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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 45

[Docket No. FAA–2007–27173; Amendment No. 45–25]

RIN 2120–AJ02

Nationality and Registration Marks, Non Fixed-Wing Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule will permit operators of U.S. registered powered parachutes and weight-shift-control aircraft to display their nationality and registration marks in other than a horizontal orientation on the fuselage, a structural member, or a component of the aircraft. It will also clarify the size requirements for these marks. This action will provide a solution to the challenges faced by many operators in complying with current regulations that require these marks to be displayed horizontally on a fuselage structural member. This rule will eliminate the need for affected operators to petition for an exemption from current nationality and registration marks requirements.

DATES: Effective November 13, 2007. Comments for inclusion in the Rules Docket must be received on or before October 15, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–27173 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140, West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room W12–140, West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Grant Schneemann, AIR–230, Airworthiness Branch, Production and Airworthiness Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8473; facsimile (202) 267–5580; e-mail *grant.schneemann@faa.gov.*

SUPPLEMENTARY INFORMATION: Currently, § 45.27(e) of Title 14 of the Code of Federal Regulations (14 CFR) requires operators of U.S. registered powered parachutes and weight-shift-control aircraft to display nationality and registration markings horizontally and in two diametrically opposite positions on any fuselage structural member. However, fuselage structural members for these aircraft are, quite often, nothing more than diagonally-mounted narrow bars. These bars, due to their size and orientation, are generally unsuitable for displaying nationality and registration marks as required by current regulations. Consequently, the Experimental Aircraft Association (EAA) petitioned the FAA for an exemption from § 45.27(e) of the regulations to allow horizontal or vertical display of the required markings. The EAA also separately petitioned the FAA for rulemaking to revise § 45.27(e) to the same effect.

In consideration of the varying and evolving structural designs of powered parachute and weight-shift-control aircraft, the FAA is issuing this direct final rule to accommodate these aircraft designs and enable them to meet the intent of the marking requirements. This amendment will relieve operators of U.S. registered powered parachute and weight-shift-control aircraft from the current requirement to display nationality and registration marks in only a horizontal orientation. It will also relax the requirement that marks be displayed on a fuselage structural member, while clarifying the minimum requirement for 3 inch high markings. This amendment will permit the display of marks on the fuselage, on a structural member of the aircraft, or on a component of the aircraft. The marks must be visible by a person standing 90 degrees off the nose of the aircraft. Because operators will have greater latitude in displaying nationality and registration marks, we believe this rule will allow them to achieve compliance more easily.

Part 45 also contains requirements regarding the size of nationality and registration markings. Section 45.29(f) states that if any approved surface ''is not large enough for full-size marks, marks as large as practicable'' must be used. This rule will clarify the size requirements for nationality and registration marks by amending § 45.29(f) to state the marks for powered parachutes and weight-shift-control aircraft must be no less than 3 inches high. This amendment to § 45.29(f) is consistent with the size requirements of § 45.29(b)(2), which specifies that powered parachutes and weight-shift-control aircraft must have marks at least 3 inches high.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Safety, Section 44104. Under that section, the FAA is charged with prescribing

regulations in the interest of safety for registering and identifying an aircraft, engine, propeller, or appliance. This regulation is within the scope of that authority because it eliminates a potentially burdensome marking requirement on many operators, while still requiