of Reference for Groundfish Stock Assessments, fishery and survey data were updated through 2008. Data updates for earlier years were also made with most of the updates being minor, with the exception of historical catch estimates (< 1981) that were substantially revised by NMFS and CDFG scientists. The historical catch revisions resulted in a 24 percent reduction in the total estimated canary rockfish catch from 1916 to 2006, with most of this reduction occurring prior to 1968. The new data resulted in a rebuilding trajectory that was overall lower than previous projections. Although the stock has continued to progress towards the rebuilding threshold ($B_{40\%}$), the overall lowering of the trajectory means that it would take more time to reach the $B_{40\%}$. The new assessment estimated the 2007 depletion level for canary rockfish to have been 21.7 percent (below the estimate of 32.4 percent for 2007 from the 2007 assessment with 95 percent confidence bounds of 24–41 percent) and the 2009 depletion level to have been 23.7 percent with 95 percent confidence bounds of 17–30 percent). The SSC indicated that the broad confidence interval on the depletion level was due to a high degree of uncertainty in the parameter estimates, especially steepness. The change in the depletion level is largely due to the revised historical catch time-series for California. At the Council's September meeting, the SSC indicated that revised catches reflected the best available data, and were consistent with the Terms of Reference for Stock Assessment Documents.

The assessment update estimated the unfished spawning stock biomass to be 25,993 mt (down from the 2007 estimate of 32,561 mt). After a period of above average recruitments, recent year-class strengths (1997–2008) have generally been low, with only 4 of the 12 years (1999, 2001, 2006, and 2007) estimated to have produced larger recruitments. Because of the limited number of years they have been observed, the strengths of the 2006–2007 year classes are subject to greater uncertainty. As the larger recruitments from the late 1980s and early 1990s move through the population, the rate of recovery to B_{MSY} in future projections is estimated to slow. Because the species has a patchy distribution it is difficult to sample well with the bottom trawl gear used in the trawl survey.

The base case assessment model explicitly captures parameter uncertainty in the asymptotic confidence intervals for key parameters and management quantities. Uncertainty around the base model results is considered through integration of rebuilding trajectories over two alternate states of nature corresponding to lower and higher stock-recruitment steepness, the parameter largely governing productivity and recent rebuilding trajectory. At the Council's September meeting the SCC indicated that the canary rockfish stock assessment update represented the "best available science," and was suitable to use for Council management decisions. The canary rockfish OFL of 614 mt for 2011 and 622 mt for 2012 was based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment update.

Cowcod (Sebastes Levis)

A stock assessment update was prepared for cowcod in the Southern California Bight (U.S. waters south of Point Conception—34°27′ north latitude) using an age-structured production model (Stock Synthesis 2 model). The assumption of an isolated stock is untested, and no information is available regarding stock structure or dispersal across the assumed stock boundaries. No new data sources were available for this update assessment.

Cowcod is a long lived species with a mean generation time estimated at 38 years. Relative depletion was estimated at 4.5 percent in 2009 for the base model. The cowcod stock shows a slowly increasing trend in stock biomass, but given that no new data are available, this result is little more than a stock projection. Cowcod remain on a multi-decadal rebuilding timeline. Management actions since 2001, that include large scale area closures specifically to reduce fishery interactions with cowcod, have truncated data used in the assessment. Due to uncertainty in total mortality since no-retention regulations took effect, recreational and commercial mortalities have been assumed to be 0.25 metric tons per year, per fishery. A major source of uncertainty in the assessment was the assumed value of the steepness parameter in the spawner-recruit relationship. In addition, the percentage of cowcod in total rockfish landings in years prior to the 1980s is not well understood. At the Council's June 2009 meeting the SSC indicated that the updated assessment for cowcod represented the "best available science," and was suitable as the basis for Council management decisions. The 2011 and 2012 cowcod OFL contribution for the Conception area (south of 36°00′ north latitude) was determined from the 2009 stock assessment update with an FMSY proxy harvest rate of F50% applied to the estimated exploitable biomass for the assessed portion of the stock in the Conception area. The OFLs for the Monterey area were determined using a DB–SRA approach. The OFLs for the Conception and the Monterey areas were summed to determine an OFL specification of 13 mt for 2011 and 2012 for the entire stock south of 40°10′ north latitude.

Darkblotched Rockfish (Sebastes Crameri)

In 2009, a stock assessment update was prepared for darkblotched rockfish the U.S. Vancouver, Columbia, Eureka and Monterey areas using the Stock Synthesis 3.03a model. During the previous assessment cycle, The SSC indicated that changes to the darkblotched rockfish stock assessment model in 2007 (same model used for 2009 update) represented a substantial advancement over previous stock assessments.

The fishing mortality rate on darkblotched rockfish has been greatly reduced, and darkblotched rockfish appear to be rebuilding gradually, relatively consistent with previous rebuilding projections. The point estimate for the depletion of the spawning output at the start of 2009 is 27.5 percent. In 2009, the biomass (1+ age fish) is estimated at 12,836 mt, as compared to 5,862 mt in 2000. The recruitment pattern for darkblotched rockfish is highly variable between years. Recruitment levels between the 1980's and 1990's were generally poor when compared with average historical recruitment levels, with the exceptions being the 1999 and 2000 year-classes which appear to be two of the four largest years since 1975. The estimated increase in stock size is driven primarily by the assumption that darkblotched productivity is analogous to that of other similar species, and not on survey and fishery data indicating an upward trend.

A number of sources of uncertainty were explicitly included in the assessment. Allowance was made for uncertainty in natural mortality and the parameters of the stock recruitment relationship. Sources of uncertainty not included in the current model, included: The degree of connection between the stocks of darkblotched rockfish off British Columbia and those in the Exclusive Economic Zone (EEZ); the effect of climatic variables on recruitment, growth and survival of darkblotched rockfish; and gender based differences in survival. At the Council's June 2009 meeting the SSC indicated that the updated assessment for darkblotched rockfish represented the "best available science," and was suitable as the basis for Council management decisions. The darkblotched rockfish OFL of 508 mt for 2011 and 497 mt for 2012 was based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment update.

Petrale Sole (Eopsetta Jordani)

A new coastwide stock assessment was prepared for petrale sole using the Stock Synthesis 3.03a model. There is currently no genetic evidence suggesting distinct biological stocks of petrale sole off the U.S. coast. Given the lack of clear information regarding the status of distinct biological populations, the assessment treats the U.S. petrale sole resource from the Mexican border to the Canadian border as a single coastwide stock.

Petrale sole were lightly exploited during the early 1900s. By the 1950s, the petrale sole fishery was well developed and showing clear signs of depletion and declines in catches and biomass. The base model indicates that the spawning biomass has been below $B_{25\%}$ continuously since 1953. The petrale sole spawning stock biomass is estimated to have increased slightly from the late 1990s, peaking in 2005, in response to above average recruitment. However, this increasing trend has reversed since the 2005 assessment and the stock has been declining, most likely due to strong year classes having passed through the fishery. The estimated relative depletion level for 2009 is 11.6 percent. Unfished spawning stock biomass was estimated to be 25,334 mt.

The base case assessment model includes within model uncertainty (assessment parameter uncertainty) from a variety of sources, but it likely underestimates the uncertainty in recent trend and current stock status. For this reason, in addition to asymptotic confidence intervals, results from models that reflect alternate states of nature regarding the estimate of 2009 spawning biomass are presented as a decision table within the stock assessment document.

At the Council's June 2009 meeting, the SSC reviewed the new petrale sole assessment and, based on a number of concerns, was unable to endorse the assessment at that time. While the petrale sole assessment appeared to be technically sound and thoroughly reviewed by the STAR panel, the SSC was concerned that certain assessment results were so extreme that the overall plausibility of the assessment was called into question. Attention focused primarily on the estimated catchability of the NWFSC survey, the estimate of stock-recruit steepness (0.95), and confounding of estimated model parameters. The Council's STAR Panel recommended that the estimates of F_{MSY} and B_{MSY} produced by the petrale sole assessment be investigated as alternatives to the currently used proxies for $F_{40\%}$ and $B_{40\%}$. The SSC developed a list of analytical requests for the Council's petrale sole Stock Assessment Team to address. The SSC's groundfish subcommittee and the Council's Stock Assessment Team reviewed the model and proxies of $F_{40\%}$ and $B_{40\%}$. After further consideration by the SSC's groundfish subcommittee, the full SSC endorsed the petrale sole stock

assessment model approved by the Council's STAR panel, and recommended that proxies of $B_{25\%}$ for B_{MSY} and $F_{30\%}$ for F_{MSY} be established for all flatfish not only petrale sole.

The SSC agreed that the base petrale sole model represents the best available scientific information, and endorsed its use for status determination and management in the Council process. The SSC concluded that there is no basis for rejecting the assessment based on the estimated catchability coefficient (q) for NWFSC trawl survey. However the SSC encouraged further investigation of the catchability coefficient of the survey by experimental evaluation of trawl performance, quantification of trawlable and untrawlable habitat off the west coast, or by synthesis of available information and expert knowledge through development of an informative prior, as had been anticipated from the 2008 survey catchability workshop. The SSC also endorsed further evaluation of fishery CPUE data in the next petrale sole assessment. The petrale sole OFL of 1,021 mt for 2011 and 1,279 mt for 2012 was based on the F_{MSY} harvest rate proxy of $F_{30\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment.

POP (Sebastes Alutus)

A stock assessment update was prepared for POP in the combined U.S. Vancouver and Columbia areas using the same forward projection age-structured model used in the previous stock assessment. Consistent with the Terms of Reference for Groundfish Stock Assessments, fishery, survey, and observer data were updated to include the years since the last assessment. Only minor updates to the data from earlier years were made.

There were no significant changes in the view of stock status between the 2007 and 2009 assessment updates. The estimate of depletion of the spawning biomass at the start of 2009 is estimated to be 28.6 percent. The POP biomass shows an increasing trend. Poor recruitment has been seen in recent years, compared with the 1950s and 1960s, although the 1999 year class appears to be larger than any other since the 1960's. The 2000 year class also appears to be relatively large; however, this may be due to some small amount of overall bias in ageing.

A number of sources of uncertainty are explicitly included in this assessment such as uncertainty in natural mortality, the parameters of the stock-recruitment relationship, and the survey catch ability coefficients. There are also other sources of uncertainty that are not included in the current model. These include the degree of connection between the U.S. and Canadian stocks; the effect of climatic variables on recruitment, growth and survival; gender differences in growth and survival; and the relationship between individual spawner biomass and effective spawning output and age and maturity.

At the Council's June 2009 meeting the SSC indicated that the updated assessment for POP represented the "best available science," and would be suitable as the basis for Council management decisions. The POP OFL of 1,026 mt for 2011 and 1,007 mt for 2012 was based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment update.

Widow Rockfish (Sebastes Entomelas)

A new coastwide stock assessment was prepared for widow rockfish in the U.S Vancouver, Columbia, Eureka, Monterey, and Conception areas. The 2009 assessment differed from the previous assessment in several respects: The assessment used the Stock Synthesis 3 model rather than an age-based population model; the catch history was revised and extended back to 1916; catch, age structure, and survey data were updated through 2008; and data from the NWFSC trawl survey were included in the assessment.

The widow rockfish spawning biomass steadily declined from 1980 to 2003, when widow rockfish was targeted in a major commercial fishery. Since 2003, spawning biomass has shown an increasing trend. For 2009 spawning biomass is estimated at 15,625 mt (~95 percent confidence: 5,984–25,266 mt). Depletion in 2009 is estimated at 38.5 percent (14.2–62.9 percent) of unfished biomass. Because the biomass is below $B_{40\%}$ it remains under a rebuilding plan.

Uncertainty in estimation of widow rockfish recruitment remains high. The highest known widow rockfish recruitment occurred in 1970. When compared to the long-term average, recruitment was relatively low in the early 1990s and since 2001. The 2007 stock assessment update indicated that the 2000 recruitment was relatively strong; however, the new stock assessment did not confirm a strong 2000 recruitment. In general, estimates of recruitment for the most recent years are uncertain, and can have a considerable impact on the outcomes of rebuilding projections.

The SSC endorsed the use of the 2009 widow rockfish stock assessment for status determination and management in the Council process. The widow rockfish OFLs of 5,097 mt for 2011 and 4,923 mt for 2012 were based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment.

Yelloweye Rockfish (Sebastes Ruberrimus)

A new coastwide stock assessment was prepared for yelloweye rockfish in 2009 using the Stock Synthesis 3.03b model. The 2009 assessment differed from previous assessments in terms of assumed population structure and the data used to fit the model. The 2009 assessment was based on three regions (California, Oregon and Washington) under the assumptions that: Adults are sedentary; density-dependence is a function of coastwide egg production; and the proportion of recruits settling in each area is constant over time. This spatial structure is consistent with our understanding of the behavior of yelloweye rockfish, and reflects a compromise between a coastwide assessment and separate assessments for each state.

Even with a large number of changes to data inputs, the results from the 2009 yelloweye rockfish assessment are consistent with those from the 2006 and 2007 assessments. All of these assessments suggest that yelloweye rockfish experienced a substantial decline in abundance between 1980 and 2000, with increased catches. Large reductions in harvest have been in place since 2000. The best estimate of depletion in 2009 from the current assessment is 20.3 percent of unfished biomass (states of nature: 17.3–23.5 percent). This represents an increase from the 2007 updated assessment, which estimated depletion in 2007 to be 16.4 percent.

In contrast to the 2006 and 2007 assessments, the 2009 assessment makes use of data from the NWFSC and triennial trawl surveys as well as data on discarded yelloweye rockfish collected by observers in the Oregon recreational charter fishery. However, the International Pacific Halibut Commission (IPHC) survey data remain the most important index in the assessment, although IPHC survey data are only available for Washington and Oregon and not California, where the largest potential biomass of yelloweye rockfish is estimated to occur.

Data for yelloweye rockfish are sparse and relatively uninformative, especially regarding current trends. Yelloweye rockfish catches are very uncertain due to the relatively small contribution to rockfish market categories and the

relatively large scale of recreational removals. In addition, since 2001, management restrictions have required nearly all yelloweye rockfish caught by recreational and commercial fishers to be discarded at sea. Currently available fishery-independent indices of abundance are imprecise and not highly informative. It is unclear whether increased rates of recovery (or lack thereof) will be detectable without more precise survey methods applied over broad portions of the coast. Fishery data are also unlikely to produce conclusive information about the stock for the foreseeable future, due to retention prohibitions and active avoidance of yelloweye rockfish among all fleets. Considerable uncertainty regarding the time-series of historical catches was identified as a key source of uncertainty in the stock assessment.

At the Council's September 2009 meeting, the SSC cautioned against using the stock assessment estimates of trends in abundance by region as the sole basis for the spatial allocation because the trend in abundance at the coastwide level was much more robust than at the regional level. The SSC emphasized the value of collecting biological data, such as age-length and maturation information, for yelloweye rockfish during the IPHC surveys.

The SSC endorsed the approach used to quantify uncertainty, which forms the basis for the yelloweye rockfish rebuilding analysis and they endorsed the use of the 2009 yelloweye rockfish assessment as the best available science for status determination and management in the Council process. The yelloweye rockfish OFL of 48 mt for 2011 and 2012 was based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2009 stock assessment.

ABC Policy

The proposed ABCs are consistent with the harvest specification framework proposed for Amendment 23 to the PCGFMP. Under Amendment 23, the term ABC is redefined to be an annual catch specification that is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. Under the revised Magnuson-Stevens Act National Standard 1 guidelines, scientific advice that is relatively uncertain will result in ABCs that are relatively lower, all other things being equal, *i.e.,* a precautionary reduction in catch will occur due purely to scientific uncertainty. The ABC is the catch level that ACLs may not exceed. As explained in more detail below, the SSC recommended a two-step approach referred to as the P* approach initially for stocks with relatively data-rich stock assessments and ultimately for other stocks. In this approach, the SSC determines the amount of scientific uncertainty in a stock assessment, referred to as sigma. Then the Council determines the level of risk aversion to use, which is designated as the P*. The scientists then apply the P* value to the sigma value to determine the amount by which the OFL is reduced to establish the ABC.

In January 2009, the SSC's Groundfish and Coastal Pelagic Species Subcommittees met to discuss the new Magnuson-Stevens Act reauthorization requirements, including the development of a methodology for estimating scientific uncertainty in stock assessments. At this meeting, two types of uncertainty in biomass estimation were considered. The first was "within" assessment variability, which is presented in each stock assessment or stock assessment update and represented by the coefficient of variation for the terminal year biomass estimate. The second type of uncertainty is "among" assessment variation, resulting from a wide variety of factors, many of which represent a significant model or structural uncertainty. Reasons for "among" assessment variations in stock size estimation, includes differences in: The modeling software; the makeup of the analytical team doing the assessment; the composition of the review panel; changes in data availability; altered "priors" for the parameters; and changes in overall model structure. The SSC evaluated three methods of quantifying these types of scientific uncertainty, but also recognized that numerous other unaccounted for factors exist for which there is currently no method for meaningful analysis, including for example, the effects of climate and/or ecosystem interactions on the estimation of an OFL.

The general methodology used by the SSC subcommittees to assess among-assessment uncertainty was to compare previous stock assessments and stock assessment updates, and consider the logarithms of the ratios of the biomass estimates for each pair of assessments and their reciprocals using the last 20 years from an assessment. This provides a distribution of stock size differences in log-space and, if this variation is averaged over species, provides a general view of total biomass variation (represented as sigma—σ) that emerges among repeat assessments of stocks, while embracing a wide range of factors that affect variability in results. During their consideration of Amendment 23 to the PCGFMP, in March 2010, the SSC recommended the use of this methodology, but recognized that it was only the first step in the process of developing methods for estimating uncertainty in OFL, in part, because it only considers uncertainty in biomass and likely underestimates total variance. Going forward, the SSC indicated that it will be important to consider other sources of uncertainty, such as F_{MSY}. While biomass is most likely the dominant source of uncertainty, it is anticipated that other factors will need to be considered in the future.

The SSC recommended the biomass variance statistic of sigma=0.36, from the analysis of stock assessments and stock assessment updates from 17 data rich stocks (meta-analysis). To set ABCs, the Council recommended using an approach where the SSC determines a value of sigma and the GMT uses the recommended formulation to translate sigma to a range of P* values (the probability of overfishing). Each P* is then mapped to its corresponding buffer fraction. The Council then determines the preferred level of risk aversion by selecting an appropriate P* value.

In cases where the P* approach is used, the upper limit of P* values considered will be 0.45. Since estimated OFLs are median estimates, there is a 50 percent probability that the OFL is overestimated or underestimated. A P* of 0.5 equates to no additional reduction for scientific uncertainty. In other words, the ABC is set equal to the OFL.

For the purposes of using the P* approach, the SSC assigned stocks to species categories. Using the P* approach, a scientific uncertainty buffer against overfishing can generally be determined for data rich species that have had quantitative stock assessments prepared (category 1 species). Since there is greater scientific uncertainty for category 2 and 3 stocks relative to category 1 stocks, the scientific uncertainty buffer is generally greater than that recommended for category 1 stocks. The SSC indicated that ideally the approach recommended for setting ABCs for category 1 stocks should also be applied to category 2 and 3 stocks. However, there is presently no analysis available for determining the appropriate value of sigma (σ) to represent scientific uncertainty for stocks in these categories, unlike the situation for category 1 stocks. In the absence of an analysis for category 2 and 3 stocks, the SSC suggested two interim approaches for computing ABCs from OFLs: Use 25 percent and 50 percent reductions from the OFL for deciding the ABC for category 2 and 3 stocks (similar to status quo), respectively; or use the P* approach using the σ values

for category 2 and 3 stocks recommended by the SSC. The SSC noted that their approach allows the Council to express their views on overfishing risk aversion. With a P* approach for deciding the ABC for category 2 and 3 stocks, the SSC recommended setting the value of sigma (σ) for category 2 and 3 stocks to 0.72 and 1.44 respectively (i.e., two and four times the σ for category 1 stocks). The difference between buffers determined using sigma values of 0.72 and 1.44 corresponds fairly closely to the difference between the buffers previously used for category 2 and 3 stocks (25 percent versus 50 percent) when P* is in the range 0.3 ~ 0.35. Although, the specific values of 0.72 and 1.44 are recommended by the SSC and considered to be the best available scientific information, the values are not based on a formal analysis of assessment outcomes and could change substantially when the SSC reviews additional analyses in future management cycles.

The Council approved the SSC-recommended σ values for each species category. For category 1 species the Council adopted a P* of 0.45, which combined with a sigma (σ) value of 0.36, corresponds with a reduction of 4.4 percent from the OFL when deriving the ABC. For healthy stocks, the P* of 0.45 is more risk averse than the policy used in the previous biennial management cycle in which the OYs for most healthy stocks were set at 100 percent of the ABC. The Council adopted a general policy of using a P* of 0.4 for category 2 and 3 stocks. The buffers determined using sigma (σ) values of 0.72 and 1.44 with a P* value of 0.40 corresponds to 16.7 percent, and 30.6 percent reductions, respectively. For the purpose of setting the ABCs in 2011 and 2012 the following category 1 species had a P* of 0.45 applied to the OFL to determine the ABC: Bocaccio south of 40°10′ north latitude, canary rockfish, darkblotched rockfish, Pacific Ocean Perch, widow rockfish, yelloweye rockfish, petrale sole, lingcod north of 42° N latitude (Oregon and Washington), Pacific whiting (U.S./Canada), sablefish (coastwide), chilipepper rockfish (coastwide), splitnose rockfish south of 40°10′ north latitude, yellowtail rockfish north of 40°10′ north latitude, shortspine thornyhead (coastwide), black Rockfish (Washington), black Rockfish (Oregon-California), California scorpionfish, cabezon (California), cabezon (Oregon), Dover sole, and English sole. For the purpose of setting the ABCs in 2011–2012, the following category 2 species had a P* of 0.40 and a sigma value of applied 0.72 applied to the OFL to determine the ABC: greenstriped rockfish, arrowtooth flounder, starry flounder, longspine thornyhead (coastwide), shortbelly rockfish, lingcod south of 42° north latitude (California), cowcod (Conception-Cowcod in the Monterey area are a category 3 stock) and longnose skate. For the purpose of setting the minor rockfish complex ABCs in 2011–2012, the ABCs for the sub-complexes are the sum of the component species ABCs. The SSC identified the appropriate species category for each component species: A sigma value of 0.36 for category 1 stocks (splitnose north, chilipepper rockfish north, gopher rockfish north of Pt. Conception, and blackgill rockfish), 0.72 for category 2 stocks (greenstriped rockfish, blue rockfish, and bank rockfish) and 1.44 for category 3 stocks. The P* value used to determine the ABCs for the component species in the minor rockfish complexes was 0.45. The resulting 2011 and 2012 ABCs for minor rockfish north are reduced by 11 percent from the OFL (nearshore-15 percent, shelf-11 percent, and slope-9 percent) and for the minor rockfish south are reduced by 13 percent (nearshore-14 percent, shelf-16 percent, and slope-8 percent). Like the minor rockfish complex ABCs, the "other flatfish" complex ABCs were derived from the sum of the component species, with all being category 3 species (σ=1.44/P*=0.4). For the "other fish" complex the ABC is a 24 percent reduction from the OFL σ=1.44/P*=0.4)for category 3 species. Tables 1a and 2a present the specifications for each stock while the footnotes to these tables describe how the proposed specifications were derived.

Vulnerability to Overfishing and Organization of Stock Complexes

The vulnerability of a stock to becoming overfished is defined in the National Standard 1 guidelines as a function of its productivity and its susceptibility to the fishery. The guidelines note that the "vulnerability" of fish stocks should be considered when: (1) Deciding if a stock considered to be "in the fishery" or if it is an ecosystem component stock; (2) considering the management of stocks managed within complexes and the need to re-structure the stock complexes; and (3) creating management control rules. The GMT and the NMFS Vulnerability Evaluation Work Group considered the productivity and susceptibility of each groundfish stock by providing productivity and susceptibility (PSA) scores for each stock. A score of 1 to 3 was identified for a set of attributes related to productivity and susceptibility. Currently there are 10 attributes for productivity that reflect stock life history and 12 attributes that reflect susceptibility to the impacts of fishing and management. Stocks with a low productivity score and a high susceptibility score were considered to be more vulnerable, while stocks with a high productivity score and low susceptibility score were considered to be less vulnerable.

In the consideration of stock complex structure, a four step approach for defining the relationship between fisheries and appropriate stock complexes was developed using the PSA score: (1) Calculate PSA scores for each species in the PCGFMP; (2) identify the overlap in distributions of each species based on latitude and depth range; (3) assign each species to the various fisheries; and (4) overlay the groupings onto the PSA plot. The GMT provided the PSA vulnerability scores for all of the Pacific coast groundfish and completed a cluster analysis based on latitude and depth to identify spatial overlaps. The results of the preliminary cluster analysis indicate that there is a need to adjust the assignment of PCGFMP stocks to complexes. The GMT concluded they could not complete the necessary analyses and discussion to fully implement the changes to stock complexes suggested by the National Standard 1 guidelines on the timeline for implementing Amendment 23 or these specifications.

The GMT explored using catch information to consider whether species that are not in the PCGFMP should be considered for inclusion as "in the fishery" or as "ecosystem component" species. By using NWFSC West Coast Observer Program mortality reports on the non-whiting trawl fishery in 2007 and 2008, and a simple method for expanding total catch, the GMT was able to roughly compare the relative magnitude of total catch of PCGFMP species versus species not in the PCGFMP. Based on this preliminary analysis of total catch information, the potential vulnerability scores of these non-PCGFMP species may be indistinguishable from those scores of species currently in the PCGFMP. Therefore, further consideration may be warranted in the future to decide if any of these species should be included in the PCGFMP as "in the fishery" or as an "ecosystem component" species. The GMT recommended revisiting the "in the fishery" classification following this biennial cycle, with consideration of

changes to stock complexes in the 2013–2014 biennial cycle.

OY Policies

The concept of OY remains in the PCGFMP, however, OYs will no longer be used as the annual limit on catch; instead, ACLs will be used for this purpose. As revisions to the National Standard 1 guidelines did not alter the definition of OY, which is defined as "the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery," that definition remains unchanged in the PCGFMP. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically. Beginning with the 2011 and 2012 harvest specifications, ACLs are intended to, over the long-term, meet the National Standard 1 guidelines of preventing overfishing while achieving, on a continuing basis, the optimum yield.

ACL Policy

ACLs are specified for each stock and stock complex that is "in the fishery" as specified under the proposed Amendment 23 framework. An ACL is a harvest specification set equal to or below the ABC to address conservation objectives, socioeconomic concerns, management uncertainty or other factors necessary to meet any management objectives. Sector-specific ACLs may be specified in cases where a sector has a formal, long-term allocation of the harvestable surplus of a stock or stock complex. All sources of fishing related mortality (tribal, commercial groundfish and non groundfish, recreational, and EFP) retained and discard mortality, plus research catch is accounted for within an ACL. In general, when recommending ACLs, the Council follows a risk-averse policy by recommending an ACL that is below ABC when there is a perception the stock is below its B_{MSY}, or to accommodate management uncertainty, socioeconomic concerns, or other considerations.

Under the PCGFMP, the biomass level that produces MSY (B_{MSY}) is defined as the precautionary threshold. When the biomass for a category 1 stock or stock complex falls below the precautionary threshold, the harvest rate will be reduced to help the stock return to the B_{MSY} level. If a stock biomass is larger than B_{MSY}, the ACL may be set equal to or less than ABC. Because B_{MSY} is a long term average, the true biomass could be below B_{MSY} in some years and above B_{MSY} in other years. Even in the absence of overfishing, a biomass may decline to levels below B_{MSY} due to natural fluctuations. Decreasing harvest rates below the ABC level when a biomass is estimated to be below B_{MSY}, is a harvest control rule designed to prevent a stock or stock complex from becoming overfished.

The PCGFMP defines ACL harvest policies for category 1 species. The 40–10 harvest control rule has been applied to stocks with a B_{MSY} proxy of 40 percent ($B_{40\%}$) since 2000. A new harvest control rule referred to as the 25–5 harvest control rule is proposed for stocks with a B_{MSY} proxy of 25 percent ($B_{25\%}$). Consistent with the SSC recommendations, the new harvest control rule would be used for setting ACLs for flatfish species not managed under overfished species rebuilding plans when the biomass estimated from the stock assessment indicates that the stock has fallen below $B_{25\%}$. The 25–5 rule works exactly like the 40–10 rule except that the ACL adjustment begins when the stock's depletion drops below $B_{25\%}$ and at $B_{5\%}$, the ACL is set to zero. Like the 40–10 harvest control rule for stocks with an MSST proxy of $B_{40\%}$, the 25–5 harvest control rule is designed to prevent stocks from becoming overfished. If a stock biomass is larger than the biomass needed to produce MSY (B_{MSY}), the ACL may be set equal to or less than the ABC.

Under these harvest policies, when a stock's depletion level falls below B_{MSY} (or the proxy for B_{MSY}), the stock is said to be in the "precautionary zone" or below the precautionary threshold. When a stock is below the precautionary threshold the harvest policies reduce the fishing mortality rate. The further the stock biomass is below the precautionary threshold, the greater the reduction in ACL relative to the ABC, until at $B_{10\%}$ for a stock with a B_{MSY} proxy of $B_{40\%}$ or $B_{5\%}$ for a stock with a B_{MSY} proxy of $B_{25\%}$, when the OY would be set at zero. These harvest policies foster a quicker return to the B_{MSY} level and serve as an interim rebuilding policy for stock that are below the overfished threshold (Below MSST—below $B_{25\%}$ for a stock with a B_{MSY} proxy of $B_{40\%}$ or $B_{12.5\%}$ for a stock with a B_{MSY} proxy of $B_{25\%}$).

The Council may recommend setting the ACL higher than what the default ACL harvest control rule specifies as long as the ACL: Does not exceed the ABC; complies with the requirements of the Magnuson-Stevens Act; and is consistent with the National Standard Guidelines. On a case-by-case basis, additional precautionary adjustments may be made to an ACL if necessary to address management uncertainty. The ACL serves as the basis for invoking AMs. If ACLs are exceeded more often than 1 in 4 years, then AMs, such as catch monitoring and inseason adjustments to fisheries, need to improve or additional AMs may need to be implemented. Additional AMs may include setting an ACT, which is a specified level of harvest below the ACL. The use of ACTs may be especially important for a stock subject to highly uncertain inseason catch monitoring. A sector-specific ACT may serve as a harvest guideline for a sector or may be used strategically in a rebuilding plan to attempt to reduce mortality of an overfished stock more than the rebuilding plan limits prescribe.

For category 2 and 3 species with only rudimentary stock assessments, the Council has the discretion to adjust the ACLs for uncertainty on a case-by-case basis. In cases where there is a high degree of uncertainty about the condition of the stock or stocks, the ACL may be reduced accordingly. Most category 3 species are managed in a stock complex (such as other flatfish, minor rockfish, and other fish) where harvest specifications are set for the complex in its entirety. For stock complexes, the ACL will be less than or equal to the sum of the individual component ABCs. The ACL may be adjusted below the sum of component ABCs as appropriate. For what are now being referred to as category 2 and 3 stocks, the Council's policy prior to this specification cycle was to set the OY at 75 percent of the ABC to account for stocks that have non-quantitative assessments and to set the OY at 50 percent of the ABC where the ABC is based on historical data. The previous adjustments were intended to address both scientific and management uncertainty. Because the ABC values for 2011 and 2012 are the OFLs reduced by scientific uncertainty, adjustment to the ACLs for additional uncertainty was made on a case-by-case basis.

If a stock is declared overfished, the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within one year from the declaration date. The policies for setting ACLs for overfished species managed under rebuilding plans is described below in the section titled "Rebuilding Plan ACLs for Overfished Species".

As discussed above, the Council's development of the 2011 and 2012 biennial harvest specifications began at Council's November 2009 meeting. Because Amendment 23 was under development while the ACL alternatives were being developed, some early ACLs under consideration by the Council were not consistent with Amendment 23 and were removed after the ABCs were specified (*i.e.* ACLs that exceeded the ABC). Other viable ACLs though lower than the ABC's developed under the Amendment 23 structure, are described in terms of pre-Amendment 23 language. The harvest specifications recommended by the Council and which are being implemented by this action are consistent with Amendments 23.

ACLS for "Healthy" and "Precautionary Zone" Species and Species Complexes

As stated above, the PCGFMP provides guidance on setting harvest specifications for category 1 stocks depending on the stock's estimated biomass level. For the following species or species complexes where there was no new scientific information including stock assessments or a management guidance change in the harvest strategy, the Council only considered a single annual ACL for 2011 and 2012: Pacific cod; chilipepper rockfish, yellowtail rockfish, shortspine thornyhead north of 34°27′ north latitude, black rockfish (Washington), black rockfish (Oregon/California), longnose skate, other flatfish, and other fish. The Council recommended final adoption of the ABC/OYs values for these species at its June 2010 meeting. The information that serves as the basis for the ACLs for these species can be found in the footnotes to Table 1a and Table 2a. Because there were new policies applicable or new information available, the Council considered alternative ACLs for the following non-overfished species: lingcod north of 42° north latitude; lingcod south of 42° north latitude; sablefish; shortbelly rockfish; shortspine thornyhead south of 34°27′ north latitude; longspine thornyhead north of 34°27′ north latitude; longspine thornyhead south of 34°27′ north latitude; California scorpionfish; cabezon (California); cabezon (Oregon); Dover sole; English sole; arrowtooth flounder; starry flounder; and minor rockfish complexes north and south of 40°10′ north latitude.

Pacific whiting is managed consistent with the U.S.-Canada agreement for Pacific whiting. ACLs for Pacific whiting are adopted on an annual basis after a stock assessment is completed just prior to the Council's March meeting. Accordingly, the Council recommended a range of ACLs for 2011 and 2012, and delayed adoption of final 2011 and 2012 OFLs, ABCs, and ACLs until the March 2011 and 2012 meetings, respectively. The DEIS for the 2011 and 2012 management measures considers a range for Pacific whiting ACLs and the resulting impacts.

Lingcod North and South

A lingcod stock assessment was prepared in 2009. The stock assessment was conducted as two separate stock assessments, one for the northern portion and one for the southern portion of the stock. For lingcod off of Washington and Oregon (the northern portion of the coastwide stock) the biomass was estimated to be at 62 percent of its unfished biomass, and for lingcod off of California (the southern portion) the biomass was estimated to be at 74 percent of its unfished biomass. Three ACL alternatives were considered for the north stock. Alternative 1, with an ACL of 1,219 mt in 2011 and 1,126 mt in 2012 was based on the 2009 stock assessment base model with a 50 percent reduction from the OFL (48 percent reduction from the ABC) for assessment uncertainty and overfished species bycatch concerns. Alternative 2, with an ACL of 2,172 mt in 2011 and 2,020 mt in 2012 was based on the low mortality model in the 2009 assessment. Alternative 3, with an ACL of 2,330 mt in 2011 and 2,151 mt in 2012, was based on the 2009 stock assessment base model with the ACL set equal to the ABC. Because lingcod is a healthy stock the Council recommended the ACL be set equal to the ABC (Alternative 3).

For lingcod south, three ACLs were considered. Alternative 1, with an ACL of 1,262 mt in 2011 and 1,299 mt in 2012, was based on the 2009 stock assessment base model with a 50 percent reduction from the OFL for assessment uncertainty and overfished species bycatch concerns. Alternative 2, with an ACL of 1,421 mt in 2011 and 1,531 mt in 2012, was based on the low mortality model in the 2009 assessment. Alternative 3, with an ACL of 2,102 mt in 2011 and 2,164 mt in 2012 was based on the 2009 stock assessment base model with the ACL set equal to the ABC. Because lingcod is a healthy stock, the Council recommended the ACL be set equal to the ABC (Alternative 3).

The trawl rationalization program, as approved by NMFS in Amendments 20 and 21, lists lingcod as an IFQ species with a coastwide area designation. Because these harvest specifications for lingcod are being recommended north and south of 42° north latitude as opposed to coastwide, NMFS anticipates that quota share for lingcod would need to be reallocated north and south of 42° N. lat. once the 2011–2012 harvest specifications and management measures are implemented through a final rule.

Sablefish

Sablefish is one of the most important species to the trawl and limited entry fixed gear fisheries. Management uncertainty for sablefish and the risk of overharvesting is considered to be low. This is because of the increased monitoring of the trawl fisheries that will occur under rationalization and because the limited entry fixed gear sector tends to under harvest their allocation. Therefore, when recommending the sablefish ACLs, the Council focused primarily on conservation concerns and stock status.

The 2007 coastwide sablefish stock assessment indicates the stock is at 36 percent of its unfished biomass and is therefore considered to be in the precautionary zone. The strength of the stock is reliant upon the strong 1999 and 2000 year classes, with the possibility of a strong incoming 2004 year class as well. The 2010 OY was previously set by applying a 40–10 harvest control rule to the coastwide ABC (in 2010 the ABC was equivalent to the OFL). The coastwide OY was then apportioned north and south of 36° north latitude, using the average 2003–2006 proportions of the swept-area biomass estimates of sablefish from the NWFSC shelf-slope trawl survey (72 percent north; 28 percent south). The OY south of 36° north latitude was then reduced by 50 percent to account for greater assessment and survey uncertainty in that area.

In determining the 2011–2012 ACLs for sablefish, the Council considered: (1) How to apply the 40–10 control rule since this stock is in the precautionary zone; (2) how to apportion the stock north and south of 36° north latitude; and (3) whether precautionary reductions were needed to the southern ACL to account for greater conservation concerns. Options were considered for applying the 40–10 harvest control rule directly to the OFL, resulting in coastwide ACLs of 8,485 in 2011 and 8,227 in 2012, and making the adjustment to the ABC resulting in ACLs of 7,296 mt in 2011 and 6,896 mt in 2012. The Council recommended the more risk-averse adjustment of applying the 40–10 reduction to the ABC resulting in a coastwide ACL of 8,110 mt for 2011 and 7,863 mt for 2012.

Historically, the coastwide sablefish OY was apportioned north and south of 36° North latitude by using historical

landings data (96.5 percent north and 3.5 percent south). However, beginning with the 2009–2010 harvest specifications and management measures process, the swept area biomass from the 2003–2006 combined NWFSC shelf/slope surveys were used to apportion the coastwide OY (72 percent north and 28 percent south). The Council considered apportioning the coastwide ACLs for 2011 and 2012 using the same proportions as in 2009–2010. When applied to the 2011 coastwide ACL of 8,110 mt this resulted in a 5,839 mt apportionment to the north and a 2,271 mt apportionment to the south. When applied to the 2012 coastwide ACL 7,863 mt it resulted in 5,839 mt apportionment to the north and a 2,271 mt apportionment to the south. Because new data were available from the 2007 and 2008 NWFSC shelf/slope surveys, the Council also considered apportioning the coastwide ACLs using averaged 2003–2008 data (68 percent north and 32 percent south) and using a weighted average with more weighing given to recent years (64 percent north and 36 percent south). When using averaged 2003–2008 data and applying it to the 2011 Coastwide ACL of 8,110 mt it resulted in a 5,515 mt to the north and 2,595 mt to the south and for 2012 when applied to the ACL of 7,863 mt it resulted in 5,347 mt to the north and 2,516 mt to the south. When using the weighted average of the 2003–2008 data and applying it to the 2011 Coastwide ACL of 8,110 mt it resulted in a 5,190 mt to the north and 2,920 mt to the south and for 2012 when applied to the ACL of 7,863 mt it resulted in 5,032 mt to the north and 2,832 mt to the south. The apportionment of biomass using the trawl survey data incorporates the best available information on the sablefish stock distribution. The Council recommended apportioning the 2011 and 2012 coastwide ACLs with 68 percent going to the north and 32 percent going to the south, based on using averaged 2003–2008 data.

To account for the uncertainty inherent in the abundance estimates of sablefish south of 36° north latitude (due to the short time-series of survey data from the southern area and advisory body advice), the Council recommended making a 50 percent reduction to the 2011 and 2012 southern apportionment of the coastwide ACLs of 2,595 mt and 2,516 mt, respectively, resulting in 2011 and 2012 ACLs for the area south of 36° north latitude of 1,298 mt and 1,258 mt, respectively. Even with the precautionary reduction in the southern area, the ACL is high relative to recent catches in the Conception Area. The Cowcod Conservation Area (CCA) closes a significant amount of the Conception Area to fishing and the area-swept biomass estimates for the Conception area are based on the assumption that catch rates outside of the CCAs are comparable to those inside (the survey does not sample within the CCAs).

Thornyheads

Shortspine and longspine thornyhead stocks have been assessed coastwide and projected harvest levels in the stock assessments are coastwide values. However, since 2008 each of the stocks has been managed with separate OYs for the areas north and south of Point Conception (34°27' north latitude). Separate ACLs are being adopted for shortspine thornyhead north and south of Point Conception, and longspine thornyhead north and south of Point Conception.

Only one ACL alternative, based on projections from the 2005 stock assessment and representing 66 percent of the coastwide ACL (the portion of the biomass estimated to occur north of Point Conception) was considered for shortspine thornyhead. Due to conservation concerns in the Conception area and a new specifications structure under proposed Amendment 23, two ACL alternatives, based on projections from the 2005 stock assessment, were considered for shortspine thornyhead south. Alternative 1 represented 34 percent (the portion of the biomass estimated to occur south of Point Conception) of the coastwide ACL, reduced by 50 percent for conservation concerns. Under Alternative 1 the ACLs were 405 mt in 2011 and 401 mt in 2012. Alternative 2 ACLs represented 34 percent of the coastwide ACL with no conservation reductions and were 811 mt in 2011 and 802 mt in 2012. The Council recommended a continuation of the added precautionary adjustment included under Alternative 1, and recommended ACLs of 405 mt in 2011 and 401 mt in 2012. The conservation concern is largely due to the fact that a small proportion of the Conception area is surveyed in the NMFS trawl survey given the high proportion of untrawlable habitat in the Conception area and the prohibition of bottom trawling in the Cowcod Conservation Areas. The conservation concern is specifically south of Point Conception (of 34°27′ north latitude) and is accommodated in consideration of the ACL for the shortspine thornyhead stock for the Conception area.

Two ACL alternatives, based on the most recent stock assessment (2005) were considered for longspine thornyhead north. Both ACL alternatives are based on the assumption that 79 percent of the coastwide biomass occurs north of Point Conception. Alternative 1 for the northern portion of the coastwide ACL, is a 10 percent reduction from the ABC for conservation uncertainty. Under Alternative 1 the ACLs were 2,119 mt in 2011 and 2,064 mt in 2012. Alternative 2 ACLs made the same assumption regarding stock distribution and represented 79 percent of the coastwide ACL based on projections from the 2005 stock assessment. The ACLs under Alternative 2 were 2,825 mt in 2011 and 2,751 mt in 2012. The Council recommended a continuation of the added precautionary adjustment included under Alternative 1 and the ACLs of 2,119 mt in 2011 and 2,064 mt in 2012.

Two ACL alternatives, based on the most recent stock assessment (2005), were considered for longspine thornyhead south. Alternative 1 assumed a constant density throughout the Conception area and represented 21 percent (the portion of the biomass estimated to occur north of Point Conception) of the coastwide ACL reduced by 50 percent for uncertainty. Under Alternative 1 the ACLs were 375 mt in 2011 and 366 mt in 2012. Alternative 2 ACLs made the same assumption regarding stock distribution and represented 21 percent of the coastwide ACL. The ACLs under Alternative 2 were 751 mt in 2011 and 731 mt in 2012. For similar reasons as for shortspine thornyhead south, but with a 40 percent reduction from the ABC, the Council recommended a continuation of the added precautionary adjustment included under For similar reasons as for shortspine thornyhead south, the Council recommended a continuation of the added precautionary adjustment included under Alternative 1 and recommended ACLs of 375 mt in 2011 and 366 mt in 2012.

Cabezon (California)

In recent years, the OY for Cabezon in waters off California was based on the California State Nearshore Management Plan which uses a F_{MSY} proxy of $F_{50\%}$ and a 60–20 precautionary adjustment for stocks below $B_{60\%}$ (60 percent of the unfished biomass). This is in contrast to the PCGFMP F_{MSY} proxy of $F_{45\%}$ percent for Cabezon. In light of the new ACL requirements for a more precautionary ABC that is reduced from the OFL for scientific uncertainty, the Council's advisory bodies recommended using the

40–10 adjustment to better align the California management strategy with the PCGFMP. Alternative 1 considered an ACL of 102 mt in 2011 and 105 mt 2012. Alternative 1 is based on the low mortality scenario from the 2009 stock assessment with a 40–10 reduction. Since scientific uncertainty is addressed in the ABC specification and the new assessment indicates a healthy stock status, the more risk averse ACL Alternative 1 was not considered necessary for managing California cabezon. Alternative 2 is the ACL set equal to the ABC and results in a 2011 ACL of 179 mt and a 2012 ACL of 168 mt. Following consideration by the Council, Alternative 2 was recommended. The cabezon fishery is managed by the State under the California nearshore fishery management plan. Implementation of the California fishery management plan included provisions to improve fishery monitoring and research data collection. Improved stock assessment modeling plus improved inseason data availability, as implemented under the California fishery management plan, are expected to substantially reduce uncertainty in management of the nearshore fishery. Therefore, additional reductions in the ACL below ABC to address management uncertainty were not recommended by the Council.

Cabezon (Oregon)

Following a 2009 stock assessment for cabezon off Oregon the SSC recommended removing the species from the "other fish" complex. The recreational sector was the main source of cabezon removals until the 1990s when hook and line and pot gear commercial fisheries began targeting cabezon. Cabezon has since become a valuable live-fish commercial fishery associated with higher live market prices. Given the small contribution relative to other species in the complex, removing cabezon in Oregon from the "other fish" complex will reduce the risk of overfishing.

Two ACL alternatives were considered for the cabezon stock off Oregon. Alternative 1 includes an ACL of 29 mt in 2011 and 2012, and was based on the results of the low mortality scenario in the 2009 stock assessment. Since scientific uncertainty is addressed in the ABC specification and the new assessment indicates a healthier stock, the more risk averse ACL alternative 1 was not considered necessary for managing Oregon cabezon. Alternative 2 was from the results of the base model and the 2009 stock assessment, with the ACL set equal to the ABC. This resulted in a 2011 ACL of 50 mt and a 2012 ACL of 48 mt. Following consideration by the Council, an ACL of 50 mt in 2011 and an ACL of 48 mt in 2012 was recommended. The cabezon fishery is managed by the State of Oregon under a limited entry nearshore permit program with a conservative management approach and a management history in which necessary action to stay within harvest specifications has been taken by the state.

California Scorpionfish

California Scorpionfish south of 34°27′ North latitude (Point Conception) was first assessed in 2005 and was estimated to be between 58 and 80 percent of its unfished biomass in 2005. For 2011 and 2012 the Council considered two ACL alternatives for California scorpionfish. Alternative 1 was based on the base model from the 2009 stock assessment with the 60–20 reduction from the California State Nearshore Management Plan. Alternative 1 resulted in a 2011 ACL of 133 mt and a 2012 ACL of 124 mt. The Alternative 2 ACLs of 135 mt in 2011 and 125 mt in 2012 are ACLs set equal to the ABC. The Council recommended setting the ACL equal to the ABC. Like cabezon, the California nearshore fishery management plan includes California scorpionfish which is a healthy stock, and is managed by the state under provisions for improved fishery monitoring and research data collection.

Dover Sole

Alternatives 1–3 are based on the results of the 2005 stock assessment, which estimated the Dover sole biomass to be at 59.8 percent of its unfished biomass in 2005 and was projected to be increasing. Alternative 1 is the 2010 OY which is based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{40\%}$. The Alternative 1 ACL of 16,500 mt is the MSY harvest level which is considerably larger than the coastwide catches in any recent years. Alternative 2 reflects the change in the F_{MSY} harvest proxy from $F_{40\%}$ to $F_{30\%}$ for flatfishes. The MSY harvest level at $F_{30\%}$ is 17,560 mt. Alternative 3 is based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{30\%}$, with the ACL set equal to the ABC, and was considered because the Dover sole stock biomass is above B_{MSY}. Alternative 3 results in ACLs of 42,436 mt in 2011 and 42,843 mt in 2012. After consideration of these alternatives, the Council recommended an ACL of 25,000 mt for 2011 and 2012 which is intermediate to Alternatives 2 and 3. An ACL of 25,000 mt is higher than recent harvests yet substantially lower than the ABC. This is anticipated to provide increased harvest opportunities on healthy stocks for the new trawl ITQ program. With a trawl IFQ program fishers would allow opportunity within the constraints of the individual quota shares for both Dover sole and overfished species that co-occur with Dover sole within. The Council indicated that such opportunities were necessary at the start of the IFQ fishery to provide harvest opportunity.

English Sole

Two ACL alternatives were considered for English sole for 2011 and 2012. Alternative 1 is 7,158 mt and 5,790 mt in 2011 and 2012, respectively. These amounts, are based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{40\%}$ and the ACL set equal to the ABC. Alternative 2 reflects the change in the F_{MSY} harvest proxy from $F_{40\%}$ to $F_{30\%}$ for flatfishes. The 2011 ACL of 19,761 mt and 2012 ACL of 10,150 mt under Alternative 2 are the ACLs set equal to the ABC. The Council recommended Alternative 2. English sole is a healthy stock that is primarily caught in the trawl fishery where individual allocations and improved catch accounting under an IFQ fishery are expected to reduce the management uncertainty.

Arrowtooth Flounder

Two ACL alternatives were considered for arrowtooth flounder in 2011 and 2012. The Alternative 1 ACLs are 9,109 mt in 2011 and 8,241 mt in 2012 and are based on the results of the 2007 assessment with an F_{MSY} proxy of $F_{40\%}$ and is the ACL set equal to the ABC. Alternative 2 reflects the change in the F_{MSY} harvest proxy from $F_{40\%}$ to $F_{30\%}$ for flatfishes. The Alternative 2 ACL is set equal to the ABC and results in an ACL of 15,174 mt in 2011 and 12,049 mt in 2012. The Council recommended Alternative 2. Like English sole, arrowtooth flounder is a healthy stock that is primarily caught in the trawl fishery, where individual allocations and improved catch accounting under an IFQ fishery are expected to reduce the management uncertainty.

Starry Flounder

Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. However, the stock was projected to decline in both the northern and southern areas. The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. The

Alternative 1 ACL was based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{40\%}$ and a 25 percent precautionary reduction from the ABC to account for management uncertainty. Alternative 1 results in ACLs of 1,130 mt in 2011 and 1,166 mt in 2012. Alternative 2 reflects the change in the F_{MSY} harvest proxy from $F_{40\%}$ to $F_{30\%}$ for flatfishes and includes a 10 percent reduction from the ABC as a precautionary measure. Alternative 2 results in ACLs of 1,352 mt in 2011 and 1,360 mt in 2012. Alternative 3 reflects the change in the F_{MSY} harvest proxy from $F_{40\%}$ to $F_{30\%}$ for flatfishes. Under Alternative 3 the ACL would be set equal to ABC. The resulting ACLs under Alternative 3 are 1,502 mt in 2011 and 1,511 mt in 2012. Following consideration of the ACLs, the Council recommended Alternative 2 with ACLs of 1,352 mt in 2011 and 1,360 mt in 2012.

Minor Rockfish North

In 2010, the ABC for each minor rockfish complex was the sum of the ABCs. To obtain the total catch OY for the complex, the "remaining rockfish" (species that have been assessed by less rigorous methods or stock assessments) ABCs were further reduced by 25 percent and "other rockfish" (species that do not have quantifiable stock assessments) ABCs were reduced by 50 percent. The complex OYs were then based on the sum of the OYs for the component species contributions. Sub-complex OYs, minor nearshore rockfish, minor shelf rockfish, and minor slope rockfish were also based on the sum of their component species contributions.

For 2011 and 2012, the Council recommended implementing the OFLs put forward by the SSC along with the SSC recommended ABC policies of using a sigma value and the Council recommended P* values. Substantial changes in minor nearshore north and minor shelf north harvest specifications from the 2010 levels resulted from the application of DB–SRA and the DCAC methods for determining OFLs for stocks that have not been assessed; the apportionment of catch north and south of 40°10′ north latitude to derive component species OFLs; and the application of scientific uncertainty buffers.

The Council expressed concern about the long term impacts of leaving splitnose and greenstriped rockfish in their current complexes. If stocks within a complex are caught in proportion to their contribution to the OFL the risks of overfishing an individual stock is low. If stocks are not caught in such proportions, then it is possible for overfishing to occur on a component species. This is more of a concern with stocks that are targeted and that only contribute a small proportion of the overall OFL.

Greenstriped rockfish and splitnose rockfish were assessed in 2009. Given the results of the new assessments the Council considered removing these stocks from the minor rockfish north complex. Splitnose rockfish is part of the minor Slope Rockfish North sub-complex, which is comprised of nine species. In 2011 and 2012, splitnose rockfish is projected to contribute more than 50 percent of the weight of the minor Slope Rockfish in the complex. Greenstriped rockfish is a minor shelf rockfish that would present a similar situation with an OFL contribution of 55 percent of the complex. Removing a stock from a complex creates substantial complications for the management system. New sorting and reporting programs would be required for industry and the states. The implementation of the trawl shoreside IFQ program and initial allocation of minor slope rockfish under Amendment 21 would also be affected. Historical data collected at the complex level would be unreliable for deriving IFQ catch history at the species level. Additional observer monitoring under an IFQ program would provide much needed data for allocations at the species level. Consideration was given to the potential for a target species within a complex becoming overfished. Ultimately, the Council recommended leaving splitnose and greenstriped rockfish in the minor rockfish north complexes at this time.

For chilipepper rockfish, 7 percent of the biomass from the 2007 assessment area is attributed to the area north of 40°10′ north latitude. The northern portion of the stock is currently managed as part of the minor rockfish north complex. The Council recommended continuing the management of this species within the complex north of 40°10′ north latitude.

The Council considered dismantling of the minor rockfish complexes (both north and south) and grouping them by stock vulnerability, based on the PSA analysis prepared by the GMT. Due to workload and the complexity of the necessary analysis, the GMT could not complete the work in time for the 2011–2012 biennial management cycle. The Council expressed interest in such an analysis for the 2013–2014 biennial process and encouraged that a broad range of methods be considered through the Council's STAR-light process (less vigorous review than the full STAR panel process). The lack of species specific historical landing data for stocks within complexes makes an analysis difficult. The trawl IFQ program will require full observer coverage for catch accounting, and it is expected to provide catch by species data that could be used in such an analysis.

For minor nearshore rockfish north the Council recommended that splitnose, greenstriped, and chilipepper rockfish remain in the complex for 2011 and 2012. A 50 mt contribution for cabezon in waters off Oregon is removed from the complex. Minor rockfish north is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish) and 1.44 for category 3 stocks all with a P*s of 0.45. The ACL for each component species is less than or equal to the ABC. The ACL for the complex is the sum of the sub-complex ACLs. The sub-complexes ACLs are the sum of the component stock ACLs. The resulting 2011 and 2012 ACLs for the minor rockfish north represent a 42 percent (nearshore-15 percent, shelf-56 percent, and slope-23 percent) reduction from the OFL. This is in contrast to the 2010 minor rockfish north OY which represented a reduction from the 2010 ABC (now referred to as the OFL) of 38 percent.

Minor Rockfish South

Similar to the minor rockfish north complex, the OFLs recommended by the SSC and the new ABC policies based on the OFLs for the 2011–2012 cycle resulted in substantial changes relative to 2010. Blue rockfish is currently managed within the minor rockfish complex. The first blue rockfish assessment on the West Coast was conducted in 2007 for the portion of the stock occurring in waters off California north of Point Conception (34°27′ north latitude). The Blue rockfish stock was estimated to be at 29.7 percent of its unfished biomass in 2007; therefore, the stock is considered to be in the precautionary zone. During the 2009 and 2010 biennial specification process, the Council contemplated removing blue rockfish from the minor rockfish complex. The decision to continue managing blue rockfish within the minor nearshore complex was based on both scientific uncertainty and management needs, given the interaction of blue rockfish with other

nearshore species. When blue rockfish occur offshore they can be targeted separately from other nearshore rockfish, but those that occur inshore mix with other nearshore rockfish stocks. Blue rockfish is managed under the state of California nearshore management plan which is a limited entry program with mandatory sorting requirements. Landings are routinely tracked and monitored, thereby reducing management uncertainty.

The Council considered the contribution of blue rockfish to the minor rockfish complex ACL. For more efficient state management, blue rockfish would continue to be managed as part of the minor rockfish complex. In 2009–2010, blue rockfish in the California fisheries were managed with a harvest guideline (HG) to prevent overfishing as blue rockfish is a stock in the precautionary zone. To prevent an ACL from being exceeded, the Council recommended continued use of the HG. The 2011 HG will be 242 mt and the 2012 HG will be 239 mt. The HG contribution for the unassessed portion of the stock south of Pt. Conception was calculated by first estimating an OFL using the DCAC methodology and then applying an ABC adjustment (σ=1.44 with a P* of 0.45). The HG contribution for the assessed area was calculated by determining the OFL from the 2007 stock assessment, deriving an ABC using a P* of 0.45 for a category 2 stock, then adjusting the ABC value using the 40–10 harvest control rule. The 2011 and 2012 blue rockfish ABC contributions for the assessed and unassessed areas are then summed to determine the HGs.

Similar to minor rockfish north, consideration was given to the potential for a target species within a complex becoming overfished and the contribution of a non-target species managed within a species complex. The Council contemplated the removal of greenstriped rockfish in the minor shelf rockfish south complex, but recommended leaving it in the complex at this time.

Minor rockfish south is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope. The OFL for the complex is the sum of OFLs for nearshore, shelf and slope south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher north of Point Conception, and blackgill rockfish), 0.72 for category 2 stocks (blue, bank and greenstriped rockfish) and 1.44 for category 3 stocks with a P* of 0.45. The ACLs for the complex are the sum of the sub-complex ACLs. The ACLs for the sub-complexes are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. The ACLs for the minor slope and shelf sub-complexes were set equal to the 2010 OYs. The resulting 2011 and 2012 ACLs for the minor rockfish south represent a 45 percent (nearshore-14 percent, shelf-68 percent, and slop-31 percent) reduction from the OFL. This is in contrast to the 2010 a minor rockfish south OY reduction from the 2010 ABC (now referred to as the OFL) of 41 percent in 2010.

Amendment 23 to the PCGFMP removes dusky rockfish and red-dwarf rockfish from the PCGFMP. These stocks are not considered to be in the fishery as there are no historical records of them being landed. Therefore these stocks are removed from the complexes.

Splitnose Rockfish

A new coastwide stock assessment was prepared for splitnose rockfish in 2009. Splitnose rockfish is a slope species currently managed in the minor rockfish complex north of 40°10′ north latitude, but as an individual species south of 40°10′ north latitude. Splitnose rockfish has been managed separately north and south of 40°10′ north latitude because the previous stock assessment was only for the southern portion of the stock. Although the SSC recommended 2011 and 2012 coastwide splitnose rockfish OFLs of 2,381 and 2,507 mt, respectively, which were determined by applying the proxy $F_{50\%}$ MSY harvest rate to the projected exploitable biomass in each year. The Council chose OFL and ABC values that assume that splitnose rockfish north of 40°10′ north latitude would continue to be managed within the minor nearshore rockfish complex north. The Council recommended continuing this management strategy largely due to the implications of determining the catch history for individual trawl permits for the initial allocation of quota shares for the shoreside trawl IFQ program under Amendment 20. Determining the catch history would be difficult because splitnose rockfish are not targeted and are predominantly discarded at sea resulting in little landing data.

The Council recommended continued management of splitnose rockfish with a separate ACL south of 40°10′ north latitude and within the minor slope rockfish sub-complex ACL north of 40°10′ north latitude. As noted above, the minor slope rockfish north complex is comprised of nine species. In 2011 and 2012, splitnose rockfish were projected to contribute more than 50 percent of the ABC/ACL of the minor Slope Rockfish North complex. The north/south apportionment recommended by the Council was based on the average 1916–2008 assessed area catch and is 64.2 percent for the area south of 40°10′ north latitude and 35.8 percent for the area north of 40°10′ north latitude. The resulting ACL for 2011 is 1,461 mt and 1,538 mt for 2012.

Shortbelly Rockfish

To understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem, a non quantitative assessment was conducted in 2007. The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass at 67 percent of its unfished biomass in 2005. Shortbelly rockfish is an abundant species that is not targeted in any commercial or recreational fisheries, and which is a valuable forage fish species. The OFL of 6,950 mt was recommended for the stock in both 2011 and 2012 with an ABC of 5,789 mt (σ-0.72 with a P* of 0.40) in both 2011 and 2012. The Council considered two ACL alternatives. Alternative 1 with an ACL of 50 mt was somewhat above the recent landing level and under Alternative 2 ACL values were set equal to the ABC (5,789 in both 2011 and 2012). The 50 mt ACL was recommended by the Council and was intended to be adequate to accommodate incidental catch while preventing the development of fisheries specifically targeting shortbelly rockfish. The Council recognized shortbelly rockfish for its value as a forage fish.

Rebuilding Plan ACLS for Overfished Species

When a stock has been declared overfished a rebuilding plan must be developed and the stock must be managed in accordance with the rebuilding plan. An overfished groundfish stock is considered rebuilt once its biomass reaches B_{MSY}. Rebuilding plans are based on the results of rebuilding analyses. Life history characteristics (*e.g.,* age of reproductive maturity, relative productivity at different ages and sizes, etc.) and the effects of environmental conditions on its abundance (*e.g.,* relative productivity under inter-annual and inter-decadal climate variability, availability of suitable feed and habitat for different life stages, etc.) are taken into account in the stock assessment and the rebuilding analysis. A

rebuilding analysis for an overfished species uses the information in its stock assessment to determine T_{MIN}, the minimum time to rebuild to B_{MSY} in the absence of fishing. For each stock, T_{MIN} is dependent on a variety of physical and biological factors. The rebuilding analyses are used to predict T_{MIN} for each overfished species and, in doing so, answer the question of what is "as quickly as possible" for each of the overfished species.

To rebuild a stock by the T_{MIN} date would require elimination of human-induced mortality on a stock (the complete absence of fishing mortality is referred to as F = zero). However, the absence of fishing mortality does not necessarily result in the complete absence of human-induced fishing mortality. To rebuild by the T_{MIN} date would require elimination of extractive scientific research, in addition to any target or incidental commercial, recreational, or ceremonial and subsistence fishing that results in overfished species mortality. Eliminating extractive scientific fishing would eliminate a significant portion of data used to inform stock assessments and to better understand the biological condition of groundfish stocks. For overfished species where retention has been prohibited, little information is available to inform stock assessments; this has particularly been an issue for species such as yelloweye rockfish. With the implementation of trawl rationalization, observer monitoring will increase to full coverage which is expected to provide more biological data regarding overfished species that are vulnerable to trawl gear. However, for species such as yelloweye rockfish and cowcod that are primarily taken in the recreational fishery and with non-trawl gears, little new biological data is expected to be available without research collections. Non-extractive survey techniques, such as Remote Operational Vehicle (ROV) work, are currently cost prohibitive on a large scale. Because Pacific Coast groundfish species are so intermixed, extractive scientific fishing for some non-overfished species would need to be eliminated as well. To appropriately take into account the status and biology of overfished stocks, both now and in the future the scientific take of overfished and other groundfish stocks must continue.

The relative level of depletion, combined with other biological characteristics of the stock, influences the sensitivity of a stock's rebuilding time to changes to long-term harvest rates generally used to set ACLs. Stocks with very low levels of depletion; such as canary rockfish, cowcod, and yelloweye rockfish; are considered to have a higher sensitivity to changes in harvest rate and higher harvest rates for these species have a greater risk of not rebuilding by $T_{TARTGET}$. From a biological view due to the differences in productivity between species, one year of delay of rebuilding for yelloweye rockfish (the slowest of the overfished species to rebuild) is not equivalent to a one year of delay in rebuilding for petrale sole (the quickest overfished species to rebuild). The estimate of mean generation time recommended in the National Standard guidelines for the calculation of T_{MAX} captures these biological differences, but it is not incorporated into the other rebuilding parameters.

As advised by the SSC, the Council has elected to set overfished species harvests based on a constant SPR harvest rate. The SPR is the expected lifetime contribution to the spawning stock biomass for a recruit (a fish of specific spawning age or greater) usually expressed as the number of eggs that could be produced by an average recruit in a fished stock, divided by the number of eggs that could be produced by an average recruit in an unfished stock. The SPR harvest rate specifies the proportion of the spawning stock that can be removed each year and inherently takes into account the productivity of the stock. The exploitation pattern, rate of growth, and natural mortality can be given consideration when calculating an SPR harvest rate. Applying a constant SPR harvest rate is more precautionary in an uncertain environment as it reduces the effect of changes in variability in the scale of biomass (a change in the entire trajectory of biomass from the first biomass estimate forward to the current biomass estimate). When a new stock assessment results in a change in the understanding of stock scale, a constant harvest rate strategy is expected to keep the stock on track to the T_{TARGET}. In addition, the "rebuilding paradox" (the fishing interaction with the stock increases as the stock biomass increases) is addressed within a constant SPR approach. This is because the ACL would change in relation to changes in biomass. In contrast, constant catch rebuilding strategies do not adjust in relation to changes in biomass which can be problematic when there is a downward change in abundance. In this case, the catch may become too large relative to the size of the biomass population and adjustments become necessary to meet the same T_{TARGET}. Although the biennial management cycle requires the focus on ACLs for a two year period, an SPR harvest strategy is based on a rebuilding trajectory over time. For stocks with slow trajectories, the differences between two alternatives considered during a single biennial management cycle need to be compared in relation to how they rebuild the stock over time.

Given the changes in perception of stock status and biology, the Council tracks rebuilding progress in three dimensions: stock productivity; absolute stock abundance or stock scale; and relative stock abundance or stock status. Stock productivity is referred to as recruitment and means the ability of a stock to generate new individuals of harvestable size. Stock scale is the total number of individuals in a population. This value is rarely known, but is usually estimated from relative abundance or through other methods. Absolute stock abundance is an estimate of the current biomass usually measured by indices that track trends in population biomass over time. Stock status is the current biomass relative to the unfished biomass. Each of these dimensions is subject to considerable scientific uncertainty and can change the overall rebuilding outlook from cycle to cycle. To determine whether a stock is better or worse off compared to a previous assessment, all three dimensions must be examined. Changes in the understanding of stock productivity can affect rebuilding plans by altering our perception of how quickly a stock can increase. Changes in our understanding of life history traits (*e.g.* mortality, maturity, fecundity, or growth) can change the evaluation of stock productivity. Measuring recruitment is difficult given the elusive and inaccessible early life histories of most groundfish species and the fact that recruitment events are not constant. In the case of many groundfish, recruitment is highly variable and sporadic. Age or length data, along with survey biomass estimates and removal histories, all inform recruitment patterns, but to varying degrees of resolution. The most recent couple of years of recruitment are often the most uncertain.

Absolute stock abundance, or stock scale, has also demonstrated considerable variability across assessments. This variability is often a result of uncertainty in catch histories, which scales the biomass via estimates of fishing mortality, but is also sensitive to life history parameters such as growth and mortality. Any changes in these estimates can have large effects in perceived biomass. These changes in scale are commonly seen in estimates of

unfished biomass, as the scale of the entire population trajectory can shift up or down. Changes in population scale will affect the level of catch needed to achieve the rebuilding goals if harvest levels are not based on harvest rates. Changes in the understanding of stock productivity and relative biomass can result in changes in the estimated time to rebuild and rebuilding reference points.

Stock status or depletion is expressed as an estimate of current biomass relative to the estimate of unfished biomass. Importantly, changes in the estimate of unfished biomass can change with new data, even though the current population biomass stays the same. Likewise, as more data becomes available on productivity in current years it may alter our understanding of current year biomass relative to an unfished biomass. Because stock status is the basis for determining when a stock is rebuilt, subsequent estimates of when a stock is projected to rebuild at a specific SPR may change as estimates of stock status change.

At its June 2010 meeting, the Council made final recommendations on: 2011–2012 harvest specifications (OFLs, ABC, ACLs ACTs, catch allocations and set-asides); rebuilding plans for overfished species; and, management measures designed to keep total catch mortality within the final preferred ACL levels.

Bocaccio

The new 2009 assessment shows that bocaccio is rebuilding ahead of schedule. The Council considered, but did not recommend extending the bocaccio rebuilding plan north of 40°10′ north latitude to Cape Blanco based given advisory body advise that extending the rebuilding plan further north would not aid stock recovery and would complicate current management. Three bocaccio ACL alternatives derived from the 2009 rebuilding analysis were considered by the Council. The Alternative 1 ACLs of 53 mt in 2011 and 56 mt in 2012 applies an SPR harvest rate of 95 percent and has a predicted median time to rebuild of 2019, which equals the minimum time to rebuild with F=zero (*i.e.,* the shortest time to rebuild the stock at this point) and 7 years before the T_{TARGET} specified in the current rebuilding plan. The 2012 bocaccio HG for the California recreational fishery Alternative 1, would reduce the Southern Management Area fishing season to only a five month fishing season during the least valuable months. The resulting season would not encompass the critical months for rockfish fishing from March through April when coastal pelagic and highly migratory species are not available to the fishery. In addition, the season in the South-Central Management Area would be reduced by 1 month resulting in a 6-month fishing season. The Alternative 2 ACLs of 109 mt in 2011 and 115 mt in 2012 are consistent with an SPR harvest rate of 90 percent with a predicted median time to rebuild the stock of 2020 or one year longer than the minimum time to rebuild with F=zero and rebuilds 6 year earlier than the T_{TARGET} specified in the current rebuilding plan. Most bocaccio mortality occurs in the California recreational fisheries. Under this alternative the only constraint over status quo in the recreational fishery is for "other flatfish" where fishing is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through September 15; and is closed entirely from January 1 through May 14 and from September 16 through December 31). Alternative 2 for the California recreational fishery, given the preferred catch sharing alternative selected by the Council, would be sufficient to allow for a depth increase to 30 fm (55 m) or possibly 40 fm (73 m) in the cowcod conservation area (CCA) and retention of shelf and slope rockfish including bocaccio in the CCA. Bocaccio co-occur with chilipepper and widow rockfish, which have historically been taken with trawl gear south of 40°10′ north latitude. Under the trawl IFQ program, fishers could target chilipepper rockfish providing they have adequate quota pounds to cover all IFQ species in the catch.

The Alternative 3 ACLs of 263 mt in 2011 and 274 mt in 2012 are based on the current rebuilding plan and are based on the status quo SPR harvest rate of 77.7 percent. This alternative has a predicted median time to rebuild of 2022 or three years longer than the minimum time to rebuild with F=zero and rebuilds 4 years earlier than the T_{TARGET} specified in the current rebuilding plan. This alternative applies the same SPR harvest rate as in 2009–10, even though it results in slightly lower harvest levels. This alternative also takes into account the status of the stock and facilitates rebuilding early, while attempting to strike a balance between rebuilding the stock and minimizing severe economic consequences to communities. Bocaccio is a relatively productive species which is difficult for fishers to avoid and co-occurs with other stocks (*e.g.,* widow and chilipepper). As with Alternative 2, the California recreational fishery could increase the RCA depths from 20 fm (37 m) to 30 fm (55 m) under this alternative. As noted above under Alternative 2, with the trawl IFQ program, fishers could target chilipepper providing they have adequate quota pounds to cover all IFQ species in the catch. Alternative 3 provides the greatest opportunity for targeting chilipepper with trawl gear. The Council expressed concerns relative to bocaccio catch in the initial year of the new IFQ program. For species where more than 80 percent of the OY has been harvested annually, concern was expressed in regards to the implications of full catch accounting and the number of fishers that may choose to carry-over quota pounds into 2012 or 2013.

Because the rebuilding progress was considered adequate, and the assessment did not change our fundamental understanding of the stock, the SSC recommended maintaining the status quo rebuilding plan (*i.e.,* no modifications to T_{TARGET} or SPR harvest rate) under Alternative 3. Total catch from 2000–2008 was 50 percent of the OY, indicating that management has been effective at curtailing fishing mortality to facilitate rebuilding as quickly as possible.

ACL allocations were also considered by the Council. The following are the Council's recommended allocations for Bocaccio in 2011: Limited entry non-whiting trawl, 29.6 mt; limited entry and open access non-nearshore fixed gears, 57.9; limited entry and open access nearshore fixed gear, 0.3; California recreational 161.8 mt. The following are the Council's recommended allocations for bocaccio in 2012: Limited entry non-whiting trawl, 30.9 mt; limited entry and open access non-nearshore fixed gears, 60.4; limited entry and open access nearshore fixed gear, 0.3; California recreational 168.9 mt. The recreational portion of the non-trawl allocation of bocaccio would accommodate a potential increase in bocaccio impacts in the recreational fishery as a result of allowing retention of shelf rockfish within the 30 fm (55 m) depth restriction in the CCA.

Although the Council-recommended ACLs are 263 mt in 2011 and 274 mt in 2012, the proposed management measures and catch allocations were projected to result in bocaccio total catch mortality of 249.6 mt in 2011 and 260.6 mt in 2012, which is 13.4 mt less than the annual ACLs. Managing the fishery to a level that is 13.4 mt less than the annual ACLs is intended to allow the stock to rebuild faster while recognizing the management uncertainty associated with the species.

Canary Rockfish

The historical catch data used in the 2009 stock assessment update was significantly different from that used in previous assessments. This change caused a relatively large change in the unfished and terminal year (2009) biomass estimates. When compared to the results of the 2007 stock assessment, the depletion level in recent years is lower in the 2009 stock assessment. The perception of the relative status and productivity of canary rockfish has changed and stock cannot be rebuilt by the current T_{TARGET} (2021) even in the absence of fishing, therefore the rebuilding plan must be modified.

The impacts of three ACL alternatives were analyzed and included ACLs of 49 in 2011 and 51 mt in 2012, 94 in 2011 and 99 mt in 2012; and, 102 mt in 2011 and 107 mt in 2012. Alternative 1 with an ACL of 49 mt in 2011 and 51 mt in 2012 takes into account the less optimistic assessment update with a more precautionary harvest rate (SPR=94.4 percent). Alternative 1 results in a T_{TARGET} of 2025 which is 4 years longer than the T_{TARGET} in the existing rebuilding plan and 1 year longer than the minimum time to rebuild with F=zero. The canary rockfish ACLs in Alternative 1 are similar to the 2007–2008 OY of 44 mt which resulted in substantial hardship on fishers and communities because substantial harvest of other healthy species was foregone. Under Alternative 1 a large closed area would be needed for the limited entry fixed gear fishery in the north or reductions to sablefish harvest would be necessary in order to stay within the overfished species constraints. With the ACLs proposed under Alternative 1, the canary rockfish ACL and associated apportionment to the non-nearshore fisheries is so low that the sablefish allocations would have to be reduced by as much as 42 percent. The California nearshore fishery would also be severely constrained, requiring statewide 20 fm (37 m) Shoreward RCA lines and large trip limit reductions or total closures for some species would be necessary. This is in contrast to status quo where the non-trawl RCAs are 20 fm (37 m) in most northern areas and 60 fm (110 m) south of 34°27 north latitude. All recreational fisheries would experience reduced season lengths and restrictive depth restrictions. In addition, the trawl IFQ fishery is intended to provide long-term benefits to the fishery in the form of bycatch reduction and economic stability. Given the full catch accounting proposed under trawl IFQ program and that all catch, discarded and retain will count towards the individuals IFQ shares, the risk of the fishery exceeding the ACL is reduced compared 2010 and prior years. In the short term, fishers will need to learn how to avoid canary rather than simply discarding them at-sea. ACLs for overfished species that are too low could be perceived as too risky (risk of exceeding the individual quota pounds) by fishers such that they limit their fishing participation for healthy target species; or hold quota pounds of constraining overfished for sale to fishers who incur overages. Reduce fishing time may result in fishers being unable to develop new methods or strategies risk to avoid overfished species. The long-term success of the trawl rationalization program to maintain low incidental catch of overfished species in conjunction with profitable harvest of healthy stocks is consistent with the needs of communities specified in the PCGFMP.

Alternative 2 included ACLs of 94 mt in 2011 and 99 mt in 2012. This alternative takes into account the less optimistic assessment update with a more precautionary harvest rate (SPR=89.5 percent) than the current rebuilding plan and results in a T_{TARGET} that is two years longer than F=Zero. Under this alternative the California nearshore fishery would experience changes to the RCA and/or reductions in catch.

Alternative 3 includes ACLs of 102 mt in 2011 and 107 mt in 2012. The alternative would maintain the SPR harvest rate of 88.7 percent in the current rebuilding plan. This is a conservative SPR harvest rate that results in a T_{TARGET} that is three years longer the target year with no F=zero. Due to the nature of the canary stock, even higher ACL harvest levels in the range considered by the Council have small impacts on the time to rebuild. This is because the range of ACLs being considered represent a very low level of fishing mortality. Canary rockfish are under the rebuilding paradox (as the stock increases its biomass it becomes increasingly more difficult for fishers to avoid) and are difficult to avoid, so the ACL under this alternative would address those expected increased interactions. The California nearshore fishery would continue to be constrained under this alternative, preventing access to target species. The shoreward nontrawl RCA would be the same as under the No Action Alternative (20 fm (37 m) in most northern areas, 60 fm (110 m) south of 34°27 north latitude). Landings of non-overfished species would be reduced from the No Action Alternative levels in order to stay within the overfished species constraints. Alternative 1, the trawl IFQ fishery is intended to provide long-term benefits to the fishery. Under Alternative 3, canary rockfish would be less of a limit to access to healthy target species and the risk of encountering canary rockfish in excess of an individual's quota shares is reduced. Although canary rockfish is still expected to constrain harvest of healthy stocks under Alternative 3, the constraints on harvest from the perceived risk of exceeding an individual's quota shares and is not expected to undermine the long term benefits that shorebased trawl IFQ program. In the short term fishers will need to learn how to avoid canary rockfish rather than simply discarding them at-sea. However, long term benefits in reduced bycatch and improved avoidance techniques are expected in a rationalized trawl fishery.

The Council also considered the allocation of the canary ACL among fishery sectors. The following are the Council's recommended allocations for canary rockfish in 2011: Limited entry non-whiting trawl, 19.3 mt; limited entry Pacific whiting 14.1 mt (catcher/processor 4.8 mt, mothership 3.4 mt, and shorebased 5.9 mt); limited entry and open access non-nearshore fixed gears, 2.3; limited entry and open access nearshore fixed gear, 3.3; Washington recreational, 4.4; Oregon recreational 14.5 mt; and California recreational 22.9 mt. The following are the Council's recommended allocations for canary rockfish in 2012: Limited entry non-whiting trawl, 19.3 mt; limited entry Pacific whiting 14.8 mt (catcher/processor 5 mt, mothership 3.6 mt, and shorebased 6.2 mt); limited entry and open access non-nearshore fixed gears, 2.3; limited entry and open access nearshore fixed gear, 3.3; Washington recreational, 4.4; Oregon recreational 14.5 mt; and California recreational 24.2 mt. Although the Council's recommended ACLs are 102 mt in 2011 and 107 mt in 2012, the proposed management measures and catch allocations were projected to result in canary total catch mortality of 82 mt in 2011 and 87 mt in 2012, that is 20 mt less than the annual ACLs. The catch allocations are consistent with how the 2010 Washington and Oregon recreational fisheries have been managed and with the PCGFMP Amendment 21 which specifies trawl and non-trawl allocations. Managing the fishery to a level that is 20 mt less than the annual ACLs is intended to allow the stock to rebuild faster while reducing inseason management changes for the species.

Cowcod

Three ACL alternatives derived from the 2009 rebuilding analysis for the Conception area contribution and based on results of the 2009 stock assessment update were considered for analysis. As was done in previous biennial harvest specifications, the Conception area ACL was doubled as an appropriate harvest contribution for the unassessed Monterey area.

Under Alternative 1, the ACL would be 2 mt for 2011 and 2012, with an SPR harvest rate of 90 percent with a median time to rebuild of 2064, which is four years longer than the minimum time to rebuild with F=zero. Under this alternative extractive research would not be possible. Additional modifications to the California recreational fishery southern management area may be necessary. Under Alternative 1, cowcod is less constraining than other overfished species occurring in the same areas. Although the low cowcod ACL would allow for an increase the CCA depth restriction from 20 fm to 30 fm (37–55 m) for the California recreational and fixed gear fisheries, the bocaccio ACLs would not. The Alternative 2 ACL of 3 mt for 2011 and 2012 is based on an SPR harvest rate of 82.7 percent in 2011 and 2012. Although cowcod impacts have been minimized by prohibiting retention and area closures in California waters, there have been instances when 3 mt has been estimated to have been incidentally taken. Alternative 2 has a median time to rebuild of 2068 which is eight years longer than the minimum time to rebuild with F=zero. The cowcod harvest limit would be sufficient to allow the proposed 30 fm (55 m) or 40 fm (73 m) depth restriction in the CCA and retention of shelf and slope rockfish including bocaccio in the CCA. The Alternative 3 ACL of 4 mt in 2011 and 2012 is the status quo alternative based on an SPR harvest rate of 79 percent with a median time to rebuild of 2071 or eleven years longer the minimum time to rebuild with F=zero. The three ACL alternatives are predicted to rebuild the stock 8, 4, and 1 year(s), respectively prior to the T_{TARGET} of 2072 specified in the current rebuilding plan. The Council recommended maintaining the 4 mt ACL under Alternative 3 with no change to the SPR harvest rate of 79 percent from 2009–2010. Modifying the depth restriction in the CCA from 20 fm (37 m) to 30 fm (55 m) or 40 fm (73 m) is not projected to result in increased catch of cowcod and can be accommodated under Alternative 3. Because cowcod impacts have varied over the last 5 years (according to the total mortality reports), Alternative 3 would encompass the variability. Cowcod is extremely important to the recreational fishery and the trawl fishery south of 40°10′ north latitude. Trawl activity has declined south of 40°10′ north latitude over the last few years due in part to the buyback program. Trawl activity is expected to increase due to the new trawl rationalization program.

Darkblotched Rockfish

The 2009 assessment results indicated that the fishing mortality rate has been greatly reduced and darkblotched appear to be rebuilding gradually at close to previous rebuilding projections. Three ACL alternatives derived from the 2009 rebuilding analysis were considered. The Alternative 1 ACLs of 130 mt and 131 mt for 2011 and 2012, respectively. The Alternative 1 ACLs are based on an SPR harvest rate of 81.8 percent and result in an estimated median time to rebuild of 2018, which is two years longer than the minimum time to rebuild with F=zero. The whiting trawl fishery would likely be constrained by this alternative. Reductions in the darkblotched rockfish OYs are highly limiting to the trawl fisheries because darkblotched rockfish co-occur with the most economically important species in the fishery such as petrale sole, sablefish, and whiting. Trawl opportunities on the slope would be limited as the seaward RCA moved deeper. With the low ACL under Alternative 1, ACLs for overfished species that are too low could be perceived as too risky (risk of exceeding the individual quota pounds) by fishers such that they limit their fishing participation for healthy target species; or hold quota pounds of constraining overfished for sale to other fishers who incur overages. Reduced fishing time may result in fishers being unable to develop new methods or strategies to avoid overfished species. Darkblotched rockfish quota shares may increase in value. Alternative 2 was based on an SPR harvest rate of 64.9 percent and resulted in a 2011 ACL of 298 mt and 2012 ACL of 296 mt, with a median time to rebuild of 2025. The median time to rebuild is nine years longer than the minimum time to rebuild with F=zero and 3 years sooner than the T_{TARGET} in the current rebuilding plan. The Alternative 3 ACLs of 332 mt in 2011 and 329 in 2012 are based on an SPR harvest rate of 62.1 percent which is the SPR harvest rate specified in the current rebuilding plan. Alternative 3 has a median time to rebuild of 2027 which is eleven years the minimum time to rebuild with F=zero. The three ACL alternatives are predicted to rebuild the stock 10, 6, and 1 year(s), respectively, earlier than the T_{TARGET} specified in the current rebuilding plan. The SSC did not recommend any changes to the current rebuilding plan. The Council recommended Alternative 2, a 2011 ACL of 298 mt and a 2012 ACL of 296 mt.

Petrale Sole

The results of the 2009 stock assessment estimated the petrale sole biomass to be at 11.6 percent of its unfished biomass. Because petrale sole is below the B_{MSY} proxy of $B_{25\%}$ it was declared overfished by NMFS on February 9, 2010 and therefore requires the development of a rebuilding plan.

The ACL alternatives considered for petrale sole are all projected to rebuild the stock to the $B_{25\%}$ level well in advance of T_{MAX} (2021). The shortest time to rebuild petrale sole is T_{MIN} (2014), which is the estimated rebuilding period if all sources of fishing-related mortality were eliminated beginning in 2011. With petrale sole, successful rebuilding by T_{MIN} is also projected to occur even with some allowable harvest. The Alternative 1 ACLs of 459 and 624 mt in 2011 and 2012 respectively were based on an SPR harvest rate of 50 percent. The median year estimated to rebuild the stock under Alternative 1 is 2014, which is T_{MIN}. Alternative 2 applies the 25–5 precautionary harvest control rule beginning in 2011 and results in ACLs of 776 mt and 1,160 mt in 2011 and 2012, respectively. Alternative 2 is estimated to rebuild the stock by 2015 or 1 year the minimum time to rebuild with F=zero. Alternative 3 would specify a 2011 ACL of 976 mt which is at the ABC level and for 2012 the 25–5 precautionary adjustment would be applied, resulting in a 1,160 mt ACL. Alternative 3 is estimated to rebuild the stock by 2016 or two years longer than the minimum time to rebuild with F=zero and 5 years earlier than T_{MAX}.

The Council recommended Alternative 3. Petrale sole are a major target stock in the current non-whiting trawl fishery. Industry has indicated that an allowable harvest below the 1,000–1,200 mt level risks losing market share to substitute species and significantly disrupts the fishery. The fall petrale sole fishery has been a valuable economic asset to both the fishers and processors when both the weather and the late year trip limits put an economic hardship on the industry. The petrale sole fishery has become an established holiday season marketing item for the processors, brokers,

wholesalers, restaurants, and grocery stores. While Alternative 3 is below this critical level of harvest, it is the highest alternative considered for 2011–2012. It would constrain the non-whiting trawl fishery, but cause less disruption to the fishery and economic harm to trawl-dependent fishing communities than the other alternatives.

Petrale sole make seasonal inshore-offshore migrations and are targeted in bottom trawl efforts on the shelf in the summer and in spawning aggregations in discrete areas on the shelf/slope break in the winter. One strategy for faster rebuilding of petrale sole would be to close the petrale sole fishing areas where the fish aggregate and spawn in the winter. The 2009 petrale sole assessment and rebuilding analysis indicated that larger and more mature fish are caught by the offshore winter fleet. Reducing these fishing opportunities has been shown to rebuild the stock relatively faster than allowing the mix of summer and winter petrale sole fishing that has occurred prior to 2010. Under Alternative 3, the 200 fm (366 m) seaward RCA coastwide would continue to be modified in periods 1 (January–February) and 6 (November–December) to provide access to petrale sole. Proposed changes to the 200 fm (366 m) RCA line in the Heceta Bank area are not expected to result in measurable impacts on spawning aggregations of petrale sole over the existing 200 fm (366 m) RCA line. In addition, the shoreward RCA line between of 48°10′ north latitude and 40°10′ north latitude would be maintained at 75 fm (137 m) year round to reduce petrale sole catch. Under a rationalized trawl fishery, with individual accountability, the risk of exceeding the petrale sole trawl allocation or ACL is lower than under cumulative trip limit management where the fleet is modeled as a whole.

Given petrale sole's productivity and the fact that the species is caught almost exclusively by a single fishery sector, rebuilding the stock is more straight forward than rebuilding long-lived rockfish. The Council's recommended alternative deviates from the Council's policy of overfished species being managed as incidental only, because the ACLs recommended for petrale sole would allow for a targeted fishery with a minimal delay in rebuilding (2 years more than $F_{=ZERO}$). Petrale sole is one of the most economically important stocks to the non-whiting trawl fishery. Petrale sole is the third most valuable species in terms of its overall annual ex-vessel value, contributing, on average, 19 percent of total ex-vessel revenue in the non-whiting trawl fishery. Despite increases in the Dover sole ACL, petrale sole is so unique in its market desirability that it will be difficult if not impossible to make up lost revenue by switching to the harvest of other groundfish species. Allowing this level of harvest will extend the rebuilding period by two years from T_{MIN}.

POP

The 2009 stock assessment update changed the perception of stock status. Although the population dynamics were similar to the 2007 assessment, the scale of the terminal year (2009) biomass estimate changed such that the T_{TARGET} (2017) in the current rebuilding plan cannot be attained even in the absence of fishing. Although the SPR was held constant (86.4 percent) from 2007 through 2010, the target rebuilding year changed as a result of revised rebuilding analyses (2007–2008 T_{TARGET} was 2015; 2009–2010 T_{TARGET} was 2017). Because the T_{TARGET} (2017) in the current rebuilding plan cannot be attained even in the absence of fishing, the existing rebuilding plan must be revised.

Three alternatives derived from the 2009 rebuilding analysis based on the 2009 stock assessment update were analyzed for the Council's June meeting. All ACL alternatives contemplate a change in the median time to rebuild the stock greater than the current T_{TARGET}. The Alternative 1 ACLs of 80 mt in 2011 and 2012 was based on an SPR harvest rate of 93.6 percent with a median time to rebuild of 2019, one year longer than the minimum time to rebuild with F=zero. The Alternative 2 ACLs of 111 mt in 2011 and 113 mt in 2012 were based on an SPR harvest rate of 91.2 percent with a predicted median time to rebuild the stock of 2019 or one year longer than the minimum time to rebuild with F=zero. The Alternative 3 ACLs of 180 mt in 2011 and 183 mt in 2012 are based on the status quo SPR harvest rate of 86.4 percent from the current rebuilding plan. Alternative 3 has a predicted median time to rebuild of 2020 or two years longer than the minimum time to rebuild with F=zero. This alternative results in slightly lower catches than those in 2009–2010.

The Council recommended Alternative 3 (180 mt and 183 mt, in 2011 and 2012 respectively). POP is a slope rockfish species that is primarily taken in the trawl fishery. As discussed above for canary rockfish, the ACLs under Alternatives 1 and 2 could compromise the long-term bycatch reduction benefits of IFQ management. The trawl IFQ fishery is intended to hold individual fishers responsible for their catch and creates a management structure that encourages fishers to develop methods or fishing strategies that reduce the catch of overfished species. Therefore, long term benefits in reduced bycatch and improved avoidance techniques are expected in a rationalized fishery. However, ACLs for overfished species that are too low could be perceived as too risky (risk of exceeding the individual quota pounds) by fishers such that they limit their fishing participation for healthy target species; or hold quota pounds of constraining overfished for sale to fishers who incur overages. Reduced fishing time may result in fishers being unable to develop new methods or strategies to avoid overfished species. Given the full catch accounting proposed under trawl IFQ program and that all catch, discarded and retained, will count towards the individual's IFQ shares, the risk of the fishery exceeding the ACL is reduced compared with 2010 and prior years. In the short term, fishers will need to learn how to avoid POP rather than simply discarding them at-sea. The long-term success of the trawl rationalization program to maintain low incidental catch of overfished species in conjunction with profitable harvest of healthy stocks is consistent with the needs of communities specified in the PCGFMP, by allowing some limited harvest of POP as unavoidable bycatch which permits targeting of Pacific whiting and slope fisheries.

The needs of fishing communities were considered by evaluating how the alternative POP ACLs affect the opportunity for targeting healthy stocks that co-occur with POP. POP is primarily a trawl caught species landed in Oregon and Washington. The vulnerability (dependency on groundfish fishing and resiliency) of port group areas were considered in the supporting DEIS. Fishing communities in Oregon, Washington and northern California where healthy trawl-caught target species that co-occur with POP are landed were considered to be among the vulnerable and most vulnerable communities.

Widow Rockfish

The 2009 assessment indicated that the stock is at 38.5 percent of unfished biomass, just short of being rebuilt. The rebuilding analysis projects that the stock will be rebuilt by 2010 under each of the ACL alternatives considered by the Council. All of the Alternatives result in a T_{TARGET} that is 5 years earlier than the current rebuilding plan.

The Alternative 1 ACL is a constant harvest level of 200 mt in 2011 and 2012. Alternative 1 represents catch levels far less than status quo. Because

the Pacific whiting fisheries have been constrained by the catch of widow rockfish in recent years, the whiting sectors are expected to be seriously constrained under this alternative. The Pacific whiting fleets have been managed under bycatch limits for widow rockfish for several years and have taken extensive measures to keep incidental catch rates low. Despite this, unexpected widow rockfish catch events, where several tons of widow rockfish have been incidentally taken in single haul, have continued to occur in the Pacific whiting fishery. As the widow rockfish stock rebuilds, avoiding such events is increasingly more difficult. With a 200 mt ACL there is a higher likelihood that such an event would result in the closure of fishery coop or sector. The Alternative 2 ACL is a constant harvest level of 400 mt in 2011 and 2012. The whiting trawl fishery may be constrained under this alternative, given the increase in widow biomass as it nears a rebuilt status. The Alternative 3 ACL is a constant harvest level of 600 mt in 2011 and 2012 which is slightly higher than recent total catch mortality. In addition to whiting, widow rockfish co-occurs with other stocks such as bocaccio and chilipepper. It's difficult for fishers targeting Pacific whiting and chilipepper to avoid widow rockfish. The higher ACL alternative may provide additional opportunities for some sectors of the fishery. It is less likely that Pacific whiting sectors would be constrained under this alternative. The Council recommended Alternative 3 with an ACL based on a constant harvest level of 600 mt in 2011 and 2012. The SPR harvest rate associated with 600 mt is 91.7 percent in 2011, and 91.3 percent in 2012, which is only slightly lower than the 2009–2010 SPR harvest rate of 95.0 percent. The 600 mt ACL, which is somewhat higher than the 2010 OY of 509 mt, is expected to accommodate recent catches and is unlikely to result in targeting of the stock.

Yelloweye Rockfish

Yelloweye rockfish have a life history that illustrates the classic challenge of rebuilding overfished rockfish stocks; they are slow to mature, have low productivity, and can live in excess of 100 years. Stocks exhibiting low productivity will have longer predicted rebuilding periods due to longer mean generation times. Three ACL alternatives derived from the 2009 rebuilding analysis were considered for yelloweye rockfish. Alternative 1, with an ACL of 13 mt for 2011 and 2012 was determined by applying an SPR harvest rate of 80.7 percent. Alternative 1 has a median time to rebuild of 2065, which is 19 years before T_{TARGET} in the current rebuilding plan and 18 years longer than the minimum time to rebuild with F=zero. With an ACL of 13 mt the Oregon and California commercial nearshore fisheries would be severely constrained with more restrictive depth closures and/or reductions to landed catch compared to status quo or the other alternatives. All recreational fisheries would have greatly reduced season lengths and restrictive depth restrictions. Alternative 2 is based on an SPR harvest rate of 76 percent and results in an ACL of 17 mt for 2011 and 2012. The median time to rebuild under Alternative 2 is 2074 or 10 years before the current T_{TARGET} and 27 years longer than the minimum time to rebuild with F=zero. With an ACL of 17 mt, the Oregon and California nearshore fisheries would need more restrictive RCAs compared to the 20 fm (37 m) shoreward boundary used in all areas in 2010. The 20 fm (37 m) depth restrictions implemented in 2009 between 40°10′ north latitude and 43° north latitude would remain in effect. Large trip limit reductions or total closures for some species would be necessary in order to stay within the overfished species ACLs. All recreational fisheries would have reduced season lengths and restrictive depth restrictions. In California, yelloweye rockfish impacts are extremely constraining to the recreational fishery North of Point Arena and reductions in the ACLs from the preliminary preferred alternative of 20 mt would result in additional season length reductions in the North-Central North of Point Arena Management Area. This management area is already severely constrained, with only a three-month fishing season at 20 fm (37 m). Alternative 2 ACLs would also require a reduction in the season length in the Northern or North-Central South of Point Arena Management Areas to remain within the yelloweye rockfish harvest guidelines resulting in lost revenue to coastal communities in these areas. Alternative 3 would apply an SPR harvest rate of 72.8 percent and result in an ACL of 20 mt for 2011 and 2012. The median time to rebuild under Alternative 3 is 2084 which is the T_{TARGET} specified in the current rebuilding plan and 37 years longer than the minimum time to rebuild with F=zero. For the non-nearshore fixed gear fisheries, management measures under this alternative would allow full access to the sectors' sablefish allocation. A less restrictive RCA compared to 2010 would be in place in Oregon (100 fm (183 m) vs. 125 fm (229 m). For the nearshore fishery, the shoreward RCA would be the same as under the No Action Alternative (20 fm (37 m) in most northern areas, 60 fm (110 fm) south of 34°27 north latitude). For the recreational fisheries, season structure and depth restrictions would be similar to 2010 with some increased opportunity in the California recreational fishery, as described below. In California, 20 mt (37 m) yelloweye rockfish ACL would allow the limited season in the North-Central North of Point Arena Management Area to be sustained as well as allowing a one and a half month increase to the season in the Northern Management Area over No Action. This alternative also provides one and a half months of additional fishing opportunities over status quo in the North-Central South of Point Arena Management Area and the Monterey and Morro Bay South-Central Management Areas.

The SPR harvest rate specified in the current rebuilding plan is 71.9 percent, which when applied results in an ACL of 20 mt in 2011 and 21 mt in 2012 with a median time to rebuild of 2087, three years longer than the current T_{TARGET} and 40 years longer than the minimum time to rebuild with F=zero. The Council recommended Alternative 3 with a more conservative harvest rate (SPR = 72.8 percent) than is currently specified in the rebuilding plan and which maintains the current T_{TARGET}. With a 20 mt ACL, slightly higher fishing opportunities for recreational and commercial fixed gear fisheries would be expected relative to the other alternatives. Following consideration of the ACLs and resulting impacts, the Council recommended Alternative 3, with a 20 mt ACL in 2011 and 2012 and with the specification of a 17 mt ACT.

A ramp-down OY strategy was adopted for yelloweye rockfish during the 2007 and 2008 biennial specification and management cycle. The ramp down began with an OY of 23 mt in 2007 and 20 mt in 2008. The OY was to be reduced each year until ultimately reaching 14 mt in 2011 based on an SPR harvest rate of 71.9 percent. A constant SPR harvest rate of 71.0 percent was to remain in place through 2084 which was the T_{TARGET} date. All of the yelloweye rockfish OYs considered by the Council were expected to cause severe impacts to fisheries and communities. The Council expressed strong concern about the severity of the impact on communities resulting from ramp down strategy as the OY drops below 17 mt. When considering 2011 and 2012 harvest specifications and management measures, the Council

recognized the need to restrict the fisheries, but also took into account the potentially widespread negative effects that very low ACLs would have on the fisheries and fishing communities.

Yelloweye rockfish is the key constraining stock for the non-nearshore fixed gear sectors. Yelloweye bycatch rates in these fixed gear sectors have remained relatively stable over recent years, with the lower bycatch projections in 2011 and 2012 resulting from the decreasing sablefish ACLs. Although the bycatch numbers provided to the Council for decision making were the best estimates of bycatch for the non-nearshore fixed gear fisheries, concerns were raised about management uncertainty arising from the bycatch model. The bycatch projections from the model have been conservative in recent years, in part because of the assumption that the fixed gear sablefish allocations are fully harvested. This assumption may be less conservative in 2011–2012 because of the lower sablefish ACLs and the fact that the inseason changes to the DTL trip limits the Council has made over this cycle have increased the likelihood that a higher portion of the allocations for those sectors will be taken. Sablefish landings are monitored inseason and action would be taken to keep the sablefish allocations from being exceeded.

ACL allocations were also considered by the Council. The following are the Council's recommended allocations for yelloweye rockfish in 2011 and 2012: Limited entry non-whiting trawl, 0.6 mt; limited entry and open access non-nearshore fixed gears, 1.3; limited entry and open access nearshore fixed gear, 0.7; Washington recreational, 2.6; Oregon recreational, 2.4 mt; and California recreational, 2.6 mt. The Council also considered two alternative allocation arrangements between the states of Oregon and California for yelloweye rockfish: A simple 50:50 catch sharing plan and a sharing plan with Oregon receiving 55 percent and California receiving 45 percent derived from the stock assessment. Oregon is constrained by yelloweye rockfish under both allocation alternatives. With a 17 mt ACT, annual nearshore fishery landings would need to be further reduced to accommodate cuts under either of the new catch sharing plans. In addition to being constrained by yelloweye rockfish, California is projected to be constrained by canary rockfish due to the presence of two high bycatch areas (one north of 40°10′ and the other south of 40°10′). Under the 17 mt yelloweye rockfish ACT, the California nearshore fishery would not reach its yelloweye rockfish limit because it would first be constrained by canary rockfish. California would be able to maximize cabezon landings because the majority of the cabezon catch is taken in shallow depths where bycatch rates are low. Precisely tracking recreational catch inseason, especially in the California recreational fishery, has been a challenge, which prompted the Council to adopt an ACT for yelloweye rockfish.

The tradeoffs considered by the Council were between more restrictive depth restrictions and higher reductions in landed catch. In Oregon, overfished species impacts were modeled assuming a 20 fm (37 m) depth restriction (option a) and a 30 fm (55 m) depth restriction (option b). In California, overfished species impacts are modeled assuming a 20 fm (37 m) depth restriction statewide (option a) and a 20 fm (37 m) depth restriction between 42° and 40°10′ north latitude only (option b). Although the 20 fm (37 m) depth restriction provided little yelloweye savings in Oregon, it provided greater savings in California since a greater proportion of catch comes from the deeper depths. Following consideration of the catch sharing plans the Council recommended.

Summary of Rebuilding Measures

The harvest specifications and management measures being implemented through Federal regulation and intended to rebuild overfished species are summarized below. Management measures adopted for 2011 and 2012 are expected to keep the incidental catch of overfished species within the ACLs and ACTs. Management measures designed to rebuild overfished species, or to prevent species from becoming overfished, may restrict the harvest of relatively healthy stocks that are harvested with overfished species. As a result of the constraining management measures imposed to rebuild overfished species, a number of the ACLs for healthy stocks may not be achieved.

Bocaccio

- Date declared overfished: March 3, 1999.
- Areas affected: South of 40°10′ north latitude.
- Status of stock: 28.12 percent of its unfished biomass in 2009.
- B_0: 7,946 mt.
- B_{MSY}: 3,178 mt.
- $T_{F=0}$: 2018.
- T_{MAX}: 2031.
- T_{TARGET}: 2026 (median year to rebuild).
- Target SPR Harvest rate: 77.7 percent.
- OFL: 737 mt in 2011 732 in 2012.
- ACL: 263 mt in 2011 274 mt in 2012.

Biology of the stock: Bocaccio is most abundant in waters off central and southern California. Juveniles settle in nearshore waters after a several month pelagic stage. Adults range from depths of 6.5–261 fm (12– 478 m). Most adults are caught off the middle and lower shelf at depths between 27 fm and 137 fm (50 and 250 m). Larger fish tend to be found deeper. Bocaccio are found in a wide variety of habitats, often on or near bottom features, but sometimes over muddy bottoms. Bocaccio are usually found near the bottom, however, they may also occur as much as 16.4 fm (30 m) off bottom. Tagging studies have shown that young fish move up to 148 km (92 miles). Maximum age of bocaccio was determined to be at least 40 and perhaps more than 50 years.

Management measures for 2011 and 2012: Since 2002 both commercial and recreational fisheries have been subject to very restrictive management measures that have brought catches down to very low levels. Area closures or RCAs have been one of the most effective measures to reduce catch of bocaccio. South of 40°10′ north latitude RCAs between 15 and 180 fm (329 m) provide protection for bocaccio, with the largest concentrations occurring in the 54 fm (99 m) to 82 fm (150 m) depths. The existing CCAs, where sport and commercial bottom fishing is prohibited, have also provided significant protection for bocaccio.

Bocaccio have historically been taken by commercial trawl and fixed gear vessels and in the recreational fisheries. Adult bocaccio are often caught with chilipepper rockfish and have been observed schooling with speckled, vermilion, widow, and yellowtail rockfish. South of 40°10′ north latitude the bottom trawl, limited entry fixed gear, and open access fishing opportunities, in the depths where bocaccio are most commonly encountered, have been reduced though the use of RCAs. Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty in the trawl fishery, including bocaccio management uncertainty.

Bocaccio are also vulnerable to commercial non trawl gears and to recreational fishing gear. To limit incidental catch of bocaccio in the limited entry fixed gear and open access fisheries, these fisheries continue to be restricted by RCAs and trip limits that

are intended to cover landings of incidentally caught bocaccio only. California recreational fisheries will be constrained by bag limits.

Management performance during rebuilding: Total catch estimates for the 2002–2007 period are based on the total mortality reports produced by the Pacific States Marine Fisheries Commission and the NWFSC, while the 2008 estimates are based on GMT scorecard estimates and recreational estimates from California Department of Fish and Game. Approximately 75 percent of total trawl catch during this period were discarded catch. Commercial fishery discards have been concentrated around the central California region (Monterey Bay to San Francisco) region. Although the rebuilding OY is estimated to have been exceeded during two of the early years of rebuilding, since 2004 the total estimated catch (landings plus discards) has averaged approximately 80 tons. This represents less than 50 percent of the adopted OY values, and has been associated with low SPR harvest rates, such that SPR has been greater than 0.9 percent since 2004.

Canary Rockfish

- Date declared overfished: January 4, 2000 (65 FR 221).
- Affected area: Coastwide.
- Status of the stock: 23.7 percent in 2009.
- B_0: 25,993 mt.
- B_{MSY}: 10,397 mt.
- $T_{F=0}$: 2024.
- T_{MAX}: 2046.
- T_{TARGET}: 2027 (median year to rebuild).
- SPR harvest rate: 88.7 percent.
- OFL: 614 mt for 2011 and 622 mt for 2012.
- ACL: 102 in 2011 and 107 in 2012.

Biology of the stock: Canary rockfish are a continental shelf (shelf) species. Juveniles settle in nearshore waters after a several month pelagic stage. Adults range from depths of 25–475 fm (46–868 m). Most adults are caught off the middle and lower shelf at depths between 44 fm and 109 fm (80 and 200 m). Larger fish tend to be found in deeper waters. Canary rockfish are usually associated with areas of high relief such as pinnacles, but also occur over flat rock or mud and boulder bottoms. They are usually found near the bottom and are occasionally found off the bottom or in soft-bottom habitats that are atypical for rockfish. A tagging study showed that canary rockfish can migrate up to 700 km (435 miles). The maximum age of canary rockfish is 84 years.

Management measures in 2011 and 2012: Unavoidable incidental catches of canary rockfish occur in trawl, fixed gear, open access, and recreational fisheries targeting groundfish, as well as commercial and recreational fisheries targeting species other than groundfish. Adult canary rockfish are often caught with bocaccio, sharpchin rockfish, yelloweye rockfish, yellowtail rockfishes, and lingcod. Researchers have also observed canary rockfish associated with silvergray and widow rockfish.

Management measures intended to limit bycatch of canary rockfish include RCAs, cumulative trip limits to constrain the limited entry fixed gear and open access fisheries coastwide, IFQs in the whiting and nonwhiting shoreside fisheries, and canary limits in the whiting fishery. The use of broad-based RCA configurations has had the most effect in reducing canary rockfish mortality.

Bottom trawling is prohibited in the trawl RCA, which covers depths where canary rockfish have most frequently been caught. To reduce incidental take of canary rockfish in the area north of 40°10′ north latitude, vessels fishing shoreward of the RCAs are required to use selective flatfish trawl gear. Current footrope restrictions would remain in place. Incidental catch of canary rockfish in the mothership and catcher/processor sectors will be constrained by sector-specific allocations that require closure of the sector when reached. Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shorebased IFQ program is expected to reduce management uncertainty in the trawl fishery. The retention of canary rockfish continues to be prohibited in the commercial fixed gear fisheries. 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 ACLs. The retention of canary rockfish continues to be prohibited in the recreational fisheries.

Management performance during rebuilding: Following the 1999 declaration that the canary rockfish stock was overfished the canary OY was reduced by over 70 percent in 2000 (to 200 mt) and by the same margin again from 2001–2003 (to 44 mt). In retrospect, revised catch data indicate that from 2003 to 2008, when the rebuilding OY was between 47 and 44 mt, the OY was exceeded 5 out of 6 years, but catches well below the ABC (In retrospect, due to current methods used for total mortality estimates, the catches are higher than we had estimated at the time. However, they were still below the ABC).

Cowcod

- Date declared overfished: January 4, 2000.
- Areas affected: South of 40°10′ north latitude.
- Status of stock: 4.5 percent in 2009.
- B_0: 2,183 mt.
- B_{MSY}: 873 mt.
- $T_{F=0}$: 2060.
- T_{MAX}: 2097.
- T_{TARGET}: 2071 (median year to rebuild).
- SPR harvest rate: 79 percent.
- OFL: 13 mt in 2011 and 13 mt in 2012.
- ACL: 4 mt in 2011 and 2012.

Biology of the stock: Cowcod are found at depths of 11–200 fm (75–366 m). Cowcod range from central Oregon to central Baja California and Guadalupe Island. However, they are rare off Oregon and Northern California. It has long been argued that smaller cowcod are found at the shallow end of the depth range. Recent submersible work, however, indicates that cowcod size distribution may be more associated with sea floor structure than depth. In Monterey Bay, juvenile cowcod recruit to fine sand and clay sediments at depths of 22–56 fm (40–100 m) during the months of March–September. Adults are found at depths of 50 280 fm (90–500 m) usually on high relief rocky bottom. Adult cowcod are believed to be less abundant in depths greater than 175 fm (323 m).

Management measures in 2011 and 2012: All directed fishing opportunities have been eliminated since 2001. Retention of cowcod will continue to be prohibited for all commercial and recreational fisheries. To prevent incidental cowcod harvest, two CCAs (the Eastern CCA and the Western CCA) in the Southern California Bight were delineated to encompass key cowcod habitat areas and known areas of high catches. The CCAs were codified into regulation on November 4, 2003 (68 FR 62374). Fishing for groundfish has been prohibited within the CCAs, except that minor nearshore rockfish, California scorpionfish, cabezon, lingcod, and greenling may be taken from waters where the bottom depth is less than 20 fm (37 m). This rule proposes to increase the area in which recreational and commercial non-trawl gear can be used within the CCA by moving the 20 fm (37 m) limit out to 30 fm (43 m). The rule also proposes to add an addition CCA depth contour line of 40 fm (55 m)

to regulation for potential use in the future.

Management performance during rebuilding: Estimates of total mortality indicate that the cowcod OY has not been exceeded in any year since 2002. The OYs during the rebuilding period have ranged from 4.8 (in 2002–2004) to 4 mt (in 2007–2008), while annual mortality is estimated to have been between 0.32 mt and 3.51 mt, under the same rebuilding management measure structure as status quo.

Darkblotched Rockfish

- Date declared overfished: January 11, 2001 (66 FR 2338).
- Areas affected: Coastwide.
- Status of the stock: 27.5 percent of its unfished biomass level in 2009.
- B_0: 32,783 mt.
- B_{MSY}: 15,763 mt.
- $T_{F=0}$: 2016.
- T_{MAX}: 2037.
- OFL: 508 mt in 2011, 497 mt in 2012.
- ACL: 285 mt in 2011, 296 mt in 2012.
- T_{TARGET}: 2025 (median year to rebuild).
- SPR harvest rate: 64.9 percent.

Biology of the stock: Darkblotched rockfish are most abundant on the outer continental shelf and slope, mainly north of Point Reyes (38° north latitude). Most adult darkblotched rockfish are associated with hard substrates on the lower shelf and upper slope at depths between 77 and 200 fm (140 and 366 m). Darkblotched rockfish migrate to deeper waters with increasing size and age. Diurnal migration, rising off bottom at night, is a likely behavior of darkblotched rockfish. Fish landed in California generally had smaller size at age than fish landed in the two northern states (Oregon and Washington).

Management measures in 2011 and 2012: Because of their deeper distribution, darkblotched rockfish are caught almost exclusively by commercial bottom trawl vessels. Most landings have been made by bottom trawl vessels targeting flatfish on the shelf, and rockfish and the DTS species on the slope. Since 2001, darkblotched rockfish have had species-specific harvest specifications, and were removed from the minor slope rockfish complex. However, darkblotched rockfish continue to be managed within the minor slope rockfish trip limits. Management measures intended to limit catch of darkblotched rockfish include: RCAs; individual fishery quotas for the limited entry trawl shoreside trawl fisheries; allocations to the mothership and catcher/processor sectors of the Pacific whiting fisheries that result in fishery closure if the allocation is reached; and cumulative minor slope rockfish trip limits for limited entry fixed gear and open access gears.

The boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about geographical and seasonal distribution of bycatch. The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of darkblotched rockfish was highest.

Cumulative limits for slope rockfish north of 40°10′ north latitude are intended to accommodate incidental take of darkblotched rockfish in the limited entry fixed gear and open access fisheries. As needed, limited entry fixed gear and trip limits for co-occurring species may be adjusted to reduce darkblotched rockfish bycatch. Incidental catch of darkblotched rockfish in the mothership and catcher/processor sectors will be constrained by sector-specific allocations that require closure of the sector when reached. Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty in the trawl fishery.

Management performance under rebuilding: Between 2002 and 2008 the OY was exceeded once in 2002. Total catch during this period has ranged between 127 mt (2003) and 264 mt (2007), while landed catch has ranged between 80 mt (2003) and 189 mt (2004). The average percent retained during the rebuilding period has been 63 percent.

Petrale Sole

- Date declared overfished: February 9, 2010.
- Areas affected: Coastwide.
- Status of stock: Following the 2009 stock assessment, the stock was believed to be at 11.6 percent of unfished biomass level in 2009.
- B_0: 25,334 mt.
- B_{MSY}: 6,334.
- $T_{F=0}$: 2014 (T_{MIN}).
- T_{MAX}: 2021.
- T_{TARGET}: 2016 (median year to rebuild).
- SPR harvest rate: 31.0 percent in 2011 and 32.4 percent in 2012.
- ABC: 976 mt in 2011 and 1,222 mt in 2012.
- ACL: 976 mt in 2011 and 1,160 mt 2012.

Biology of the stock: Petrale sole are found from Cape Saint Elias, Alaska to Coronado Island, Baja California, Mexico. The range may possibly extend into the Bering Sea, but the species is rare north and west of southeast Alaska. Adults migrate seasonally between deepwater winter spawning areas to shallower spring feeding grounds. During periods 1 and 6, there is virtually no petrale sole catch that occurs at depths less than 125 fm (229 m), most interactions occur between 175–200 fm (320 m–366 m), and catches then drop off quickly outside of the 200 fm (366 m) line. Depth distributions change during periods 2 and 5, when petrale sole are typically deeper than 125 fm (229 m), but shallower than 175 fm (320 m), an intermediate depth for this species. Finally, petrale sole are shallowest during periods 3 and 4, when highest bycatch rates are observed shallower than 125 fm (229 m). Petrale sole show an affinity to sand, sandy mud, and occasionally muddy substrates.

Spawning occurs over the continental shelf and continental slope. Spawning occurs in large spawning aggregations in the winter. Petrale sole tend to move into deeper water with increased age and size. Petrale sole begin maturing at three years. Petrale sole eggs and larvae are eaten by planktivorous invertebrates and pelagic fishes. Juveniles are preyed upon (sometimes heavily) by adult petrale sole, as well as other large flatfishes. Adults are preyed upon by sharks, demersally feeding marine mammals, and larger flatfishes and pelagic fishes. Petrale sole compete with other large flatfishes. Petrale sole have the same summer feeding grounds as lingcod, English sole, rex sole, and Dover sole.

Management measures for 2011 and 2012: Annual catches of petrale sole by gears other than groundfish bottom trawl have been minor coastwide. For the trawl fishery, IFQ management along with RCA restrictions would be used to constrain the petrale sole catch and to reduce fishing on spawning aggregations in the winter months. Because petrale sole exhibit distinct seasonal depth migrations, the trawl RCA would vary by season. Trip limits will continue to be used in the non-trawl fisheries.

POP

- Date declared overfished: March 3, 1999.
- Areas affected: Vancouver and Columbia.
- Status of stock: Following the 2009 stock assessment, the stock was believed to be at 28.6 percent of unfished biomass level in 2009.
- B_0: 37,780 mt.

- B_{MSY}: 15,112 mt.
- $T_{F=0}$: 2018.
- T_{MAX}: 2045.
- T_{TARGET}: 2020 (median year to rebuild).
- SPR harvest rate: 86.4 percent.
- ABC: 1,026 in 2011 and 1,007 mt in 2012.
- ACL: 180 mt in 2011 and 183 MT 2012, with an ACT of 157 in both years.

Biology of the stock: The POP population off the northern U.S. west coast (Columbia and U.S.-Vancouver areas) is at the southern extreme of the stock's range. POP are found on the upper continental slope (slope), 109–150 fm (200–275 m) during the summer and somewhat deeper 164–246 fm (300–450 m) during the winter. Adults sometimes aggregate up to 16 fm (29 m) above hard bottom features and may then disperse and rise into the water column at night. The maximum age of POP has been determined to be 70 to 90 years. The mean generation time is 28 years. POP recruitment into the population occurs when the stock is at 3 years of age. Age of maturity and size varies with locality. POP reach 90 percent of their maximum size by age 20 years.

Management measures for 2011 and 2012: POP occurs in similar depths as darkblotched rockfish, although they have a more northern geographic distribution. Adult POP are often caught with other upper slope groundfish such as Dover sole, thornyheads, sablefish, and darkblotched, rougheye, and sharpchin rockfish. North of 40°10′ north latitude, POP are caught in similar fisheries as darkblotched rockfish. POP are rarely caught in the recreational fisheries. Management measures for 2011 and 2012 that are intended to limit the bycatch of POP and keep fishing mortality within the ACL include: RCAs, individual fishery quotas for the limited entry trawl shoreside trawl fisheries, allocations to the mothership and catcher/processor, and cumulative trip limits for commercial fixed gear fisheries.

Because POP co-occur with darkblotched rockfish, measures to reduce the incidental catch of darkblotched rockfish benefit POP. These measures include seaward trawl RCA boundaries that are established to keep fishing effort in deeper water where POP are less abundant. Incidental catch of POP in the mothership and catcher/processor sectors will be constrained by sector-specific allocations that require closure of the sector when reached. Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty in the trawl fishery.

Management performance under rebuilding: The OYs for POP were exceeded in: 2001 by 1.3 percent (307 mt out of a 303 mt OY); and in 2007 by 4.0 percent (156 mt out of a 150 mt OY). The overage in 2007 was due to a relatively rare and unexpected bycatch event.

Widow Rockfish

- Date declared overfished: January 11, 2001.
- Areas affected: Coastwide.
- Status of stock: 38.5 percent of its unfished biomass in 2009.
- B_0: 40,547 million eggs.
- B_{MSY}: 16,218 million eggs.
- $T_{F=0}$: 2010.
- T_{MAX}: 2035.
- T_{TARGET}: 2010 (median year to rebuild).
- SPR harvest rate: 91.7 in 2011, 91.3 in 2012.
- OFL: 5,097 mt in 2011, 4,923 mt in 2012.
- ACL: 600 mt in 2011 and 2012.

Biology of the stock: Widow rockfish are most abundant off northern Oregon and southern Washington. Young of the year recruit to shallow nearshore waters after spending up to 5 months as pelagic larvae and juveniles in offshore waters. Adults range from bottom depths of 13 fm to 300 fm (24 m to 549 m). Most adults occur near the shelf break at bottom depths between 77 fm to 115 fm (140 m to 210 m). Adults are semi pelagic with their behavior being dynamic. Large concentrations of widow rockfish form at night and disperse at dawn, an atypical pattern for rockfish. Widow rockfish tend to be more easily caught in higher abundance during El Nino (anomalously warm and dry) years. Maximum age of widow rockfish is 59 years.

Management measures in 2011 and 2012: Widow rockfish co-occurs with other stocks like yellowtail, bocaccio and chilipepper. Prior to rebuilding, large pure catches of widow rockfish were taken with midwater trawl gear. RCA management measure are to restrict fishing on the shelf are expected to continue, and would continue to be beneficial to the recovery of widow rockfish. Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty in the trawl fishery. Incidental catch of widow rockfish in the mothership and catcher/processor sectors will be constrained by sector-specific allocations that require closure of the sector when reached.

Non trawl and recreational fisheries have little incidental catch of widow rockfish. Cumulative trip limits are intended to accommodate low levels of incidental catch.

Management performance under rebuilding: Since 2002, total catch has been well below the annual OY. In recent years, the annual catch has primarily been incidental catch in the Pacific whiting midwater trawl fisheries. The Pacific whiting fisheries have been managed with bycatch limits that result in fishery closure if the limit is reached. Monitoring programs (observers in the mothership and catcher/processor sectors and monitoring under full retention EFPs in the shorebased sector) have been in place throughout the rebuilding period.

Yelloweye Rockfish

- Date declared overfished: January 11, 2002.
- Areas affected: Coastwide.
- Status of stock: 20.3 percent of its unfished biomass in 2009.
- B_0: 994 million eggs.
- B_{MSY}: 398 million eggs.
- $T_{F=0}$: 2047.
- T_{MAX}: 2089.
- Target: 2084 (median year to rebuild).
- SPR rate: 72.8 percent.
- OFL: 48 mt in 2011 and 2012.
- ACL: 20 mt in 2011 and 2012, with an ACT of 17 mt in both years.

Biology of the stock: Yelloweye rockfish juveniles have been found at depths greater than 8 fm (15 m) in areas of high bottom relief. Adults range to depths of 300 fm (549 m). Most adults are caught off the middle and lower shelf at depths between 50 fm and 98 fm (91 m and 180 m). Adult yelloweye rockfish tend to be solitary and are usually associated with areas of high relief with refuges such as caves and crevices, but also occur on mud adjacent to rock structures. They are usually found on or near the bottom. Maximum age of yelloweye rockfish is 115 years. Researchers have observed adult yelloweye rockfish associated with bocaccio, cowcod, greenspotted rockfish, and tiger rockfish.

Management measures in 2011 and 2012: Yelloweye rockfish inhabit areas typically inaccessible to trawl gear. In the coastal trawl fishery, incidental catch occurs during the harvest of other target fisheries operating at the fringes of yelloweye rockfish habitat. Yelloweye rockfish is particularly vulnerable to hook and line gear. Because yelloweye rockfish exhibit site fidelity and they are

a more sedentary rockfish species, RCAs have been effective in reducing the catch of yelloweye rockfish. Specific yelloweye rockfish RCAs have been specified for the recreational and commercial non-trawl fisheries. North of 39° north latitude RCAs out to depths of 100–125 fm (183–229 m) are expected to reduce yelloweye rockfish catch.

For 2011 and 2012, the 100 and 125 fm (183 and 229 m) RCA lines at the southwest corner of Heceta Bank were moved seaward to better follow the bathymetry that they represent; the unmodified lines were, in many cases, extremely shallow. The industry has reported this to be an area of high yelloweye rockfish bycatch. While the impacts of this change to the RCA to yelloweye rockfish are not quantifiable, it is assumed that the modification will reduce yelloweye rockfish impacts. North of 40°10′ north latitude, Yelloweye Rockfish Conservation areas (YRCAs) will continue to be used to reduce yelloweye rockfish catch in the commercial fixed gear, open access, and recreational fisheries. Off Washington, recreational fishing for groundfish and halibut will continue to be prohibited inside the YRCAs and for limited entry fixed gear and open access fishing, the "C" shaped YRCA off Washington will continue to be designated as an area to avoid. YRCAs off the coast of Washington are defined in Federal regulation at 50 CFR § 660.390. The North Coast Commercial YRCA restricts commercial limited entry and open access, the Salmon Troll YRCA restricts salmon troll fishing, and the recreational YRCA off the southern coast of Washington prohibits all recreational fishing for groundfish and halibut. The California recreational YRCAs and commercial non-trawl gear YRCAs will continue to be defined in regulation and may be implemented inseason. As in 2009 and 2010 the YRCAs not in effect at the start of 2011.

Management performance under rebuilding: Following the 2002 declaration that the yelloweye rockfish stock was overfished the total catch mortality of yelloweye rockfish was drastically reduced and has been maintained between 12.3 mt and 19.6 mt. These catch levels represent a 95% reduction from average catches observed in the 1980s and 1990s. Between 2002 and 2008, 54–76 percent of the annual catch was from the recreational fisheries. The annual OY has not been exceeded since 2002.

Management of the bottom trawl fishery under IFQs is expected to constrain the harvests to be within the trawl allocations. Full catch accounting and real time reporting in the shoreside IFQ program is expected to reduce management uncertainty in the trawl fishery.

Ecosystem Component Species

Ecosystem component (EC) species are identified in the PCGFMP. The EC species are those species that are not considered to be "in the fishery" or targeted in any fishery. EC species are not typically retained for sale or personal use. The EC species are not actively managed. The EC species are determined to not be subject to overfishing, approaching an overfished condition, or overfished, nor are they likely to become subject to overfishing or overfished in the absence of conservation and management measures.

Although harvest specifications are not specified for EC species, the incidental catch is monitored to ensure they continue to be classified correctly. While EC species are not considered to be "in the fishery," Amendment 23 to the PCGFMP indicates that the Council should consider measures for the fishery to minimize bycatch and bycatch mortality of EC species consistent with National Standard 9, and to protect their associated role in the ecosystem. EC species are not required to have reference points specified, but should be monitored to the extent that any new pertinent scientific information becomes available (*e.g.,* catch trends, vulnerability, etc.) to determine changes in their status or their vulnerability to the fishery. If necessary, they should be reclassified as "in the fishery."

The Council considered specifying shortbelly rockfish as an EC species, but decided against doing so. Shortbelly rockfish is an abundant species that is not targeted in any commercial or recreational fisheries, and which is a valuable forage fish species. Rather than classifying shortbelly rockfish as an EC species, the Council chose to recommend a very restrictive ACL which is intended to accommodate incidental catch while preventing the development of fisheries specifically targeting shortbelly rockfish.

Overfishing

Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that is above the stock's capacity to produce MSY (an estimate of the largest average annual catch or yield that can be taken over a significant period of time under prevailing ecological and environmental conditions). This level is also referred to as MFMT (the maximum fishing mortality threshold) in the PCGFMP. Under the PCGFMP, OFLs for all species will be set based on the MFMT, which is expressed as a harvest unlike OFLs. None of the 2011 or 2012 OFLs would be set higher than the MFMT or its proxy applied to a stock's abundance. The corresponding ABCs will be set below the OFL and ACLs will be set at or below the ABC. The groundfish management measures including those in this proposed rule are designed to keep harvest levels within specified ACLs.

When evaluating whether overfishing has occurred for any species under the PCGFMP, NMFS compares that species' estimated total catch (landed catch + discard) in a particular year to the MFMT applied to the estimated abundance (the ABC for 2010 and years earlier, and OFL beginning in 2011). 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.

This proposed rule discusses overfishing estimated to have occurred in 2007 and 2008. When new data are available, NMFS updates estimates of whether overfishing has occurred as part of the agency's report to Congress on the Status of U.S. Fisheries (*http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm*)

NMFS estimates that no overfishing occurred on any species during the 2007 or 2008 fishing season, since no species or species complex total catch exceeded its ABC. During 2007 and 2008 the total catch of three species did exceed the OYs. In 2007, canary rockfish exceeded its 44 mt OY by 1.6 percent with the total catch estimated to have been 44.7 mt. In 2007, POP exceeded its 150 mt OY by 4.0 percent with a total catch estimate of 156.0 mt. In 2008, sablefish exceeded its 5,934 mt OY by 2.4 percent with the total catch estimate of 6,078 mt.

Amendment 20: Carry-Over Provision

Under Amendment 20 to the PCGFMP, up to 10 percent of unused IFQ quota pounds in a vessel's account may be carried over for use in the next fishing year. Similarly, in order to cover an overage (landings that exceed the amount of quota pounds held in a vessel account) that is within 10 percent of the quota pounds that have been in the vessel account during the year, the vessel owner may use that amount from the quota pounds he will receive in the

following fishing year to account for the overage in the current year. The rationale for the carry-over as presented in the Amendment 20 EIS is to provide increased flexibility to fishery participants. During the biennial harvest specification and management process, specifically at the Council's June 2010 meeting, the Council further considered how the carry-over provision works in relationship to the 2011–2012 harvest specifications, particularly ACLs and the trawl allocations.

The primary risk pertaining to carry-over provisions is the risk associated with management uncertainty, *i.e.* the risk of the carry-over provision relative to the ability to manage the fisheries to stay within the ACLs and whether that risk is acceptably low. An examination was done on the worst case scenario which would occur if every quota holder carried an underage (landings that are less than the amount of quota pounds held in a vessel account) of 10 percent for species that are "fully prescribed" in the IFQ fishery. The likelihood of this occurring was believed to be a low risk. Because both carry-overs and carry-unders are both expected for the following year, the biological impacts were expected to be low.

Non-overfished trawl target species where 80 percent or more of the annual OY was harvested from 2005–2008 include Dover sole, sablefish, and shortspine thornyhead. Fully harvested stocks are more likely than others to experience ACL overages due to the carry-over provision. Under an IFQ fishery, more than 80% of the sablefish allocation is expected to be harvested, particularly given the lower ACLs in 2011–2012 relative to recent OYs. Petrale sole is likely to be fully harvested with a lower harvest level than in the past. Whiting may also be fully or near fully harvested. Dover sole has a higher harvest level than in recent years and therefore the fishery has a lower risk of exceeding the Dover sole trawl allocation or the ACL as a result of the carry-over provision. The overfished species, other than petrale sole, will likely have 80 percent or more of the annual ACL harvested and thus are potential species for which an ACL overage due to the carry-over provision may be possible.

Management Measures

New management measures being proposed for the 2011–2012 work in combination with the existing regulations to create a management structure that is intended to constrain fishing so the catch of overfished groundfish species does not exceed the rebuilding ACLs while allowing, to the extent practicable, the ACLs for healthier groundfish stocks that co-occur with the overfished stocks to be achieved. Routine management measures for the commercial fisheries include: Bycatch limits, trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Routine management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. Routine management measures are used to modify fishing behavior during the fishing year to allow a harvest specification to be achieved, or to prevent a harvest specification from being exceeded. The groundfish fishery is managed with a variety of other regulatory requirements that are not considered routine, and which are not changed through this rulemaking and are found at 50 CFR § 660, Subparts C through G. The regulations at 50 CFR § 660, Subparts C through G include, but are not limited to, long-term harvest allocations, recordkeeping and reporting requirements, monitoring requirements, license limitation programs, and essential fish habitat (EFH) protection measures. The routine management measures specified at 50 CFR § 660.60(c), Subpart C in combination with the entire collection of groundfish regulations as specified at 50 CFR 660, Subparts C through G are used to manage the Pacific Coast groundfish fishery to stay within the harvest specifications identified in the rulemaking. This section presents proposed management measures developed for 2011–2012.

At the Council's April 2010 meeting the Enforcement Consultants (EC) raised catch accounting concerns relative to U.S. vessels (including processing vessels) that fish for species managed under the PCGFMP and that transport catch to another country, such as Canada and Mexico, thereby circumventing catch accounting. The EC further investigated the issue including the possible implementation of regulatory language to ensure that Federal regulations provide for full catch accounting before catch leaves the United States. At the Council's June 2010 meeting the EC provided the Council with draft regulatory language that would require the submission of vessel activity reports for any non-IFQ catcher vessel, mothership processor, or catcher/processor engaged in fishing for groundfish in the EEZ before it leaves the EEZ by crossing the seaward boundary, or crosses the borders to the EEZs of Mexico or Canada. The Council recommended that a vessel activity report be implemented. However, development and implementation of a vessel activity report would take more time than is available for this rulemaking. Therefore, a vessel activity report is under consideration for future implementation and has not been included in this action.

Limited Entry Trawl

Incidental Trip Limits for Trawl Rationalization—Amendment 20

The Shoreside IFQ program being implemented under Amendment 20 to the PCGFMP will require the following incidentally caught species to be managed with trip limits: Minor nearshore rockfish north and south, black rockfish, cabezon (46°16 to 42° north latitude and south of 42° north latitude), spiny dogfish, shortbelly rockfish, Pacific whiting, and the "other fish" category. If determined necessary, trip limits may also be established for longnose skate, California scorpionfish, and as sub-limits within the other fish category, big skate, California skate, leopard skate, soupfin shark, finescale codling, Pacific rattail, kelp greenling, and cabezon off Washington. The establishment of trip limits for these species will allow incidental catch to be landed and for the fishers to be paid for those landings. Overall, the amount of regulatory discards for incidentally caught species is expected to be reduced. Under the shoreside IFQ program gear switching provisions, trawl trip limits apply to incidental landing allowances regardless of whether the vessels are using either trawl or fixed gears. In the development of trawl trip limits, monthly landings in the limited entry non-whiting and whiting trawl fishery from 2008 and 2009 were examined and compared to the 2010 trip limits. These trip limits do not apply to vessels in the mothership and catcher/processor sectors of the whiting fishery.

Minor Nearshore Rockfish and Black Rockfish North and South of 40°10 North Latitude

The minor nearshore rockfish and black rockfish trip limits for vessels participating under the shoreside IFQ program using trawl or fixed gears north and south of 40°10 north latitude would be specified at 300 lbs/month for periods 1 through 6. The highest monthly landings of nearshore rockfish in the trawl fishery during 2008 and 2009 were between 150–200 pounds; with the majority of the landings having been less than 50 pounds. In a

rationalized trawl fishery increases to minor nearshore rockfish and black rockfish landings are not expected. This is because of state regulations restricting trawl fishing in nearshore areas and because the risk of catching yelloweye rockfish is relatively high in these areas. In Washington state waters (0–3 miles) commercial fishing with either trawl or fixed gear (including pots) in nearshore waters is prohibited. To commercially land targeted amounts of nearshore rockfish species in Oregon, vessels must hold a state fixed gear nearshore permit. Landing of incidental amounts of nearshore rockfish are allowed by trawlers and by fixed gear vessels without nearshore permits, however recent (2010) state trip limits for these species have been more restrictive than the federal trip limits and are expected to remain in place in 2011 and 2012. In California, vessels must hold a state fixed gear nearshore permit to land nearshore rockfish. With full catch accounting under the shoreside IFQ program and the anticipated high cost of purchasing yelloweye rockfish quota pounds, it seems unlikely that IFQ participants will be targeting nearshore rockfish.

Cabezon (46°16 North Latitude to 42° North Latitude and South of 42° North Latitude)

Beginning with 2011–2012, cabezon would be managed as a separate species north of 42° north latitude, as well as south of 42° north latitude off California. A review of recent landings of cabezon by the limited entry trawl fleet indicated that landings were infrequent with most being below 20 pounds. The Council recommended that the cabezon trip limits for vessels participating in the shoreside IFQ program using trawl or fixed gears to harvest IFQ species with a limited entry trawl permit be specified at 50 lbs/month for periods 1 through 6 north and south of 42° north latitude, which would accommodate the landings seen in the last two years.

Spiny Dogfish

The limits specified in regulation for trawl gear in 2010 are 200,000 lbs (91 mt) per 2 months periods 1 and 2; 150,000 lbs (68 mt) per 2 months periods 3, and 100,000 lbs (45 mt) per 2 months periods 4 through 6 in both the north and the south. In recent years, no limited entry trawl vessel has approached or attained the spiny dogfish cumulative limits specified in Federal regulation. Under a rationalized fishery, an IFQ vessel could target spiny dogfish with either trawl gear or fixed gear. Due to anticipated catch of yelloweye rockfish, the access to spiny dogfish could be constrained. The risk to an individual of yelloweye rockfish bycatch would likely outweigh the value of targeting spiny dogfish. Therefore, the Council recommended that the spiny dogfish trip limits for vessels using trawl or fixed gears to harvest IFQ species with a limited entry trawl permit north and south of 40°10 north latitude be specified at 60,000 lbs (27 mt) per 2 month, which would accommodate the trawl landings seen in recent years.

Longspine Thornyhead South of 34°27 North Latitude

Unlike longspine thornyhead in the north, the Council did not specify trawl/non-trawl allocation for longspine thornyhead south of 34°27 north latitude under Amendment 21. The Council chose to manage longspine thornyheads south of 34°27 north latitude with trip limits, and longspine thornyhead in the north with individual fishing quotas. From 1995–2005, the trawl fishery harvested very small proportions of the longspine thornyhead OY. Additionally, total mortality by all fleets in recent years has been well below the OY. Historically, longspine thornyhead has not been a target species in the trawl fishery, but instead has been caught in association with shortspine thornyhead, Dover sole, and sablefish. Given the low exploitation of longspine thornyhead south, the Council recommended that south of 34°27 North latitude, the longspine thornyhead incidental landing limits for vessels using trawl or fixed gears to harvest IFQ species with a limited entry trawl permit be specified at 24,000 lbs (11 mt) per 2 months, which is the 2010 limit currently specified in regulation for limited entry trawl gears.

Remaining Groundfish Species

Under the Final Preferred Alternative, the Council specified incidental trip limits for species not managed with IFQ for vessels using trawl or fixed gear to harvest IFQ species with a limited entry trawl permit. For the purpose of setting trip limits for non-IFQ species, the Council considered the following remaining groundfish species: Longnose skate, big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. A review of the 2008 and 2009 limited entry trawl landings for these stocks was conducted. Grenadier makes up the largest component of the remaining fish landings in the trawl fishery and most landings were less than 8,000 lbs (3.6 mt) with a few landings as high as 12,000 lbs (11 mt). Historically, there was some buying/selling of grenadier in an attempt to develop a market, however recent landings are incidental catch associated with the targeting of DTS species. Big skate and California skate are also included in the remaining fish category. In recent years, there has been interest in targeting and marketing skates. Overall the species being considered had landings that were less than 1,500 pounds (680 kg) per month with most monthly landings less than 1,000 pounds (454 kg). The Council recommended that incidental landing limit for vessels using trawl or fixed gears to harvest IFQ species with a limited entry trawl permit remain unlimited at the start of 2011. Should increased landings occur such that there is concern about overfishing, the Council would likely implement the appropriate trip limits through routine inseason action. Therefore, trip limits for the remaining groundfish are being added to the regulations as a routine management measure.

Trawl Fishery Trip Limit Tables

This action specifies incidental trip limits for species not managed with IFQ for vessels using trawl or fixed gear to harvest IFQ species with a limited entry trawl permit. The purpose of allowing trip limits for these species is to allow incidental catch to be landed and for the fishers to be paid for those landings. Without trip limits these incidentally caught species would need to be discarded (regulatory discard) or forfeited to the state at the time of landing. A second set of tables is included with this action, in the event that trawl rationalization is delayed the trawl non-IFQ fishery tables would be implemented to prevent the fishery from exceeding its specifications.

RCA Configurations for Vessels Harvesting IFQ Quota Pounds

Based on analysis of West Coast Groundfish Observer Data and vessel-logbook data, the boundaries of the RCAs were set to prohibit groundfish fishing within a range of depths where encounters with overfished species were most likely to occur. The RCAs boundaries vary by season, latitude, and gear group. Boundaries for limited entry trawl vessels are different than those for the limited entry fixed-gear and open access gears. The non-trawl RCAs apply to the limited entry fixed-gear and open access gears other than non-groundfish trawl. The non-groundfish trawl RCAs are defined by fishery.

Trawl RCA boundaries and cumulative limits are routinely adjusted inseason based upon fishery performance. Managers structure catch limit opportunities and closed areas with several objectives in mind including reducing interactions with overfished species while simultaneously providing for a year round fishing opportunity. While many adjustments to catch limits and trawl RCA boundaries are relatively minor, in recent years some of these adjustments have been relatively extreme and have closed fishing opportunity for wide areas of the coast mid-season. Under the 2010 management structure for the trawl fishery, catch projections (and estimates of total catch inseason) are made using what is often described as the "trawl bycatch model." This model uses discard estimates from the WCGOP data and logbook information to develop temporal and spatially stratified bycatch rates for overfished species. The bycatch model can be used to estimate both target species and overfished species catch based on a proposed set of management measures (2-month cumulative trip limits and RCA configurations). Under a rationalized fishery, there will be full catch accounting and individuals will be held accountable for their bycatch. Despite the high level of individual accountability, there is still a risk of exceeding the trawl allocation since overfished species interactions can be unpredictable. As a starting place for the shoreside trawl IFQ program and as a risk adverse measure, the Council recommended maintaining the RCA structure that was in place in June 2010. As the IFQ fishery develops and if catch data supports reconsideration of the RCAs, the Council could revise the RCA boundaries through inseason measures.

Under Amendment 20 to the PCGFMP, quota pounds associated with a limited entry trawl permit may be harvested with either trawl gear or legal fixed gear. Groundfish regulations specify both trawl and non-trawl RCAs. The type of gear employed determines the RCA structure. As such, vessels that harvest IFQ species with trawl gear will be held to the trawl RCA while vessels that harvest with fixed gear will be held to the fixed gear RCA.

Gear Switching

The yelloweye rockfish trawl catch allocation is based on the trawl bycatch model, which projects very low amounts of yelloweye rockfish catch (0.6 mt) for 2011 and 2012. In general, yelloweye rockfish is much less vulnerable to being caught by trawl gear than non-trawl gears. With fixed-gear, nearshore fishers are able to fish in areas and depth ranges where yelloweye rockfish are found (rock bottom). As a result, yelloweye rockfish bycatch rates in the nearshore fixed gear fisheries are much greater than those used to model bycatch in the trawl fisheries. For reasons similar to those for yelloweye rockfish, canary rockfish bycatch rates are also higher in the nearshore fixed-gear fishery model than in the trawl model.

Under a trip limit fishery structure, management measures (trip limits, trawl gear restrictions and RCAs) restrict trawl yelloweye retention and fishing and in rocky habitats where yelloweye rockfish concentrate. Under trawl rationalization, the gear switching provision allows fishers to used fixed gears to harvest trawl allocations. All IFQ species caught by those fishing under the gear switching provisions, including yelloweye and canary, must be covered by trawl quota pounds. Increased fishing by trawl IFQ program participants using fixed gear shoreward of the RCA could present an increased risk of exceeding the trawl sector allocation for yelloweye rockfish, and possibly canary rockfish. For this reason, the 2011 and 2012 management measures include measures designed to discourage fixed gear fishing by trawl IFQ participants in the nearshore, where impacts to yelloweye and canary rockfish are potentially the greatest.

To discourage fishing in nearshore areas under the gear switching provision, the Council recommended that the trawl sector receive no allocation of nearshore species making it unlikely that trawl IFQ fishery participants will operate in waters shallower than 30 fm (55 m). Further, state regulations require nearshore permits to land targeted amounts of nearshore species. In Oregon, additional gear restrictions may restrict fixed gear operations in the nearshore areas. The shoreward non-trawl RCA structure is designed such that the trawl IFQ fishery participants' only viable opportunity for shoreward non-trawl activity is south of 34°27 north latitude, where yelloweye rockfish and are less common. It is less likely that vessels fishing seaward of the RCA under the gear switching provision would encountering overfished species in excess of the trawl fishery allocations. Gear switching seaward of the 100 fm (183 m) depth contour may allow access to valuable species such as sablefish and shortspine thornyheads with less incidental catch than with trawl gear.

Potential Mid-Water Opportunity in 2011–2012

There is an opportunity under the trawl rationalization program to allow targeting of species such as yellowtail rockfish within the RCA using midwater trawl gear during the primary whiting season. Under current trawl rationalization regulations, this opportunity is available regardless of amount of whiting onboard. A cursory analysis of data reveals that the risk of exceeding overfished species ACLs as a result of a mid-water opportunity appears lower than for bottom trawl gear for some species (*e.g.,* yelloweye); it may be equally as risky for some species including canary; and appears to have a higher risk for species including widow rockfish. Under a rationalized trawl fishery structure with individual accountability, and the Council's recommended ACLs for canary and widow rockfish, and with the subsequent trawl allocation, the risk of exceeding ACLs for these species is sufficiently low. Therefore, this opportunity could be afforded in 2011–2012.

Further Considerations for a Rationalized Trawl Fishery

The 2011 petrale ACL reductions over 2010 and arrowtooth ACL decision directly affect the initial allocation of individual bycatch quota (IBQ) for Pacific halibut. Pacific halibut IBQ will be calculated using a formula based on quota share for arrowtooth flounder and petrale sole, two target species that correlate to Pacific halibut bycatch. Therefore, under the new lower petrale ACLs, permits with more arrowtooth quota pounds will be allocated more halibut IBQ.

Shoreside whiting receives a one-time overfished species allocation for the initial allocation. Thereafter, this sector will join the rationalized non-whiting trawl fishery and be allowed to trade/purchase shares of overfished and non-overfished species.

Limited-Entry Fixed Gear and Open Access Non-Trawl Fishery Management Measures

Management measures for the limited entry fixed gear (LEFG) and open access non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. These fisheries will be most constrained by management measures to decrease impacts on yelloweye rockfish.

Non-Trawl RCAs

The non-trawl RCA applies to vessels that take, retain, possess or land groundfish unless they are incidental

fisheries that are exempt from the non-trawl RCA (*e.g.* the pink shrimp non-groundfish trawl fishery). The non-trawl RCA boundaries proposed for 2011–2012 are the same as those in place for the non-trawl fisheries in 2009–2010, except for the seaward boundary of the non-trawl RCA between 45°03.83′ north latitude and 43°00′ north latitude.

The seaward and shoreward boundaries of the non-trawl RCAs vary along the coast, and are divided at various commonly used geographic coordinates, defined in § 660.11, Subpart C. In 2009–2010, new divisions of the RCA boundaries were established based on recently available fishery information, indicating that fishing in some areas where the non-trawl fishery occurs has higher yelloweye rockfish impacts than in others, and the RCA boundaries were adjusted to reduce impacts to yelloweye rockfish in these areas. For 2009–2010 the seaward boundary of the non-trawl RCA between 45°03.83′ north latitude (Cascade Head) and 43°00′ north latitude (Columbia/Eureka line) was specified at 125 fm (229 m), except on days when the directed halibut fishery is open, when the fishery is then restricted to waters seaward of the 100 fm (183 m) line. This regulation, which was new in the 2009–2010 cycle, was implemented to reduce yelloweye rockfish impacts by fixed gear fishers targeting sablefish and other target groundfish. For 2011–2012, the modeled-overfished species impacts by the limited entry and open access fisheries showed that given the lower sablefish ACLs for 2011 and 2012, along with the Council's final preferred apportionment of overfished species for the non-nearshore fishery, the 100 fm (183 m) line could be accommodated.

For 2011 and 2012, the non-trawl RCA boundaries from north to south are proposed to be as follows: From the U.S./Canada Border and 46°16′ north latitude the non-trawl RCA is proposed to be between the shoreline and a boundary line approximating the 100 fm (183 m) depth contour. Between 46°16′ north latitude and 43°00′ north latitude the non-trawl RCA is proposed to be between the boundary lines approximating the 30 fm (55 m) and the 100 fm (183 m) depth contours. Between 43°00′ north latitude and 42°00′ north latitude the non-trawl RCA is proposed to be between boundary lines approximating 20 fm (37 m) and 100 fm (183 m) depth contours. Between 42°00′ north latitude the non-trawl RCA is proposed to be between the 20 fm (37 m) depth contour (there is no boundary line approximating the 20 fm (37 m) depth contour off California) and the boundary line approximating the 100 fm (183 m) depth contour. Moving the seaward RCA boundary from 125 fm (229 m) to the 100 fm (183 m) between 46°16′ and 43°00′ north latitude results in a projected increase of 0.1 mt of yelloweye rockfish for the area between 46°16′ and 43°00′ north latitude. Moving the seaward RCA from 43° north latitude to Cascade Head from 125 to 100 fm (229 to 183 m) opens more fishing areas, may decrease conflicts among fixed gear fishers, may reduce running time to some fishing grounds (which subsequently decreases expense and improves safety), and may increase sablefish catch rates in some instances.

The following lines are proposed south of 40°10′ north latitude. Between 40°10′ north latitude and 34°27′ north latitude the non-trawl RCA is proposed to be between boundary lines approximating the 30 fm (55 m) and 150 fm (274 m) depth contours. Between 34°27′ north latitude and the U.S. border with Mexico, including waters around islands, the non-trawl RCA is proposed to be between boundary lines approximating the 60 fm (110 m) and 150 fm (274 m) depth contours. The boundary lines vary along the coast because of the different abundances of overfished species along the coast.

For 2011 and 2012, the 100 fm (186 m) and 125 fm (229 m) latitude and longitude coordinates defining the lines at the southwest corner of Heceta Bank are proposed to be moved to better follow the bathymetry. In this area the existing lines are, in many cases, extremely shallow and reported to allow fishing in areas of high yelloweye rockfish bycatch by members of the industry. While the impacts to yelloweye rockfish from refining the 100 fm (186 m) and 125 fm (229 m) line waypoints are not quantifiable in the Heceta Bank area, it is likely that the modifications would reduce yelloweye rockfish impacts over the existing line structure.

This rule proposes to use the boundary line approximating the 100 fm (183 m) depth contour as the seaward boundary for the non-trawl RCA north 40°10′ north latitude. In the event that the boundary line approximating the 125 fm (229 m) and depth contour is implemented around Heceta Head (44°08.30′ north latitude) through inseason action, this action also proposes to revisions to the latitude and longitude coordinates that define the boundary line approximating the 125 fm (229 m) depth contour to reduce impacts to yelloweye rockfish. This rule also proposes changes to the boundary line approximating the 60 fm (110 m) depth contour off northern California to better approximate the 60 fm (110 m) depth contour and to better align the bycatch data collected that is divided by depth contours. Subsequent changes to the boundary line approximating the 50 fm (91 m) depth contour in the same area are necessary to prevent unintended crossovers from the change to the 60 fm (110 m) line. The latitude and longitude coordinates that define these boundary lines that approximate depth contours, and are used to define the non-trawl RCA, are found in groundfish regulations at §§ 660.71 through 74, Subpart C (redesignated from § 660.391 through 394).

In 2009–2010 NMFS defined new YRCAs off northern California that may be implemented through inseason action if necessary. These YRCAs will continue to be available for inseason management if catch of yelloweye rockfish needs to be reduced during 2011–2012. The latitude and longitude coordinates that define these YRCAs are found in groundfish regulations at § 660.70, Subpart C.

The Salmon Troll YRCA is found in groundfish regulation at § 660.70, Subpart C, and § 660.333, Subpart F, and in the Pacific Coast salmon regulations at § 660.405.

Like trawl fishery participants, non-trawl vessels are also subject to several groundfish closed areas other than those within the RCA boundary lines and those intended for EFH conservation. The following closed areas apply to all non-trawl vessels, including both open access and limited entry fixed gear vessels, and have not been proposed for modification in 2011 and beyond (§ 660.70, Subpart C): A Cordell Banks Closed Area; closed areas around the Farallon Islands off San Francisco and San Mateo Counties, CA; the Eastern CCA. The non-trawl fisheries have little to no incidental catch of POP, darkblotched, or widow rockfish. The effects of these fisheries on bocaccio, canary, cowcod, and yelloweye rockfish are constrained as much as possible by the non-trawl RCA, described above, and by the YRCAs and CCAs.

Non-Trawl Fishery Trip Limits

Trip limits proposed for the non-trawl fisheries in 2011–2012 are similar to those that applied to these fisheries in 2009–2010 with the exception of changes to trip limit structures in the sablefish daily trip limit in the LEFG fishery north of 36° north latitude. Trip limits in the LEFG fishery north of 36° north latitude are modified to allow additional flexibility for fishers by eliminating the daily and weekly trip limits. Daily or weekly trip limits may be imposed, if necessary, via routine inseason action during 2011–2012 to

keep total catch of sablefish within the 2011 and 2012 sablefish allocations. Also, the sablefish trip limits in the LEFG fishery south of 36° north latitude are modified to allow additional flexibility for fishers by eliminating the daily trip limit and establishing only a weekly cumulative limit. Trip limits in the open access sablefish fishery remain very similar to those that were in place in 2009–2010. The open access sablefish limits coastwide are more conservative than the LEFG sablefish limits in both poundage and structure, recognizing that the open access fleet can expand to an unknown number of participants. South of 36° north latitude open access sablefish limits are more conservative than the LEFG sablefish limits in both poundage and structure, recognizing that the limited entry fleet has historically harvested a larger proportion of the sablefish ACL South of 36° north latitude, particularly in the years 2000–2005. Also, as in past years, thornyheads may not be taken and retained in the open access fisheries north of 34°27′ north latitude.

Primary Sablefish Fishery Tier Limits

Tier limits for the limited entry fixed gear sablefish-endorsed fleet are lower than in 2009–2010, reflecting the lower sablefish harvest specifications for 2011 and 2012: in 2011, Tier 1 at 41,379 lb (18,769 kg), Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb (4,875 kg). For 2012 the tier limits are as follows: Tier 1 at 40,113 lb (18,195 kg), Tier 2 at 18,233 lb (8,270 kg), and Tier 3 at 10,419 lb (4,726 kg).

These tier limits are found in groundfish regulations at § 660.231, Subpart E.

Management measures for the LEFG fishery, including gear requirements, are found at § 660.330, subpart F, with management measures specific to the primary sablefish season (*e.g.* tier fishery) found at § 660.321, subpart E. Limited entry fixed gear trip limits are found in Table 2 (North) and Table 2 (South) of subpart E of part 660.

Salmon Troller Lingcod Limits

Salmon trollers will be allowed to keep incidentally caught lingcod with a ratio limit of 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, up to a maximum limit of 400 lbs per month when fishing inside the non-trawl RCA. When salmon trollers fish entirely outside of the non-trawl RCA they are not subject to the lingcod retention ration described above, but only to the monthly trip limit.

Open Access Non-Groundfish Trawl Gear Fisheries Management Measures

Open access non-groundfish trawl gear (used to harvest ridgeback prawns, California halibut, sea cucumbers, and pink shrimp) is managed with "per trip" limits, cumulative trip limits, and area closures. Trip limits in 2011–2012 are similar to those in 2007–2008 and 2009–2010. The species-specific open access limits described in the trip limit table apply unless otherwise specified and, in addition, open access non-groundfish trawl vessels may not exceed overall groundfish limits if they are specified. As in past years, the pink shrimp fishery is subject to a non-species specific groundfish limit of "500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip." In addition to the general groundfish limit, vessels fishing for pink shrimp have species specific sub limits for lingcod and sablefish that are different from other open access limits described in Table 3 South to Subpart F. Also, as in past years, thornyheads may not be taken and retained in the open access fisheries north of 34°27′ north latitude.

The trawl RCA is described in Table 1 (North) and Table 1 (South) to Subpart D. Trawling with open access non-groundfish gear for pink shrimp will be permitted within the trawl RCA; however, the states require pink shrimp trawlers to use finfish excluder devices to reduce their groundfish bycatch, particularly to prevent bycatch mortality for canary and other rockfishes. The required use of finfish excluders in the pink shrimp trawl fishery will continue in 2011–2012.

Regulations in this proposed rule include two options for trawl RCA configurations (in Table 1a (South) and Table 1b (South): One that would be in place with implementation of the trawl individual quota program; and one that would be in place if the trawl individual quota program is delayed. Trawling for ridgeback prawns, California halibut, and sea cucumber are subject to the same RCA area closures that apply to vessels fishing in the limited entry trawl fishery, except that non-groundfish trawling will be permitted shoreward of a boundary line approximating the 100 fm (183 m) depth contour if and when the inshore boundary line of the limited entry trawl RCA is moved shallower than 100 fm (183 m). NMFS may clarify the regulatory language regarding the non-groundfish trawl RCA in 660.333, Subpart F, and in line 41 of Table 3 (South) to 660, Subpart F, regarding how the trawl RCA applies to the open access non-groundfish trawl sectors. Currently in regulation the description of non-groundfish trawl RCA refers to the nontrawl RCA, which is inconsistent with the non-groundfish trawl RCA in Table 3 (South). RCA restrictions off California are particularly intended to reduce bycatch and bycatch mortality for southern and coastwide overfished species such as bocaccio, cowcod, and canary rockfish. No changes to other groundfish conservation area restrictions are proposed for the open access non-groundfish trawl fishery in 2011–2012. Management measures for the open access fisheries, including gear requirements, are found at § 660.333, Subpart F. Trip limits are found in Table 3 (North) and Table 3 (South) of subpart F of part 660.

Recreational Fisheries Management Measures

Recreational fisheries management measures are designed to limit catch of overfished and nearshore species to sustainable levels while also allowing viable fishing seasons. Overfished species that are taken in recreational fisheries are bocaccio, cowcod, canary, and yelloweye rockfish. Because sport fisheries are more concentrated in nearshore waters, the 2011–2012 recreational fishery management measures are intended to constrain catch of nearshore species such as minor nearshore rockfish, black rockfish, blue rockfish and cabezon. These protections are particularly important for fisheries off California, where the bulk of West Coast recreational fishing occurs. Management measures for the California recreational groundfish fishery are designed to reduce the incidental catch of overfished rockfish, primarily yelloweye and canary rockfish, while providing as much fishing opportunity as possible for anglers targeting groundfish. Depth restrictions and RCAs are the primary tools used to keep overfished species impacts under the prescribed harvest levels for the California recreational fishery. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits, to best fit the requirements to rebuild overfished species found in their regions, and the needs and constraints of their particular recreational fisheries.

Recreational fisheries management measures for Oregon in 2011–2012 are proposed to be very similar to the recreational fishery management measures that were in place off Oregon during 2009–2010. Recreational fisheries off northern California and Washington are constrained by the need to reduce yelloweye rockfish impacts.

Changes to recreational fishery management measures off California are in response to the revised stock status of target species, requests by the public to simplify regulations, information regarding the distribution of overfished species and the desire to redistribute effort displaced by restrictions on take in newly established Marine Protected Areas (MPAs)in state waters.

Washington

Off Washington, recreational fishing for groundfish and Pacific halibut will continue to be prohibited inside the North Coast Recreational YRCA, a C-shaped closed area off the northern Washington coast, the South Coast Recreational YRCA, and the Westport Offshore YRCA. Coordinates for all of these YRCAs are defined at § 660.70, Subpart C. The RCA for recreational fishing off Washington will be the same as in 2010. The aggregate groundfish bag limits off Washington will be reduced from 15 fish to 12 fish, because very few anglers were attaining the 15 aggregate groundfish bag limits. The rockfish and lingcod sub-limits will remain the same as in 2007–2008 and 2009–2010: 10 rockfish sub-limit with no retention of canary or yelloweye rockfish; 2 lingcod sub-limit, with the lingcod minimum size of 22 inches (56 cm). Since catches of cabezon have increased in recent years and the stock status of cabezon off the Washington coast is unknown, and to make cabezon retention regulations off the West Coast consistent with WDFW regulations in Puget Sound, Washington, this rule proposes a cabezon sub-limit for 2011–2012 of two cabezon per day. The lingcod seasons in 2011–2012 will be the same as those in 2009–2010. As in 2009–2010, south of Leadbetter Point off the state of Washington, when halibut are onboard the vessel from May through September, there will continue to be no retention of groundfish, except sablefish and Pacific cod.

Oregon

Off Oregon, recreational fishing for groundfish in 2011–2012 will have the same management measures as in 2009–2010, except that the Oregon recreational fishery marine fish bag limit will have a seasonal sub-bag limit for cabezon, as described at § 660.360(c)(2)(iii). The seasonal sub-bag limit for cabezon is intended to reduce the projected impacts to cabezon in the Oregon recreational ocean boat fishery in order to stay within the recreational portion of the 2011 and 2012 cabezon ACLs for Oregon of 50 mt and 48 mt, respectively.

California

For 2011–2012, recreational fisheries off California are proposed to be managed as five separate areas, down from six in 2009–2010, to reduce complexity while retaining flexibility in minimizing impacts on overfished stocks. They are also re-named to shorten their names and to relate the name of the management area to the region of the coast to which it applies. The following are the management areas that will be defined for 2011–2012: The Northern Management Area is defined as the area from the Oregon/California border to 40°10′ north latitude; the Mendocino Management Area is defined as the area from 40°10 north latitude to 38°57 north latitude; the San Francisco management area is defined as the area from 38°57 north latitude to 37°11 north latitude; the central management area is defined as the area from 37°11 north latitude to 34°27 north latitude and the southern management area is defined as the area from 34°27 north latitude to the U.S./Mexico border.

California updated its recreational fisheries catch model with data from the California Recreational Fisheries Survey to make recommendations to the Council for the 2011–2012 fisheries. Season and area closures differ between California regions to better prevent incidental catch of overfished species according to where those species occur and where fishing effort is greatest, while providing as much fishing opportunity as possible. The California-wide combined bag limit for the Rockfish-Cabezon-Greenling (RCG) Complex would continue to be 10 fish per day when the season is open. RCG Complex sub-bag limits will also remain the same, except that the cabezon limit statewide will increase from two fish to three fish per day. The increase to the cabezon sub-bag limit from two fish to three fish is anticipated to increase cabezon mortality by 10 percent. The increase on cabezon mortality from increased sub-bag limit, combined with other changes to management measures that may change the projected impacts to cabezon, are anticipated to result in annual total mortality of 33.9 mt of cabezon in 2011 and 2012, which is well within the 2011–2012 cabezon ACL. The increase in the cabezon sub-bag limit is not anticipated to affect projected impacts to co-occurring overfished species as effort is not expected to increase appreciably as a result of the increased bag limit and overfished species shelf species are not commonly found in shallow waters where cabezon reside.

Fishing seasons for lingcod will be modified to be the same as the fishing seasons for the RCG Complex. This modification extends the fishing season for lingcod later in the year and eliminates portions of the former seasonal closures that occurred in the winter months. Winter closures had been used since lingcod was declared overfished in 2001 to prevent catch of lingcod during its spawning and nesting season while the stock was rebuilding. According to the most recent stock assessment, the southern lingcod stock has rebuilt to 70 percent of its unfished biomass. Therefore the Council recommended and NMFS is proposing an increase in the length of the recreational lingcod fishing season, and reducing regulatory complexity by having the seasons for the RCG Complex and lingcod be the same for 2011–2012. The increase in fishing season length for lingcod is not anticipated to affect projected impacts to co-occurring overfished species, as the improved fishing opportunity is not expected to appreciably increase fishing effort as retention of lingcod is not expected to be the deciding factor as to whether or not anglers go fishing. The new seasons for lingcod are described at § 660.360(c)(3)(iii)(A). This rule also proposes to retain the lingcod size limit, but to decrease the lingcod size limit from 24 inches to 22 inches. The 22 inch lingcod size limit is intended to preserve nest guarding males, yet still allow for increased lingcod fishing opportunity. The lingcod fillet length restriction would also be reduced to reflect the change in the size limit (*i.e.* 14 inch fillet length restriction under a 22 inch total length size limit). Overfished species impacts may decrease as a result of this rule change as anglers obtain their two fish lingcod bag limit more rapidly, incurring less overfished species impacts in the process. For the same reasons described above, an increase in the lingcod bag limit was considered for 2011–2012. However, the increased bag limit was not recommended at this time due to the potential for increased impacts to co-occurring overfished rockfish species, such as yelloweye rockfish, as anglers continue incurring impacts on those species in pursuit of additional lingcod to fill a higher bag limit.

This rule proposes to implement a gear restriction (*e.g.* hook limits) for cabezon and kelp greenling to make the restrictions for these fish consistent with the existing gear restrictions for rockfish, so that the same number of fishing lines and hooks apply to all of the species in the RCG Complex. This

new gear regulation closes a regulatory loophole, and will prevent excessive recreational fishing effort using multiple rods to target cabezon and kelp greenling. The gear restrictions for the RCG Complex are described at § 660.360(c)(3)(ii)(B).

This rule proposes revisions to the time and area closures that make up the recreational RCA off California. Generally, the proposed revisions extend the length of the California recreational fisheries in all Management Areas except the Mendocino Management Area (between 40°10' north latitude and 38°57.50′ north latitude) and the Southern Management Area (south of 34°27′ north latitude). In the Southern Management Area, season length will stay the same as in 2009–2010, but the depth restriction for recreational fishing for California scorpionfish will move seaward during January and February, opening additional areas to fishing that occur between the boundary line approximating the 40 fm (73 m) depth contour and the boundary line approximating the 60 fm (110 m) depth contour. This change simplifies regulations by keeping the depth restrictions for California scorpionfish in this management area the same throughout the year. These time and area closures are liberalized for 2011–2012 to allow additional fishing opportunities to harvest healthy stocks to achieve but not exceed 2011–2012 ACLs, without causing the projected mortality of overfished rockfish species, such as yelloweye rockfish, bocaccio, cowcod and canary rockfish, to exceed their respective harvest limits in the California recreational fishery.

Incidental catch of cowcod in the area south of 34°27′ north latitude continues to be restricted by the CCAs. Prior to 2011, the CCAs were closed throughout the year to recreational fishing for groundfish deeper than the 20 fm (37 m) depth contour. Shallower than the 20 fm (37 m) depth contour, retention of some species was allowed. In 2010, the state of California is in the process of implemented marine protected areas in state waters between Point Conception to U.S. Mexico border, including state waters adjacent to offshore islands and rocks. An environmental impact analysis prepared by the state of California (Draft Environmental Impact Report; California marine life protection act initiative South Coast Study Region) indicates that cowcod are likely to benefit from marine protected areas that are closed to fishing activities. The best available scientific information on depth distributions of cowcod indicate that adults primarily inhabit depths deeper than 60 fm (110 m). To provide some additional fishing opportunities in areas where the bycatch of cowcod is not appreciable, this proposed rule would allow recreational fishing for some species, including shelf rockfish, shallower than new boundary lines that approximate the 30 fm (55 m) depth contour in several areas that are currently within the CCAs. This proposed rule would also establish new boundary lines that approximate the 40 fm (73 m) depth contour in several areas within the CCAs, which may be used as the boundary for recreational fisheries that occur within the CCA during 2011–2012 and beyond. Latitude and longitude coordinates that define the boundary lines that approximate the 30 fm (55 m) and 40 fm (73 m) depth contours within the CCA are found at § 660.71, Subpart C.

Management measures for recreational fisheries off all three West Coast states are found at § 660.360, Subpart G. Washington Coastal Tribal Allocations, Harvest Guidelines And

Set-Asides

As in previous years, the mortality of groundfish species in tribal fisheries are subtracted from the 2011 and 2012 ACLs before other allocations are derived. In 2011–2012, the tribes will continue to have formal allocations for sablefish and Pacific whiting that are deducted from the ACLs for those species. The tribal allocation for sablefish is 10 percent of the ACL north of 36° north latitude, less 1.6 percent for estimated discard mortality. For 2011 and 2012, the tribal sablefish allocations are 552 mt and 535 mt, respectively. The formula for the tribal allocation of Pacific whiting in 2010 was [17.5 percent * (U.S. OY)] + 16,000 mt and was described in a proposed rule on March 12, 2010 (75 FR 11829) and implemented in a final rule on May 4, 2010 (75 FR 23620). With a U.S. OY of 193,935 mt, the tribal allocation for the 2010 tribal Pacific whiting fishery was 49,939 mt. In accordance with the procedures set forth in 50 CFR § 660.50, subpart C, tribal allocations of Pacific whiting will be established annually until the co-managers complete the evaluation of the relevant scientific information and a determination of the long-term tribal allocation for Pacific whiting is made.

The 2011 and 2012 tribal harvest guideline for black rockfish is the same as in 2009 and 2010: 13.61 mt (30,000 lbs) for the management area between the U.S./Canada border and Cape Alava (48°10.00′ north latitude) and 4.5 mt (10,000 lbs) for the management area between Destruction Island and Leadbetter Point (46°38.17′ north latitude). The tribes have not had formal allocations for Pacific cod or lingcod in recent years; however, the Council recommended adopting a tribal proposal for tribal harvest guidelines for these two species in 2011 and 2012 of 400 mt (881,840 lbs). Pacific cod harvest guideline and a 250 mt (551,150 lbs). Lingcod harvest guideline will apply to the tribes for 2011 and 2012.

For some species on which the tribes have a modest harvest, no specific allocation or harvest guideline has been determined. The amounts anticipated to be taken by tribal fisheries for all other groundfish species or species groups, including overfished species, are referred to as tribal set-asides. Set-asides for the Pacific Coast treaty Indian tribal harvest are deducted from the ACL, similarly to the tribal allocations and harvest guidelines described above. Set-aside amounts for each species or species group taken in tribal fisheries are based on the projected catch from the proposed tribal fishery management measures, described below. Set-aside amounts could change through the biennial harvest specifications and management measures process. The set-aside amounts will be specified in the footnotes to Tables 1a through 2d of subpart C.

Washington Coastal Tribal Fisheries Management Measures

Tribes implement management measures for tribal fisheries both separately and cooperatively with those management measures that are described in the Federal regulations. The tribes may adjust their tribal fishery management measures inseason to stay within the overall harvest targets described above, including their estimated impacts to overfished species. Trip limits are the primary management measure that the tribes specify in Federal regulations at 660.50, subpart C. Continued from 2009–2010, the tribes propose trip limit management for the following species taken in tribal fisheries in 2011–2012: Spiny dogfish; several rockfish species and species groups, including thornyheads; and flatfish species and species groups. These trip limits are described below.

For spiny dogfish, tribal fisheries in 2011–2012 will be restricted to a cumulative limit of "200,000 lbs (90,718 kg.) per two month period." This cumulative limit is similar to the bi-monthly cumulative limit for spiny dogfish that was in place for the limited entry trawl fishery in 2009–2010.

For rockfish species, the 2011–2012 tribal fisheries will operate under trip and cumulative limits, and will be

required by tribal regulations to fully retain all overfished rockfish species and marketable non-overfished rockfish species. Tribal fisheries are restricted all gears to "17,000 lbs (7,711 kg) per two month period" for shortspine thornyheads and "22,000 lbs (9,979 kg) per two month period" for longspine thornyheads. As in 2009–2010, other rockfish, including minor nearshore, shelf and slope rockfish, are restricted to a "300 lb (136 kg) per trip" limit for each species group. If trip limits for minor nearshore rockfish are made less restrictive than "300 lb per trip" through inseason adjustments during 2011–2012, then the tribal limit would be set equal to the incidental trip limits published in Table 1 (North) to subpart D. As in 2009–2010, tribal midwater trawl fisheries in 2011–2012 are subject to a cumulative limit for yellowtail rockfish of 180,000 lb per two months and the landings of widow rockfish must not exceed 10 percent of the cumulative poundage of yellowtail rockfish landed by a given vessel for the year. As in 2009–2010, trip limits for canary rockfish and yelloweye rockfish in 2011–2012 are "300 lb (136-kg) per trip" and "100 lbs (45 kg) per trip," respectively. The tribes will continue to develop management measures, including depth, area, and time restrictions, in the directed tribal Pacific halibut fishery in order to minimize incidental impacts on yelloweye rockfish.

Tribal cumulative limits for most flatfish species in 2011–2012 will be very similar to the limited entry trawl fishery trip limits from 2009–2010. The 2011–2012 tribal cumulative limits are as follows: "110,000 lbs per two months" for Dover sole, English sole, and Other Flatfish, combined; and 150,000 lbs per months for arrowtooth flounder. The tribal cumulative for petrale sole will be the same in 2011–2012 as it was in 2009–2010: 50,000 lb per two months.

Tribal fishing regulations, as recommended by the tribes and the Council and adopted by NMFS, are in Federal regulations at 660.50, subpart C.

Housekeeping Measures

NMFS is proposing to correct and update the descriptions of season dates and trip limits throughout the regulations. NMFS proposes to replace, where appropriate, the words "end", "ends" or "ending" with "closed", "closes", or "closing". Changes to the language pertaining to season dates and trip limits are intended to improve enforceability by making the regulations consistent with the definition of "closure or closed" at 660.11, subpart C. Changes are proposed for the following sections: § 660.131, and subpart D; § 660.231. Housekeeping changes to the season dates and trip limits descriptions by replacing "end" with "close" do not change the intent or effect of these seasonal and trip limit regulations.

NMFS is also proposing to clarify language describing the fishing restrictions within some Yelloweye Rockfish Conservation Areas (YRCAs) that are not currently in effect as a housekeeping measure within this action. In the definitions of the Point St. George, South Reef, Reading Rock, Point Delgada North, and Point Delgada South YRCAs there is language that states that "fishing for groundfish is open [within the YRCA] from January 1, through December 31." However, other restrictions may be in effect for these non-trawl fisheries that geographically overlap these YRCAs. Currently, the language implies that fishing for groundfish is open when it may otherwise be restricted. Therefore, the language above will be stricken from the descriptions of those YRCAs in sections: § 660.302, Subpart E; § 660.330, subpart F; and § 660.360, subpart G. Housekeeping changes to the description of these YRCAs does not change the intent or effect of these area restrictions.

Additionally, NMFS may clarify language regarding the non-groundfish trawl RCA and how it applies to the open access non-groundfish trawl sectors. See "Open access non-groundfish trawl gear fisheries management measures" for additional information on these proposed changes.

Classification

At this time, NMFS has made a preliminary determination that most of the 2011–2012 groundfish harvest specifications and management measures in this proposed rule are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. However, NMFS has not made such a determination with respect to the specifications, including the rebuilding plans, for yelloweye rockfish, darkblotched rockfish and cowcod. There may be some questions whether the ACLs for these species are consistent with the court order in *NRDC* v. *Locke*. In addition, there may be some question whether the reductions in the protections in the CCAs are consistent with rebuilding requirements. NMFS specifically invites comments regarding these issues. NMFS will take into account the complete record, including any data, views, and comments received during the comment period, in making its final determination on whether the 2011–2012 specifications and management measures are consistent with the above-described standards and laws. If NMFS concludes, based on the overall record and public comments, that some rebuilding provisions are inconsistent with the court order or other rebuilding requirements, NMFS could make the necessary changes in the final rule and return the action to the Council for further consideration.

A DEIS was prepared for the 2011–2012 groundfish harvest specifications and management measures. The DEIS includes an RIR and an IRFA. The Environmental Protection Agency published a notice of availability for the draft EIS on August 27, 2010 (75 FR 52736). A copy of the DEIS is available online at *http://www.pcouncil.org/.*

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (**SEE ADDRESSES**). A summary of the analysis follows: The Council's RIR/IRFA compares all the alternatives by discussing the impacts of each alternative on commercial vessels, buyers and processors, recreational charter vessels, seafood consumers, recreational anglers, non-consumptive users, non-users, and enforcement. Based on analyses discussed in Chapter 4 of the DEIS, the following summary is based on the Council's RIR/IRFA and focuses on the Council's final preferred alternative proposed to be implemented by this action and the non action alternative.

The overall economic impact of the Final Preferred Alternative is that many sectors are expected to achieve social and economic benefits similar to those under the current regulations, or the No Action alternative. However, there are differences in the distribution of ex-vessel revenue and angler trips on a regional basis and on a sector-by-sector basis. These changes are driven by changes in the forecast abundance for target species and overfished species. Change in the nearshore species harvest guidelines may positively impact recreational fisheries in certain regions compared with No Action. With the exception of the nearshore open access sector, all other non-tribal commercial fisheries sectors are expected to achieve lower levels of ex-vessel revenues than under No Action. The limited entry

fixed gear sector shows the greatest projected decline in revenue as a result of the sablefish ACL decrease. The Pacific whiting fishery is expected to be able to attain revenues similar to No Action; however, the impact to this fishery is dependent on results of the upcoming stock assessment cycle for Pacific whiting.

On a coastwide basis, commercial ex-vessel revenues for the non-tribal directed groundfish sectors are estimated to be approximately $69 million per year under the Final Preferred Alternative compared with approximately $71 million under No Action, and the number of recreational bottom fish trips is estimated to be 645 thousand under the Final Preferred Alternative compared with 609 thousand under No Action. The decline in commercial fisheries revenues is largely the result of a reduction in harvest of sablefish under the action alternatives.

A variety of time/area closures applicable to commercial vessels have been implemented in recent years. The most extensive of these are the RCAs, which have been in place since 2002 to prohibit vessels from fishing in depths where overfished groundfish species are more abundant. Different RCA configurations apply to the limited entry trawl sector and the limited entry fixed gear and open access sectors. In addition, the depth ranges covered can vary by latitudinal zone and time period. The alternatives vary somewhat in terms of the extent of RCAs. In additions to the RCAs, two CCAs have been in place since 1999 in the Southern California Bight to reduce bycatch of the overfished cowcod stock and yelloweye conservation areas have been established off the Washington Coast to reduce bycatch of the overfished yelloweye rockfish stock. The Final Preferred Alternative for the limited entry non-whiting trawl fleet generates slightly lower ex-vessel revenue on a coastwide basis when compared to revenues under the current regulations or no action alternative. This is primarily driven by a decrease in the abundance of sablefish and petrale sole as opposed to changes in status of constraining species. Area-based management for the limited entry non-whiting trawl fleet under the preferred alternative will be comparable to what was in place in 2009 and 2010—the area north of Cape Alava, Washington and shoreward of the trawl RCA will remain closed in order to protect overfished rockfish species. Given the decreased amount of fishable area in northern Washington since 2009 higher costs for fishery participants from increases in fuel required to travel to and fish at those deeper depths would remain.

The limited entry whiting fishery is expected to be able to attain revenues similar to the previous biennial period. Rebuilding species that largely constrain the whiting fishery include widow and canary rockfish. The past few years have witnessed an increase in the incidental take of widow rockfish in the whiting fisheries despite bycatch avoidance behavior. This trend is likely to continue as it is expected that the fishery will continue to encounter more widow rockfish as that stock rebuilds. It is important to note that potential ex-vessel revenue in these fisheries ultimately depends on the Pacific whiting stock assessment, which is adopted annually by the Council during the March meeting.

The fixed gear sablefish sector will generate lower revenue under the Final Preferred Alternative than No Action because the sablefish ACL has decreased. However, the fixed gear fleet will have somewhat more area available than under No Action, because fishing will be open at depths deeper than 100 fm (183 m) north of 40°10' north latitude whereas under No Action, depths between 100 fm (183 m) and 125 fm (229 m) were only open on days when the Pacific halibut fishery was open. Fixed gear fisheries south of 36° north latitude will see sablefish harvest close to status quo levels. There are no recommended changes to area management relative to status quo.

Under the Final Preferred Alternative, the nearshore groundfish fishery is expected to have a moderate increase in ex-vessel revenues compared with No Action due to increased targeting opportunities for black rockfish (between 42 north latitude and 40 10′ north latitude) and cabezon south (South of 42 north latitude). Fishing areas open to the nearshore fleets will be roughly the same as under No Action. Fishing opportunity and economic impacts to the nearshore groundfish sector are largely driven by the need to protect canary and especially yelloweye rockfish.

The final preferred alternative is projected to provide the west coast economy with slightly lower ex-vessel revenues than was generated by the fishery under No Action. However, effects on buyers and processors along the coast will vary depending location. In addition, the Council's preferred alternative attempts to take into account the desire expressed by buyers and processors to have a year round groundfish fishery. Individual quota management for trawl fisheries should help accommodate this preference; however in practice in the absence of trip limits it is somewhat uncertain how trawl landings will be distributed in time and space.

In terms of recreational angler effort, the number of angler trips under the final Council-preferred alternative is slightly higher compared to No Action, but somewhat less than in 2009. However, an increase in angler effort under the final Council-preferred alternative is occurring primarily in south and central California, while northern Washington shows a slight increase and Oregon shows no change compared with No Action. It is expected that under the proposed 2011–2012 management measures, tribal groundfish fisheries will generate less revenue and personal income than under No Action due to a reduction in sablefish harvest.

The 2011–2012 period will be the first groundfish management cycle in which the shoreside trawl sector fisheries would be conducted under the Amendment 20 trawl rationalization program, including issuance and tracking of individual fishing quotas (IFQ) for most trawl-caught groundfish species. IFQ management is designed to provide opportunities for fisherman and processors to maximize the value of their fishery by creating incentives to make the optimum use of available target and bycatch species. Since all trawl trips will be observed, catch of constraining overfished species will be monitored in real time, and individuals will be held directly responsible for "covering" all catch of groundfish species with IFQ. Since IFQ for constraining, overfished species represents a real cost in terms of money and/or fishing opportunity, it is expected that fishers will take extraordinary steps to avoid unnecessary catch of these species. At the same time there is uncertainty about how individuals will be able to manage the individual risk inherent in a system based on personal responsibility. This issue may present a considerable challenge, especially to small businesses that have access to only a single limited entry trawl permit. Exhausting all readily available supplies of IFQ for a particularly constraining species, such as yelloweye, may result in the business being effectively shut down for the remainder of the season. Partly for this reason it is expected that over time the number of vessels and permits engaging in the limited entry trawl fishery will decline as fishers strive to consolidate available IFQ onto a smaller number of vessels in order to reduce the costs of harvesting the quotas. A smaller number of active vessels will mean reductions in the number of crew hired and in

expenditures made in local ports for materials, equipment, supplies and vessel maintenance. As such, while wages and profits for those crew and vessel owners that do remain in the fishery should increase, the amount and distribution of exvessel revenues and community income will change in ways that are not yet foreseeable, but probably to the detriment of some businesses and communities currently involved in the groundfish trawl fishery. Due to these types of countervailing uncertainties, impacts on trawl fisheries under the 2011–2012 management measures used in this analysis were estimated using a model designed to project overfished species bycatch levels under a status quo cumulative trip limit management regime. Likewise, the model used to estimate community income impacts was calibrated based on recently estimated spending patterns for regional vessels and processors. While providing a useful starting point for comparing gross-level effects under the alternatives, the true range of economic impacts achievable under the rationalized, IFQ-managed fishery may reflect a considerable departure from these estimates.

The Council analysis includes a discussion of small businesses. This proposed rule will regulate businesses that harvest groundfish. According to the Small Business Administration, a small commercial harvesting business is one that has annual receipts under $4.0 million and a small charter boat business is one that has annual receipts under $7 million. The Council estimates that implementation of the Final Preferred Alternative will affect about 2,600 small entities. These small entities are those that are directly regulated by the proposed rule that will be promulgated to support implementation of the Final Preferred Alternative. These entities are associated with those vessels that either target groundfish or harvest groundfish as bycatch. Consequently, these are the vessels, other than catcher-processors, that participate in the limited entry portion of the fishery, the open access fishery, the charter boat fleet, and the tribal fleets. Catcher/processors also operate in the Alaska pollock fishery, and all are associated with larger companies such as Trident and American Seafoods. Therefore, it is assumed that all catcher/processors are "large" entities. Best estimates of the limited entry groundfish fleet are taken from the NMFS Limited Entry Permits Office. As of June 2010, there are 399 limited entry permits including 177 endorsed for trawl (172 trawl only, 4 trawl and longline, and 1 trawl and trap-pot); 199 endorsed for longline (191 longline only, 4 longline and trap-pot, and 4 trawl and longline); 32 endorsed for trap-pot (27 trap-pot only, 4 longline and trap-pot, and 1 trawl and trap-pot). Of the longline and trap-pot permits, 164 are sablefish endorsed. Of these endorsements 130 are "stacked" on 50 vessels. Ten of the limited entry trawl endorsed permits are used or owned by catcher/processor companies associated with the whiting fishery. The remaining 389 entities are assumed to be small businesses based on a review of sector revenues and average revenues per entity. The open access or nearshore fleet, depending on the year and level of participation, is estimated to be about 1,300 to 1,600 vessels. Again, these are assumed to be "small entities." The tribal fleet includes about 53 vessels, and the charter boat fleet includes 525 vessels that are also assumed to be "small entities."

The Final Preferred Alternative represents the Council's efforts to address the directions provided by the Ninth Circuit Court of Appeals, which emphasizes the need to rebuild stocks in as short a time as possible, taking into account: (1) The status and biology of the stocks, (2) the needs of fishing communities, and (3) interactions of depleted stocks within the marine ecosystem. By taking into account the "needs of fishing communities" the Council was also simultaneously taking into account the "needs of small businesses" as fishing communities rely on small businesses as a source of economic income and activity and income. Therefore, it may be useful to review whether the Council's three-meeting process for selecting the preferred alternative can be seen as means of trying to mitigate impacts of the proposed rule on small entities. The EIS and RIR/IRFA include analysis of a range of alternatives that were considered by the Council, including analysis of the effects of setting allowable harvest levels necessary to rebuild the seven groundfish species that were previously declared overfished. An eighth species, petrale sole, was declared overfished in 2010 and the proposed action includes a new rebuilding plan for this species along with the 2011–2012 ACLs and management measures consistent with the adopted rebuilding plan. Associated rebuilding analyses for all eight species estimate the time to rebuild under various levels of harvest.

The Council initially considered a wider range of alternatives, but ultimately rejected from further analysis alternatives allowing harvest levels higher than what is generally consistent with current policies for rebuilding overfished stocks and a "no fishing" scenario (F=0). Section 2.2 of the DEIS describes five integrated alternatives including No Action, the Council's Final Preferred Alternative, and three other alternatives (including the Council's Preliminary Preferred Alternative, which is similar to the Final Preferred Alternative). Comparison of the action alternatives with No Action allows an evaluation of the economic implications to groundfish sectors, ports, and fishing communities; and the interaction of depleted species within the marine ecosystem of reducing ACLs for overfished species to rebuild stocks faster than they would under the rebuilding strategies that the Council adopted and have modified consistent with new, scientific information on the status and biology of these stocks.

Alternative 2011–2012 groundfish management measures are designed to provide opportunities to harvest healthy, target species within the constraints of alternative ACLs for overfished species. The integrated alternatives allow estimation of target species catch under the suite of overfished ACLs for overfished species both to demonstrate that target species ACLs are projected to be exceeded and to estimate related socioeconomic impacts.

The Council reviewed these analyses and read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, and the general public before deciding the final Council-preferred alternative in June 2010. The Council's final preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species decided by the Council at their April and June 2010 meetings.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River

Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery.

For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence NMFS has begun the process to initiate consultation on the effects of the fishery.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. 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 PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP 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 non-whiting 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 tribal whiting set aside will be established prior to the beginning of the whiting fishery in April, after further consultation with the tribes and the states.

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

List of Subjects in 50 CFR Part 660

Fisheries, fishing, and Indian fisheries.

Dated: October 20, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660, as amended at 75 FR 60868, October 1, 2010, effective November 1, 2010, is proposed to be further amended as follows:

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

Subpart C—West Coast Groundfish Fisheries

2. In § 660.11,

a. Add definitions of "Acceptable Biological Catch", "Annual Catch Limit", "Annual Catch Target", and "Overfishing Limit" in alphabetical order.

b. Revise the definition of "Fishery harvest guideline".

c. At the definition for "Groundfish", revise paragraphs (7) introductory text, (7)(ii)(A) and (B), and paragraph (9).

d. At the definition of "North-South management area" redesignate paragraphs (2)(xvii) through (xxii) as (2)(xviii) through (xxiii).

e. At the definition of "North-South management area", add paragraph (2)(xvii).

§ 660.11 General definitions.

* * * * *

Acceptable Biological Catch (ABC) means a harvest specification that is set below the overfishing limit to account for scientific uncertainty in the estimate of OFL, and other scientific uncertainty.

* * * * *

Annual Catch Limit (ACL) is a harvest specification set equal to or below the ABC threshold in consideration of conservation objectives, socioeconomic concerns, management uncertainty and other factors. The ACL is a harvest limit that includes all sources of fishing-related mortality including landings, discard mortality, research catches, and catches in exempted fishing permit activities. Sector-specific annual catch limits can be specified, especially in cases where a sector has a formal, long-term allocation of the harvestable surplus of a stock or stock complex.

Annual Catch Target (ACT) is a management target set below the annual

catch limit and may be used as an accountability measure in cases where there is great uncertainty in inseason catch monitoring to ensure against exceeding an annual catch limit. Since the annual catch target is a target and not a limit, it can be used in lieu of harvest guidelines or strategically to accomplish other management objectives. Sector-specific annual catch targets can also be specified to accomplish management objectives.

* * * * *

Fishery harvest guideline means the harvest guideline or quota after subtracting from the ACL or ACT when specified, any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

* * * * *

Groundfish * * *

* * * * *

(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,* except dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus,* 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.

* * * * *

(ii) * * *

(A) North of 40°10′ N. lat.: bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegates;* 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;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegates;* 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.*

* * * * *

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1) through (8) of this definition except for the following: Those groundfish species specifically listed in Tables 1a and 2a of this subpart with an OFL for that area (generally north and/or south of 40°10′ N. lat.); spiny dogfish coastwide. "Other fish" may include all sharks, except spiny dogfish, skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in waters off Washington.

* * * * *

North-South management area * * *

(2) * * *

(xvii) Cape Vizcaino, CA–39°44.00′ N. lat.

* * * * *

Overfishing limit (OFL) is the MSY harvest level or the annual abundance of exploitable biomass of a stock or stock complex multiplied by the maximum fishing mortality threshold or proxy thereof and is an estimate of the catch level above which overfishing is occurring.

* * * * *

3. In § 660.12, revise paragraph (a)(8) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(8) 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, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

* * * * *

4. In § 660.30, paragraphs (a)(2)(iv) and (a)(6) are revised to read as follows:

§ 660.30 Compensation with fish for collecting resource information—EFPs.

* * * * *

(a) * * *

(2) * * *

(iv) The year in which the compensation fish would be deducted from the ACL or ACT before determining the fishery harvest guideline or commercial harvest guideline.

* * * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process, as described at § 660.60, subpart C, NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ACLs or ACTs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ACLs or ACTs will be accounted for in the next management cycle where it is practicable to do so.

* * * * *

5. Revise § 660.40 to read as follows:

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial ACLs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio.* The target year for rebuilding the bocaccio stock south of 40°10 N. latitude to B_{MSY} is 2022. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* The target year for rebuilding the cowcod stock south of 40°10 N. latitude to B_{MSY} is 2071. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 79 percent.

(d) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2025. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 64.9 percent.

(e) *Petrale Sole.* The target year for rebuilding the petrale sole stock to B_{MSY} is 2016. The harvest control rule is an annual SPR harvest rate of 31 percent in 2011 and 32.4 percent in 2012.

(f) *Pacific Ocean Perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2020. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(g) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2010. A constant catch of 600 mt will be used to rebuild the widow rockfish stock, which is an annual SPR harvest rate of 91.7 percent in 2011 and 91.3 percent in 2012.

(h) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2084. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 72.8 percent.

6. In § 660.50, paragraphs (f)(2)(i) and (ii), (f)(4),(g)(2), and (g)(7) are revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(i) The sablefish allocation to Pacific coast treaty Indian tribes is 10 percent of the sablefish ACL 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.

(ii) The tribal allocation is 552 mt in 2011 and 535 in 2012 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) The tribal allocation is reduced by 1.5 percent for estimated discard mortality.

* * * * *

(4) *Pacific whiting.* The tribal allocation for 2010 is 49,939 mt. The tribal allocations for will be announced each year following the Council's March meeting when the final specifications for Pacific whiting are announced.

* * * * *

(g) * * *

(2) *Thornyheads.* The tribes will manage their fisheries to the following limits for shortspine and longspine thornyheads. The limits would be accumulated across vessels into a cumulative fleetwide harvest target for the year. The limits available to individual fishermen will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. The annual following limits apply:

(i) Shortspine thornyhead cumulative trip limits are 17,000-lb (7,711-kg) per 2 months.

(ii) Longspine thornyhead cumulative trip limits are 22,000-lb (9,979-kg) per 2 months.

* * * * *

(7) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear are subject to the following limits: For Dover sole, English sole, other flatfish 110,000 lbs (49,895 kg) per 2 month; and for arrowtooth flounder 150,000 lbs (68,039 kg) per 2 month. The Dover sole and arrowtooth limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000 lb (22,680 kg) per 2 month limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

* * * * *

7. In § 660.55 paragraphs (a), (b) introductory text, (f)(1)(ii) and (k) are revised to read as follows:

§ 660.55 Allocations.

* * * * *

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Beginning with the 2011–2012 biennial specifications process and prior to the setting of fishery allocations, the ACL or ACT when specified is reduced by the Pacific Coast treaty Indian tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, set-asides for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (**Note**: Recreational estimates are not deducted here).

* * * * *

(f) * * *

(1) * * *

(ii) *Catch accounting for the nontrawl allocation.* All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at § 660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the ACL or ACT when specified.

* * * * *

(k) Exempted fishing permit set-asides. Annual set-asides for EFPs described at § 660.60(f), will be deducted from the ACL or ACT when specified. Set-aside amounts will be adjusted through the biennial harvest specifications and management measures process.

* * * * *

8. In § 660.60 paragraphs (c)(1)(i), (g) and (h)(1) are revised to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(1) * * *

(i) Trip 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, longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the other flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; cabezon in Oregon and California and "other fish" as a complex consisting of all groundfish species listed at § 660.11, subpart C and not otherwise listed as a distinct species or species group. Specific to the IFQ fishery, sub-limits or aggregate limits may be specified for the following species: Longnose skate, big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. 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 paragraphs (c)(1)(i)(A) and (B) of this section.

* * * * *

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in Tables 1a through 2d of this subpart, and those specified in subparts D through G, including Tables 1a (North) and 1a (South) Tables 1b (North) and 1b (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F.

(h) * * *

(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in Tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including Tables 1a (North) and 1a (South), Tables 1b (North) and 1b (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F must not be exceeded.

* * * * *

9. In § 660.65, the introductory text is revised to read as follows:

§ 660.65 Groundfish harvest specifications.

Harvest specifications include OFLs, ABCs, and the designation of OYs, and ACLs. Management measures necessary to keep catch within the ACL include ACTs, harvest guidelines (HGs), or quotas for species that need individual management, and the allocation of fishery HGs between the trawl and nontrawl segments of the fishery, and the allocation of commercial HGs 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). Harvest specifications are provided in Tables 1a through 2d of this subpart.

* * * * *

10. Section 660.71 is proposed to be amended as follows:

a. Remove paragraph (e)(78),

b. Redesignate paragraphs (e)(79) through (e)(333) as (e)(78) through (e)(332) respectively.

c. Redesignate paragraphs (k) through (n) as (o) through (r), respectively.

d. In newly redesignated paragraph (o), revise paragraphs (o)(149) and (150), redesignate paragraphs (o)(151) through (212) as (o)(153) through (214), add new paragraphs (o)(151) and (152),

e. Add paragraphs (k), (l), (m), (n), (s), (t), (u), and (v) to read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10 fm (18 m) through 40 fm (73 m) depth contours.

* * * * *

(k) The *30fm (55m) depth contour around Santa Barbara Island* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.41′ N. lat., 119°02.93′ W. long.;

(2) 33°30.22′ N. lat., 119°03.84′ W. long.;

(3) 33°29.53′ N. lat., 119°04.60′ W. long.;

(4) 33°28.57′ N. lat., 119°04.06′ W. long.;

(5) 33°28.35′ N. lat., 119°03.44′ W. long.;

(6) 33°27.73′ N. lat., 119°03.41′ W. long.;

(7) 33°27.31′ N. lat., 119°01.80′ W. long.;

(8) 33°27.76′ N. lat., 119°01.31′ W. long.;

(9) 33°27.78′ N. lat., 119°00.85′ W. long.;

(10) 33°27.95′ N. lat., 119°00.75′ W. long.;

(11) 33°28.47′ N. lat., 119°00.92′ W. long.;

(12) 33°29.61′ N. lat., 119°00.69′ W. long.; and connecting back to 33°30.41′ N. lat., 119°02.93′ W. long.

(l) The *30fm (55m) depth contour around San Nicolas Island* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°19.00′ N. lat., 119°28.00′ W. long.;

(2) 33°18.50′ N. lat., 119°39.50′ W. long.;

(3) 33°17.18′ N. lat., 119°40.26′ W. long.;

(4) 33°15.61′ N. lat., 119°38.65′ W. long.;

(5) 33°12.50′ N. lat., 119°30.00′ W. long.;

(6) 33°12.00′ N. lat., 119°27.00′ W. long.;

(7) 33°12.68′ N. lat., 119°23.30′ W. long.;

(8) 33°13.50′ N. lat., 119°20.00′ W. long.;

(9) 33°15.50′ N. lat., 119°20.00′ W. long.;

(10) 33°16.50′ N. lat., 119°25.00′ W. long.; and connecting back to 33°19.00′ N. lat., 119°28.00′ W. long.

(m) The *30fm (55m) depth contour around Tanner Bank* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°43.37′ N. lat., 119°08.86′ W. long.;

(2) 32°42.86′ N. lat., 119°07.36′ W. long.;

(3) 32°41.13′ N. lat., 119°05.46′ W. long.;

(4) 32°40.57′ N. lat., 119°05.76′ W. long.;

(5) 32°41.49′ N. lat., 119°09.90′ W. long.; and connecting back to 32°43.37′ N. lat., 119°08.86′ W. long.

(n) The *30fm (55m) depth contour around Cortes Bank* off the state of

California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°29.73′ N. lat., 119°12.95′ W. long.;

(2) 32°28.83′ N. lat., 119°10.38′ W. long.;

(3) 32°28.17′ N. lat., 119°07.04′ W. long.;

(4) 32°26.27′ N. lat., 119°04.14′ W. long.;

(5) 32°25.22′ N. lat., 119°04.77′ W. long.;

(6) 32°28.60′ N. lat., 119°14.15′ W. long.; and connecting back to 32°29.73′ N. lat., 119°12.95′ W. long.

* * * * *

(o) * * *

(149) 36°18.40′ N. lat., 121°57.93′ W. long.;

(150) 36°16.80′ N. lat., 121°59.97′ W. long.;

(151) 36°15.00′ N. lat., 121°55.95′ W. long.;

(152) 36°15.00′ N. lat., 121°54.41′ W. long.;

* * * * *

(s) The *40fm (73m) depth contour around Santa Barbara Island* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.89′ N. lat., 119°02.42′ W. long.;

(2) 33°29.89′ N. lat., 119°05.27′ W. long.;

(3) 33°29.54′ N. lat., 119°05.39′ W. long.;

(4) 33°28.53′ N. lat., 119°04.27′ W. long.;

(5) 33°28.23′ N. lat., 119°03.73′ W. long.;

(6) 33°27.77′ N. lat., 119°03.67′ W. long.;

(7) 33°27.32′ N. lat., 119°02.80′ W. long.;

(8) 33°27.20′ N. lat., 119°01.82′ W. long.;

(9) 33°27.64′ N. lat., 119°00.31′ W. long.;

(10) 33°29.96′ N. lat., 119°00.45′ W. long.; and connecting back to 33°30.89′ N. lat., 119°02.42′ W. long.

(t) The *40fm (73m) depth contour around San Nicolas Island* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°20.00′ N. lat., 119°29.00′ W. long.;

(2) 33°18.72′ N. lat., 119°41.27′ W. long.;

(3) 33°17.56′ N. lat., 119°41.38′ W. long.;

(4) 33°15.19′ N. lat., 119°38.59′ W. long.;

(5) 33°12.35′ N. lat., 119°30.11′ W. long.;

(6) 33°11.81′ N. lat., 119°27.13′ W. long.;

(7) 33°12.60′ N. lat., 119°23.15′ W. long.;

(8) 33°12.93′ N. lat., 119°22.26′ W. long.;

(9) 33°12.78′ N. lat., 119°21.48′ W. long.;

(10) 33°13.11′ N. lat., 119°17.70′ W. long.;

(11) 33°13.77′ N. lat., 119°17.77′ W. long.;

(12) 33°14.50′ N. lat., 119°19.82′ W. long.;

(13) 33°15.52′ N. lat., 119°19.94′ W. long.;

(14) 33°16.67′ N. lat., 119°23.12′ W. long.; and connecting back to 33°20.00′ N. lat., 119°29.00′ W. long.

(u) The *40fm (73m) depth contour around Tanner Bank* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°43.67′ N. lat., 119°09.11′ W. long.;

(2) 32°43.02′ N. lat., 119°07.17′ W. long.;

(3) 32°40.62′ N. lat., 119°04.52′ W. long.;

(4) 32°40.00′ N. lat., 119°05.00′ W. long.;

(5) 32°41.43′ N. lat., 119°10.05′ W. long.; and connecting back to 32°43.67′ N. lat., 119°09.11′ W. long.

(v) The *40fm (73m) depth contour around Cortes Bank* off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°30.45′ N. lat., 119°12.61′ W. long.;

(2) 32°28.90′ N. lat., 119°10.26′ W. long.;

(3) 32°28.49′ N. lat., 119°07.04′ W. long.;

(4) 32°26.29′ N. lat., 119°03.80′ W. long.;

(5) 32°24.91′ N. lat., 119°04.70′ W. long.;

(6) 32°28.57′ N. lat., 119°14.91′ W. long.; and connecting back to 32°30.45′ N. lat., 119°12.61′ W. long.

11. Section 660.72 is proposed to be amended as follows:

a. Remove and reserve paragraphs (f)(143) through (f)(144), and remove paragraph (f)(198),

b. Redesignate paragraphs (a)(122) through (a)(195) as (a)(127) through (a)(200), paragraphs (f)(145) through (f)(197) as (f)(146) through (f)(198), paragraphs (j)(16) through (j)(254) as (j)(18) through (j)(256), and paragraphs (j)(4) through (j)(15) as (j)(5) through (j)(16),

c. Revise paragraphs (a)(121), newly designated (a)(193), (b), (f) (140) through (f)(142), and newly designated (j)(183) through (j)(185),

d. Add paragraphs (a)(122) to (a)(126), add and reserve paragraph (a)(145), and add paragraphs (j)(4) and (j)(17), to read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(a) * * *

(121) 36°18.40′ N. lat., 121°58.97′ W. long.;

(122) 36°18.40′ N. lat., 122°00.35′ W. long.;

(123) 36°16.02′ N. lat., 122°00.35′ W. long.;

(124) 36°15.00′ N. lat., 121°58.53′ W. long.;

(125) 36°15.00′ N. lat., 121°56.53′ W. long.;

(126) 36°14.79′ N. lat., 121°54.41′ W. long.;

* * * * *

(193) 32°55.35′ N. lat., 117°18.65′ W. long.;

* * * * *

(b) The 50–fm (91–m) depth contour around the Swiftsure Bank and along the U.S. border with Canada is defined by straight lines connecting all of the following points in the order stated:

(1) 48°30.15′ N. lat., 124°56.12′ W. long.;

(2) 48°28.29′ N. lat., 124°56.30′ W. long.;

(3) 48°29.23′ N. lat., 124°53.63′ W. long.;

(4) 48°30.31′ N. lat., 124°51.73′ W. long.; and connecting back to 48°30.15′ N. lat., 124°56.12′ W. long.

* * * * *

(f) * * *

(140) 36°16.80′ N. lat., 122°01.76′ W. long.;

(141) 36°14.33′ N. lat., 121°57.80′ W. long.;

(142) 36°14.67′ N. lat., 121°54.41′ W. long.;

* * * * *

(j) * * *

(4) 48°10.00′ N. lat., 125°27.99′ W. long.;

* * * * *

(17) 48°10.00′ N. lat., 125°20.19′ W. long.;

* * * * *

(183) 36°17.49′ N. lat., 122°03.08′ W. long.;

(184) 36°14.21′ N. lat., 121°57.80′ W. long.;

(185) 36°14.53′ N. lat., 121°54.99′ W. long.;

* * * * *

12. Section 660.73 is proposed to be amended as follows:

a. Remove paragraphs (a)(118) through (a)(120), (a)(156), (d)(134), (d)(180), (h)(157) and (h)(158),

b. Redesignate paragraphs (a)(3) through (a)(16) as (a)(4) through (a)(17), paragraphs (a)(17) through (a)(117) as (a)(19) through (a)(119), paragraphs (a)(121) through (a)(155) as (a)(128) through (a)(162), paragraphs (a)(157) through (a)(307) as (a)(165) through (a)(315), paragraphs (d)(135) through (d)(179) as (d)(138) through (d)(182), paragraphs (d)(181) through (d)(350) as (d)(185) through (d)(354), and paragraphs (h)(159) through (h)(302) as (h)(158) through (h)(301),

c. Add paragraphs (a)(3), (a)(18), (a)(120) through (a)(127), (a)(163) and (a)(164), (d)(134) through (d)(137), (d)(183), (d)(184), and (h)(157) to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(a) * * *

(3) 48°10.00′ N. lat., 125°40.00′ W. long.;

* * * * *

(18) 48°10.00′ N. lat., 125°17.81′ W. long.;

* * * * *

(120) 44°02.34′ N. lat., 124°55.46′ W. long.;

(121) 43°59.18′ N. lat., 124°56.94′ W. long.;

(122) 43°56.74′ N. lat., 124°56.74′ W. long.;

(123) 43°55.76′ N. lat., 124°55.76′ W. long.;

(124) 43°55.41′ N. lat., 124°52.21′ W. long.;

(125) 43°54.62′ N. lat., 124°48.23′ W. long.;

(126) 43°55.90′ N. lat., 124°41.11′ W. long.;

(127) 43°57.36′ N. lat., 124°38.68′ W. long.;

* * * * *

(163) 40°30.37′ N. lat., 124°37.30′ W. long.;

(164) 40°28.48′ N. lat., 124°36.95′ W. long.;

* * * * *

(d) * * *

(134) 43°59.43′ N. lat., 124°57.22′ W. long.;

(135) 43°57.49′ N. lat., 124°57.31′ W. long.;

(136) 44°55.73′ N. lat., 124°55.41′ W. long.;

(137) 44°54.74′ N. lat., 124°53.15′ W. long.;

* * * * *

(183) 40°30.35′ N. lat., 124°37.52′ W. long.;

(184) 40°28.39′ N. lat., 124°37.16′ W. long.;

* * * * *

(h) * * *

(157) 40°30.30′ N. lat., 124°37.63′ W. long.;

* * * * *

13. Section 660.74 is proposed to be amended as follows:

a. Remove paragraphs (a)(159), (g)(136),

b. Redesignate paragraphs (a)(160) through (a)(284) as (a)(161) through (a)(285), (g)(137) through (g)(256) as (g)(138) through (g)(257),

c. Revise paragraphs (g)(133), (l)(84) and (l)(85),

d. Add paragraphs (a)(159) and (a)(160), (g)(136) and (g)(137), to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(a) * * *

(159) 40°30.22′ N. lat., 124°37.80′ W. long.;

(160) 40°27.29′ N. lat., 124°37.10′ W. long.;

* * * * *

(g) * * *

(133) 40°30.16′ N. lat., 124°37.91′ W. long.;

* * * * *

(136) 40°22.34′ N. lat., 124°31.22′ W. long.;

(137) 40°14.40′ N. lat., 124°35.82′ W. long.;

* * * * *

(l) * * *

(84) 43°57.88′ N. lat., 124°58.25′ W. long.;

(85) 43°56.89′ N. lat., 124°57.33′ W. long.;

* * * * *

14a. Tables 1a through 1c, Subpart C, are proposed to be revised to read as follows:

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Table 1a. To Part 660, Subpart C- 2011, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG a/
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,438	2,330	2,330		2,059
	S of 42° N. lat. c/	2,523	2,102	2,102		2,095
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	TBA	TBA	TBA		TBA
Sablefish	N of 36° N. lat. f/	8,808	8,418	5,515	See Table 1c	
	S of 36° N. lat. g/			1,298		1,264
Cabezon	46°16' to 42° N. lat. h/	52	50	50		50
	S of 42° N. lat. i/	187	179	179		179
FLATFISH:						
Dover sole j/	Coastwide	44,400	42,436	25,000		23,410
English sole k/	Coastwide	20,675	19,761	19,761		19,661
Petrale sole l/	Coastwide	1,021	976	976		911
Arrowtooth flounder m/	Coastwide	18,211	15,174	15,174		13,096
Starry Flounder n/	Coastwide	1,802	1,502	1,352		1,345
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,026	981	180	157	144
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	5,097	4,872	600		539.1
Canary s/	Coastwide	614	586	102		82
Chilipepper t/	S of 40°10' N. lat.	2,073	1,981	1,981		1,966
Bocaccio u/	S of 40°10' N. lat.	737	704	263		249.6
Splitnose v/	S of 40°10' N. lat.	1,529	1,461	1,461		1,454
Yellowtail w/	N of 40°10' N. lat.	4,566	4,364	4,364		3,865
Shortspine thornyhead	N of 34°27' N. lat.	2,384	2,279	1,573		1,528
x/	S of 34°27' N. lat.			405		363
Longspine thornyhead	N of 34°27' N. lat.	3,577	2,981	2,119		2,075
y/	S of 34°27' N. lat.			376		373
Cowcod z/	S of 40°10' N. lat.	13	10	4		3.7
Darkblotched aa/	Coastwide	508	485	298		279.3
Yelloweye bb/	Coastwide	48	46	20	17	11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	141	135	135		133
Black	N of 46°16' N. lat. dd/	445	426	426		412
	S of 46°16' N. lat. ee/	1,217	1,163	1,000		1,000
Minor Rockfish North ff/	N of 40°10' N. lat.	3,767	3,363	2,227		2,116
Nearshore		116	99	99		99
Shelf		2,188	1,940	968		925
Slope		1,462	1,324	1,160		1,092
Minor Rockfish South gg/	S of 40°10' N. lat.	4,302	3,723	2,341		2,301
Nearshore		1,156	1,001	1,001		1,001
Shelf		2,238	1,885	714		701
Slope		907	836	626		599
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:						
Longnose Skate hh/	Coastwide	3,128	2,990	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. Fishery harvest guidelines (HGs) means the harvest guideline or quota after subtracting from the ACL or ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,438 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,330 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 2,059 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,523 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,102 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,095 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40)as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. A range of ACLs were considered in the DEIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to the Council's March 2011 meeting. Final adoption of the Pacific whiting specifications have been deferred until the Council's March 2011 meeting.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,808 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,418 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,515 mt and is reduced by 552 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 552 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

g/ Sablefish South. That portion of the coastwide ACL apportioned to the area south of 36° N. lat. is 2,595 mt (32 percent). An additional 50 percent reduction was made for uncertainty resulting in an ACL of 1,298 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental

open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,264 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 52 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 50 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 50 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California). A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 187 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 179 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 179 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,400 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,436 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 20,675 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 19,761 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 19,661 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,021 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 976 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL is set equal to the ABC and represents an SPR harvest rate of 31 percent. A set-aside of 65.4 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 911 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 18,211 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 15,174 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2

species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 13,096 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2010, the coastwide OFL of 1,802 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,502 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,352 mt is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt), the incidental open access fishery (5 mt), resulting in a fishery HG of 1,345 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40)as it's a category 3 species. The ACL of 4,884 mt is the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,026 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 981 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 180 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 13 mt is deducted from the ACT for the Tribal fishery (10.9 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2011 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 5,097 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,872 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch strategy of 600 mt (SRP harvest rate= 91.7 percent) will be used to rebuild the widow rockfish stock consistent with the rebuilding plan and a T_{TARGET} of 2010. A set-aside of 61 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP

catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update, based on the full assessment in 2007, was completed in 2009 and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 614 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 586 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 102 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt) resulting in a fishery HG of 82 mt. Recreational HGs are being specified as follows: Washington recreational, 2.0; Oregon recreational 7.0 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 2,073 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,981 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,966 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.) Given that bocaccio rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 737 mt is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 704 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 263 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 249.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and with south of 40°10 N species-specific harvest specifications. South of 40°10 N. lat. the OFL of 1,529 mt is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,461 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,454 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, and Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,566 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,364 mt is a 4 percent reduction from the OFL

(σ=0.36/P*=0.45)as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,865 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,384 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,279 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,573 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt) resulting in a fishery HG of 1,528 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 405 mt which is 34 percent of the coastwide OFL, reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt) resulting in a fishery HG of 363 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,978 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,577 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,981 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,119 mt, and is 79 percent of the coastwide OFL for the biomass found in that area reduced by an additional 25 percent as a precautionary adjustment. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt) resulting in a fishery HG of 2,075 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 376 mt and is 21 percent of the coastwide ABC reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 373 mt. The sum of the northern and southern area ACLs (2,495 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent (bounded between 4 and 21 percent) of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 4 mt is being set for both areas combined. The ACL of 4 mt is based on a rebuilding plan with a target year to rebuild of 2071 and an SPR rate of 79 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 3.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 508 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 485 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 298 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5 mt) and research catch (2.1 mt), resulting in a fishery HG of 279.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 20 mt ACL is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 72.8 percent. An ACT of 17 mt is being established in order to address management uncertainty and increase the likelihood that total catch remains below the ACL. A set-aside of 5.9 mt is deducted from the ACT for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 141 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 135 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 133 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared for black rockfish north of 45°56′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16′ N. lat. (the Washington/Oregon Border) is 445 mt and is 97 percent of the OFL from the assessed area. The ABC of 426 mt for the north of 46° 16′ N. Lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 412 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56′ N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California in 2007. The biomass in this area was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45° 56′. The resulting OFL for the area south of 46°16 N. lat. is 1,217 mt. The ABC of 1,163 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to

keep the stock biomass above $B_{40\%}$. There are no set-asides thus the fishery HG is equal to the ACL. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope rockfish. The OFL of 3,767 mt is the sum of OFLs for nearshore (116 mt), shelf (2,188 mt) and slope (1,462 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,363 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt) resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2 mt) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,302 mt is the sum of OFLs for nearshore (1,156 mt), shelf (2,238 mt) and slope (907 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of 34°27′ N. lat., blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,723 mt (1,001 mt nearshore, 1,885 mt shelf, and 836 mt slope). The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 1,001 mt. The set-aside for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-aside for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,128 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,990 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 mortality (landings and discard mortality). The set-

aside for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is calculated by applying a P* buffer of 30.6 percent under a P* of 0.40.

Table 1.b. To Part 660, Subpart G - 2011, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
ROUNDFISH:					
Lingcod					
N of 42° N. lat.	2,059	45%	927	55%	1,132
S of 42° N. lat.	2,095	45%	943	55%	1,152
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	TBA	100%	TBA	0%	TBA
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,264	42%	531	58%	733
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	19,661	95%	18,678	5%	983
Petrale sole a/	911		876		35
Arrowtooth flounder	13,096	95%	12,441	5%	655
Starry Flounder	1,345	50%	673	50%	672
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch b/	144	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	82		34.1		29.8
Chilipepper - S of 40°10 N. Lat.	1,966	75%	1,475	25%	492
Bocaccio - S of 40°10 N. Lat. a/	249.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,454	95%	1,381	5%	73
Yellowtail - N of 40°10 N. Lat.	3,865	88%	3,401	12%	464
Shortspine thornyhead					
N of 34°27' N. lat.	1,528	95%	1,452	5%	76
S of 34°27' N. lat.	363	NA	50	NA	313
Longspine thornyhead					
N of 34°27' N. lat.	2,075	95%	1,971	5%	104
Cowcod - S of 40°10 N. Lat. a/	3.7		1.8		0.9
Darkblotched d/	279.3	95%	265	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.2%	557	39.8%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

a/ Allocations were decided through the biennial specification process.

b/ The POP trawl allocation is further divided with 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery.

c/ The canary rockfish trawl allocation is further divided with 5.9 mt for the shorebased IFQ fishery, 3.4 mt for the mothership fishery, and 4.8 mt for the catcher/processor fishery.

d/ The darkblotched rockfish trawl allocation is further divided with 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery.

e/ The widow rockfish trawl allocation is further divided with 107.1mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery.

Table 1c. To Part 660, Subpart C Sablefish North of 36° N. lat. Allocations, 2011 and 2012

Year	ACL	Set-asides		Recreational Estimate	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal	Research			%	Mt	%	MT b/
2011	5,515	552	16	6.1	4,941	90.6%	4,477	9.4%	464
2012	5,347	535	16	6.1	4,790	90.6%	4,340	9.4%	450

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2011	4,477	2,597	50	2,547	1,880	1,598	282
2012	4,340	2,517	50	2,467	1,823	1,549	273

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 544 mt in 2011 and 527 in 2012

b/ Of the Open access HG the annual amount estimated to be taken in the incidental OA fishery is 17.2 mt.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

Table 1.E. Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011

Species/Species Group/Area	Trawl Allocation (mt)	At-sea Whiting set asides	Shorebased IFQ			
			Non-Whiting		Whiting	
			percent	mt	percent	mt
Pacific Ocean Perch	137	17.4 (10.2 catcher/processor + 7.2 mothership)	89.5% [Remaining]	107	10.5% (Greater of 17% or 30 mt to shorebased + at-sea whiting)	12.6
Widow rockfish	491	147.9 (86.7 catcher/processor + 61.2 mothership)	68.7% (Remaining)	235	0 (52% to shorebased + at-sea whiting)	107.1
Yellowtail rockfish North of 40°10' N. lat.	3,401	300	90.3% (Remaining)	2,801	9.7% (300 mt)	300
Darkblotched rockfish	265	14.5 (8.5 catcher/ processors + 6 mothership)	95.8% (Remaining)	240	4.20% (Greater of 9% or 25 mt to shorebased + at-sea whiting)	10.5
Minor slope rockfish South of 40°10' N. lat.	377	na	100%	377	0.0%	0
Minor shelf rockfish North of 40°10' N. lat.	557	35	82.6%	431.2	17.4%	90.8
South of 40°10' N. lat.	86	na	100%	86	0.0%	0
Canary Rockfish	34.1	8.2 (4.8 catcher/processor + 3.4 mothership)	77.2%	20	22.8%	5.9
Bocaccio	60	na	100%	60	0.0%	0
Cowcod	1.8	na	100%	1.8	0.0%	0
Yelloweye Rockfish	0.6	0	100%	0.6	0.0%	0

Table 2a. To Part 660, Subpart C- 2012, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,251	2,151	2,151		1,880
	S of 42° N. lat c/.	2,597	2,164	2,164		2,157
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	TBA	TBA	TBA		TBA
Sablefish	N of 36° N. lat. f/	8,623	8,242	5,347	See Table 1c	
	S of 36° N. lat. g/			1,258		1,224
Cabezon	46°16' to 42° N. lat. h/	50	48	48		48
	S of 42° N. lat. i/	176	168	168		168
FLATFISH:						
Dover sole j/	Coastwide	44,826	42,843	25,000		23,410
English sole k/	Coastwide	10,620	10,150	10,150		10,050
Petrale sole l/	Coastwide	1,279	1,222	1,160		1,094.6
Arrowtooth flounder m/	Coastwide	14,460	12,049	12,049		9,971
Starry Flounder n/	Coastwide	1,813	1,511	1,360		1,353
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,007	962	183	157	144
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	4,923	4,705	600		539.1
Canary s/	Coastwide	622	594	107		87
Chilipepper t/	S of 40°10' N. lat.	1,872	1,789	1,789		1,774
Bocaccio u/	S of 40°10' N. lat.	732	700	274		260.6
Splitnose v/	S of 40°10' N. lat.	1,610	1,538	1,538		1,531
Yellowtail w/	N of 40°10' N. lat.	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	N of 34°27' N. lat.	2,358	2,254	1,556		1,511
	S of 34°27' N. lat.			401		359
Longspine thornyhead y/	N of 34°27' N. lat.	3,483	2,902	2,064		2,020
	S of 34°27' N. lat.			366		363
Cowcod z/	S of 40°10' N. lat.	13	10	4		3.7
Darkblotched aa/	Coastwide	497	475	296		277.3
Yelloweye bb/	Coastwide	48	46	20	17	11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	132	126	126		124
Black	N of 46°16' N. lat. dd/	435	415	415		401
	S of 46°16' N. lat. ee/	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	Coastwide	3,821	3,414	2,227		2,116
Nearshore	N of 40°10' N. lat.	116	99	99		99
Shelf		2,197	1,948	968		925
Slope		1,507	1,367	1,160		1,092
Minor Rockfish South gg/	Coastwide	4,291	3,712	2,341		2,290
Nearshore	S of 40°10' N. lat.	1,145	990	990		990
Shelf		2,243	1,890	714		701
Slope		903	832	626		599
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:						
Longnose Skate hh/	Coastwide	3,006	2,873	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. Fishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40)as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. A range of ACLs were considered in the DEIS (96,968 mt-290,903 mt). A new stock assessment will be prepared prior to the Council's March 2011 meeting. Final adoption of the Pacific whiting specifications have been deferred until the Council's March 2012 meeting.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California) - A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,826 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,843 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 10,620 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 10,150 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 10,050 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,279 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 1,222 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 1,160 mt ACL is represents an SPR harvest rate of 32.4 percent. A set-aside of 65 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 1,094.6 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 14,460 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 12,049 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041

mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 9,971 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2012, the coastwide OFL of 1,813 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,511 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,360 mt, is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt)and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,353 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40)as it's a category 3 species. The ACL of 4,884 mt is the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,007 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 962 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 183 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 13 mt is deducted from the ACT for the Tribal fishery (10.9 mt), the incidental open access fishery (0.1 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2011 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 4,923 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,705 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch of 600 mt will be used to rebuild the widow rockfish stock by 2015. The corresponding SPR harvest rate is 91.3 percent in 2012. The T_{TARGET} is 2015. A set-aside of 60.9 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update was completed in 2009, based on the full assessment in 2007, and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 622 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 594 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 107 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt), resulting in a fishery HG of 87 mt. Recreational HGs are being specified as follows: Washington recreational, 2 mt; Oregon recreational 7 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the biomass is estimated to be above 40 percent the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.). Bocaccio rockfish are managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 732 mt is based on the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 700 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 274 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 260.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10' N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from

the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent bounded between 4 and 21 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 4 mt is being set for both areas combined. The ACL of 4 mt is based on a rebuilding plan with a target year to rebuild of 2071 and an SPR rate of 79 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 3.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 497 mt

and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 475 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 296 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5) and research catch (2.1 mt), resulting in a fishery HG of 277.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 20 mt ACL is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 72.8 percent. An ACT of 17 mt is being established in order to address management uncertainty and increase the likelihood that total catch remains below the ACL. A set-aside of 5.9 mt is deducted from the ACT for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt), resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56'N. lat.(Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16' N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56' N. lat. is added to the OFL from the assessed area south of 45°56'. The resulting OFL for the area south of 46°16' N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being

set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 3,767 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0,72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,128 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,990 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is calculated by applying a P* buffer of 30.6 percent under a P* of 0.40.

Table 2b. To Part 660, Subpart G - 2012, and beyond, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
Lingcod					
N of 42° N. lat.	1,880	45%	846	55%	1,034
S of 42° N. lat.	2,157	45%	971	55%	1,186
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	TBA	100%	TBA	0%	TBA
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,224	42%	514	58%	710
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	10,050	95%	9,548	5%	503
Petrale sole a/	1,095		1,060		35
Arrowtooth flounder	9,971	95%	9,472	5%	499
Starry Flounder	1,353	50%	677	50%	677
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch	144	95%	137	5%	7
Widow e/	539	91%	490	9%	49
Canary a/ c/	87		34.8		29.8
Chilipepper - S of 40°10 N. Lat.	1,774	75%	1,331	25%	443
Bocaccio - S of 40°10 N. Lat. a/	260.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,531	95%	1,454	5%	77
Yellowtail - N of 40°10 N. Lat.	3,872	88%	3,407	12%	465
Shortspine thornyhead					
N of 34°27' N. lat.	1,511	95%	1,435	5%	76
S of 34°27' N. lat.	359		50		309
Longspine thornyhead					
N of 34°27' N. lat.	2,020	95%	1,919	5%	101
Cowcod - S of 40°10 N. Lat. a/	3.7		1.8		0.9
Darkblotched d/	277.3	95%	263	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.20%	557	39.80%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

a/ Allocations were decided through the biennial specification process.

b/ The POP trawl allocation is further divided with 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery.

c/ The canary rockfish trawl allocation is further divided with 6.2 mt for the shorebased IFQ fishery, 3.6 mt for the mothership fishery, and 5.0 mt for the catcher/processor fishery.

d/ The darkblotched rockfish trawl allocation is further divided with 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery.

e/ The widow rockfish trawl allocation is further divided with 107.1mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery.

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Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries

15. In § 660.130 paragraph (d) is revised to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) *Sorting.* Under § 660.12(a)(8), subpart C, 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, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt.

* * * * *

16. In § 660.131, paragraph (b)(4)(ii) is revised to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(4) * * *

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or close of the primary whiting season.

* * * * *

17. In § 660.140 paragraph (a) and the introductory text of paragraph (c)(1) are revised to read as follows:

§ 660.140 Shorebased IFQ program.

(a) *General.* The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides, as necessary, for the remaining groundfish species or species groups. The IFQ Program is subject to area restrictions (GCAs, RCAs, and EFHCAs) listed at §§ 660.70 through 660.79, subpart C. The Shorebased IFQ Program may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, OY, ACT or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

(c) * * *

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. QS and IBQ will specify designations for the species/species groups and area to which it applies. QS and QP species groupings and area subdivisions will be those for which ACLs or ACTs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. QS for remaining minor rockfish will be aggregated for the shelf and slope depth strata (nearshore species are excluded). The following are the IFQ species:

* * * * *

18. In § 660.150 paragraph (a)(5) is revised to read as follows:

§ 660.150 Mothership (MS) Coop program.

(a) * * *

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, ACT, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

19. In § 660.160 paragraph (a)(5) is revised to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

(a) * * *

(5) The C/P Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, ACT, or formal allocation specified in the PCGFMP or regulation at § 660.55,

subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

* * * * *

20. Table 1 (North), Table 1 (South) to part 660, subpart D are redesignated as Table 1a (North), Table 1a (South) to part 660, subpart D; the newly redesignated Table 1a (North) and Table 1a (South) are revised, and Table 1b (North) and Table 1b (South) are added to part 660, subpart D to read as follows:

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Table 1a (North) to Part 660, Subpart D -- 2011-2012[7/] Trip Limits in the Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]		

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope bottom trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor slope rockfish[2/] & Darkblotched rockfish**		
5	midwater trawl gear	Before the primary whiting season: CLOSED. -- During primary whiting season: cumulative minor slope rockfish and darkblotched rockfish limit of 1,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.	
6	multiple bottom trawl gears	6,000 lb/ 2 months	6,000 lb/ 2 months
7	**Pacific ocean perch**		
8	midwater trawl gear	Before the primary whiting season: CLOSED. -- During primary whiting season: cumulative Pacific ocean perch limit of 600 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.	
9	multiple bottom trawl gears	1,500 lb/ 2 months	
10	**DTS complex**		
11	Sablefish		
12	midwater trawl gear	Before the primary whiting season: CLOSED. -- During primary whiting season: cumulative sablefish limit of 1,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.	
13	large & small footrope gear	14,750 lb/ 2 months	
14	selective flatfish trawl gear	8,000 lb/ 2 months	
15	multiple bottom trawl gear[8/]	8,000 lb/ 2 months	
16	Longspine thornyhead		
17	large & small footrope gear	20,000 lb/ 2 months	
18	selective flatfish trawl gear	5,000 lb/ 2 months	
19	multiple bottom trawl gear[8/]	5,000 lb/ 2 months	
20	Shortspine thornyhead		
21	large & small footrope gear	17,200 lb/2 months	
22	selective flatfish trawl gear	5,000 lb/ 2 months	
23	multiple bottom trawl gear[8/]	5,000 lb/ 2 months	
24	Dover sole		
25	large & small footrope gear	150,000 lb/ 2 months	
26	selective flatfish trawl gear	65,000 lb/ 2 months	
27	multiple bottom trawl gear[8/]	65,000 lb/ 2 months	

TABLE 1a (North)

Table 1a (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Whiting**						
29	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
30	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
31	**Flatfish** (except Dover sole)						
32	Arrowtooth flounder						
33	large & small footrope gear	150,000 lb/ 2 months					
34	selective flatfish trawl gear	90,000 lb/ 2 months					
35	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
36	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
37	large & small footrope gear for Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 4,800 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
38	large & small footrope gear for Petrale sole	4,800 lb/ 2 months					4,800 lb/ 2 months
39	selective flatfish trawl gear for Other flatfish[3/], English sole, & starry flounder	60,000 lb/ 2 months, no more than 4,800 lb/ 2 months of which may be petrale sole.					
40	selective flatfish trawl gear for Petrale sole						
41	multiple bottom trawl gear [8/]	60,000 lb/ 2 months, no more than 4,800 lb/ 2 months of which may be petrale sole.					
42	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
43	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.					
44	large & small footrope gear	300 lb/ 2 months					
45	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
46	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 1a (North) con't

Table 1a (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
47	**Canary rockfish**						
48	large & small footrope gear	CLOSED					
49	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
50	multiple bottom trawl gear [8/]	CLOSED					
51	**Yellowtail**						
52	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 §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
53	large & small footrope gear	300 lb/ 2 months					
54	selective flatfish trawl gear	2,000 lb/ 2 months					
55	multiple bottom trawl gear [8/]	300 lb/ 2 months					
56	**Minor nearshore rockfish & Black rockfish**						
57	large & small footrope gear	CLOSED					
58	selective flatfish trawl gear	300 lb/ month					
59	multiple bottom trawl gear [8/]	CLOSED					
60	**Lingcod** [4/]						
61	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: cumulative lingcod limit of 600 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
62	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
63	selective flatfish trawl gear			1,200 lb/2 months			
64	multiple bottom trawl gear [8/]						
65	**Pacific cod**						
66	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: cumulative Pacific cod limit of 600 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
67	multiple bottom trawl gears	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
68	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
69	**Other Fish** [5/]	Not limited					

TABLE 1a (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ These tables are intended to apply in 2011 and 2012 with the following exceptions: Unless otherwise modified, the trip limits for sablefish will be lower in 2012 (14,000 lb/2 months for vessels using large and small footrope gear; 7,500 lb/2 months for vessels using selective flatfish trawl gear and multiple trawl gears); the trip limits for shortspine thornyheads will be lower in 2012 (16,800 lb/2 months for vessels using large and small footrope trawl gears) and trip limits for petrale sole will be higher in 2012 (6,400 lb/2 month for vessels using large and small footrope gears, selective flatfish trawl gears, and multiple trawl gears), because of the changes in their respective ACLs from 2011 to 2012.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any bottom trawl gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1a (South) to Part 660, Subpart D -- 2011-2012[8/] Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 200 fm line [6/ 7/]	100 fm line[6/] - 150 fm line [6/ 7/]				100 fm line[6/] - 200 fm line [6/ 7/]
	All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.						
	See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months					
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	14,750 lb/ 2 months					
10	Longspine thornyhead	20,000 lb/ 2 months					
11	Shortspine thornyhead	17,200 lb/ 2 months					
12	Dover sole	150,000 lb/ 2 months					
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 4,800 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	Petrale sole	4,800 lb/ 2 months					4,800 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 1a (South)

Table 1a (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	12,000 lb/ 2 months					
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	12,000 lb/ 2 months					
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 1a (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
8/ These tables are intended to apply in 2011 and 2012 with the following exceptions: Unless otherwise modified, the trip limits for sablefish will be lower in 2012 (14,000 lb/2 months), the trip limits for shortspine thornyheads will be lower in 2012 (16,800 lb/2 months) and trip limits for petrale sole will be higher in 2012 (6,400 lb/2 months for vessels using large and small footrope gears) because of the changes in their respective ACLs from 2011 to 2012.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1b (North) to Part 660, Subpart D -- 2011-2012 Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas and incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery limits in this table, regardless of the type of fishing gear used.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

5	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
6	**Whiting**	
7	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
8	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
9	**Cabezon**	
10	North of 46°16' N. lat.	Unlimited
11	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
12	**Shortbelly**	Unlimited
13	**Spiny dogfish**	60,000 lb/ month
14	**Longnose skate**	Unlimited
15	**Other Fish [5/]**	Unlimited

TABLE 1b (North)

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1b (South) to Part 660, Subpart D -- 2011-2012 Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas and incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
	All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery limits in this table, regardless of the type of fishing gear used.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month					
	Whiting						
	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
5	**Cabezon**	50 lb/ month					
6	**Shortbelly**	Unlimited					
7	**Spiny dogfish**	60,000 lb/ month					
8	**Longnose skate**	Unlimited					
9	**California scorpionfish**	Unlimited					
10	**Other Fish[5/]**	Unlimited					

TABLE 1b (South)

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (excluding longnose skate), ratfish, morids, grenadiers, and kelp greenling.

6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

21. In § 660.230 paragraphs (c)(1), (c)(2)(ii), and (d)(5) through (9) are revised to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(1) Under § 660.12(a)(8), subpart C, 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, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) * * *

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish, Cabezon (Oregon and California);

* * * * *

(d) * * *

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, Subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South

Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry sfixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

* * * * *

22. In § 660.231, paragraphs (b)(1) and (b)(3)(i) are revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) *Season dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual permit holder when that permit holder's tier limit has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60, subpart C.* * * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish 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 (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2011, the following annual limits are in effect: Tier 1 at 41,379 lb (18,769 kg) Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb (4,875 kg). For 2012 and beyond, the following annual limits are in effect: Tier 1 at 40,113 lb (18,195 kg), Tier 2 at 18,233 lb (8,270 kg), and Tier 3 at 10,419 lb (4,726 kg).

* * * * *

23. In § 660.232 paragraph (a)(2) is revised to read as follows:

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) * * *

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish 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 fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the close 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 DTL fishery for sablefish for the remainder of the fishing year.

* * * * *

24. Table 2 (North) and Table 2 (South) to part 660, subpart E are revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- 2011-2012 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,900 lb per week, not to exceed 6,500 lb/ 2 months	1,900 lb per week, not to exceed 7,500 lb/ 2 months				1,900 lb per week, not to exceed 6,000 lb/ 2 months
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[1/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/]				
23	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other fish[5/]**	Unlimited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- 2011-2012 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,900 lb per week, not to exceed 6,500 lb/ 2 months	1,900 lb per week, not to exceed 7,500 lb/ 2 months				1,900 lb per week, not to exceed 6,000 lb/ 2 months
7	South of 36° N. lat.	2,000 lb per week					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 2 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/]	Unlimited						

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Subpart F—West Coast Groundfish—Open Access Fisheries

25. In § 660.330 paragraphs (c) introductory text, (c)(2) and (d)(5) through (9) are revised to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(c) *Sorting.* Under § 660.12(a)(8), subpart C, 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, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts. For open access vessels, the following species must be sorted:

* * * * *

(2) North of 40°10′ N. lat.—POP, yellowtail rockfish, Cabezon (Oregon and California);

* * * * *

(d) * * *

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada

(North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

* * * * *

26. Table 3 (North) and Table 3 (South) to part 660, subpart F are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart F -- 2011-2012 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
5	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[2/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 3/					
21	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish 3/	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish 3/				
22	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Other Fish[5/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
27	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. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	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.					

TABLE 3 (North) con't

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 § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- 2011-2012 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months					
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months	200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/]	Unlimited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line* [6/]	*100 fm line*[5/] *- 150 fm line*[5/]				*100 fm line*[5/] *- 200 fm line*[5/ 6/]
43	*38° - 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/]					
44	*South of 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/] *along the mainland coast; shoreline - 150 fm line*[5/] *around islands*					
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	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 all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Subpart G—West Coast Groundfish—Recreational Fisheries

27. In § 660.360,

a. Remove paragraphs (c)(3)(i)(C), (c)(3)(i)(A)(*5*), and (c)(3)(ii)(A)(*5*),

b. Redesignate paragraphs (c)(1)(iii) as (c)(1)(iv), (c)(3)(i)(A)(*6*) as (c)(3)(i)(A)(*5*), paragraphs (c)(3)(i)(D) through (J) as (c)(3)(i)(C) through (I), and paragraph (c)(3)(ii)(A)(*6*) as (c)(3)(ii)(A)(*5*),

c. Revise newly redesignated paragraphs (c)(1)(iv), (c)(3)(i)(A)(*5*), (c)(3)(i)(C) through (H), and (c)(3)(ii)(A)(*5*),

d. Revise paragraphs (c)(1) introductory text, (c)(1)(i)(D) introductory text, (c)(1)(i)(D)(*1*) and (*2*), (c)(2)(iii), (c)(3)(i)(A)(*1*) through (*4*), (c)(3)(i)(B), (c)(3)(ii)(A)(*1*) through (*4*), (c)(3)(ii)(B), (c)(3)(iii)(A)(*1*) through (*5*), (c)(3)(iii)(C), and (c)(3)(iii)(D),

d. Add paragraphs (c)(1)(i)(D)(*3*) and (c)(1)(iii), to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 12 groundfish per day, including rockfish, cabezon and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. The recreational groundfish fishery is open year-round except for lingcod, which has season dates outlined in paragraph (c)(1)(iv) of this section. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. The following seasons, closed areas, sub-limits and size limits apply:

* * * * *

(i) * * *

(D) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA unless otherwise stated. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA unless otherwise stated. A vessel fishing in the recreational RCA may not be in possession of any groundfish unless otherwise stated. (For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.)

(*1*) West of the Bonilla-Tatoosh line Between the U.S. border with Canada and the Queets River (Washington state Marine Area 3 and 4), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20 fm (37 m) depth contour from June 1 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20 fm (37 m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15; and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the RCA. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30 fm (55 m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*3*) Between Leadbetter Point (46°38.17′ N. lat.) and the Washington/Oregon border (Marine Area 1), when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod from May 1 through September 30.

* * * * *

(iii) *Cabezon.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 2 cabezon per day bag limit.

(iv) *Lingcod.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day. The recreational fishing seasons and size limits for lingcod are as follows:

(A) Between the U.S./Canada border and 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2011, from April 16 through October 15, and for 2012, from April 16 through October 13. Lingcod may be no smaller than 24 inches (61 cm) total length.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2011, from March 19 through October 15, and for 2012, from March 17 through October 13. Lingcod may be no smaller than 22 inches (56 cm) total length.

* * * * *

(2) * * *

(iii) *Bag limits, size limits.* For each person engaged in recreational fishing off the coast of Oregon, the following bag limits apply:

(A) Marine fish. The bag limit is 10 marine fish per day, which includes rockfish, kelp greenling, cabezon and other groundfish species. The bag limit of marine fish excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines). From April 1 through September 30; no more than one fish may be cabezon. The minimum size for cabezon retained in the Oregon recreational fishery is 16 in (41 cm) total length. The minimum size for Kelp greenling retained in the Oregon recreational fishery is 10 in (25 cm).

(B) Lingcod. There is a 3 fish limit per day for lingcod from January 1 through December 31. The minimum size for lingcod retained in the Oregon recreational fishery is 22 in (56 cm) total length.

(C) Flatfish. There is a 25 fish limit per day for all flatfish, excluding Pacific halibut, but including all soles, flounders and Pacific sanddabs, from January 1 through December 31.

(D) In the Pacific halibut fisheries. Retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825.

(E) Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3) * * *

(i) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (Northern Management Area), 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 May 14, 2011 through

October 31, 2011 (shoreward of 20 fm is open); and is closed entirely from January 1 through May 13, 2011 and from November 1 through December 31, 2011. Recreational fishing for groundfish is prohibited seaward of 20 fm (37 m) from May 12, 2012 through October 31, 2012 (shoreward of 20 fm is open), and is closed entirely from January 1 through May 11, 2012 and from November 1, 2012 through December 31, 2012.

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), 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 May 14, 2011 through August 15, 2011 (shoreward of 20 fm is open), and is closed entirely from January 1, 2011 through May 13, 2011 and from August 16, 2011 through December 31, 2011; recreational fishing for groundfish is prohibited seaward of 20 fm (37 m) and from May 12, 2012 through August 15, 2012 (shoreward of 20 fm is open); and is closed entirely from January 1, 2012 through May 11, 2012 and from August 16, 2012 through December 31, 2012.

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. San Francisco Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from June 1 through December 31; and is closed entirely from January 1 through May 31. Closures around Cordell Banks (see paragraph (c)(3)(i)(C) of this section) also apply in this area. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through December 31; and is closed entirely from January 1 through April 30 (*i.e.* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are specified in § 660.71.

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph (c)(3)(i) and in paragraph (c)(3)(v) of this section and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60 fm (110 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour when the fishing season is open (*see* paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 28 (*i.e.,* prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 60 fm (110 m) depth contour from January 1 through December 31, except in the CCAs where fishing is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 30 fm (55 m) and 60 fm (110 m) depth contours are specified in §§ 660.71 and 660.72.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. 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 boundary line approximating the 30 fm (55 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, shelf rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February).

Note to paragraph (c)(3)(i)(B): California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the boundary line approximating the 30 fm (55 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour is specified in § 660.71.

(C) *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 § 660.70, subpart C, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section.

Note to paragraph (c)(3)(i)(C): California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.

(D) *Point St. George Yelloweye Rockfish Conservation Area (YRCA).* Recreational fishing for groundfish is prohibited within the Point St. George YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(E) *South reef YRCA.* Recreational fishing for groundfish is prohibited within the South Reef YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(F) *Reading Rock YRCA.* Recreational fishing for groundfish is prohibited within the Reading Rock YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(G) *Point Delgada (North) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (North) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

(H) *Point Delgada (South) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (South) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment.

* * * * *

(ii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (North Management Area), recreational fishing for the RCG complex is open from May 14, 2011 through October 31, 2011 (i.e. it's closed from January 1 through May 13 and from November 1 through

December 31 in 2011) and from May 12, 2012 through October 31, 2012 (*i.e.* it's closed from January 1 through May 11 and from November 1 through December 31 in 2012).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 14, 2011 through August 15, 2011 (*i.e.* it's closed from January 1 through May 13 and August 16 through December 31 in 2011), and from May 12, 2012 through August 15, 2012 (*i.e.* it's closed from January 1 through May 11 and August 16 through December 31 in 2012).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (Bay Management Area), recreational fishing for the RCG complex is open from June 1 through December 31 (*i.e.* it's closed from January 1 through May 31).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for the RCG complex is open from May 1 through December 31 (i.e. it's closed from January 1 through April 30).

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for the RCG Complex is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28).

(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 the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted and cowcod is prohibited. 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. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (Northern Management Area), recreational fishing for lingcod is open from May 14, 2011 through October 31, 2011 (*i.e.* it's closed from January 1 through May 13 and from November 1 through December 31 in 2011) and from May 12, 2012 through October 31, 2012 (*i.e.* it's closed from January 1 through May 11 and from November 1 through December 31 in 2012).

(*2*) Between 40°10' N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 14, 2011 through August 15, 2011 (*i.e.* it's closed from January 1 through May 13 and August 16 through December 31 in 2011) and from May 12, 2012 through August 15, 2012 (*i.e.* it's closed from January 1 through May 11 and August 16 through December 31 in 2012).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for lingcod is open from June 1 through December 31 (*i.e.* it's closed from January 1 through May 31).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for lingcod is open from May 1 through December 31 (*i.e.* it's closed from January 1 through April 30).

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for lingcod is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28).

* * * * *

(C) *Size limits.* Lingcod may be no smaller than 22 in (56 cm) total length.

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 14 in (36 cm) in length.

* * * * *

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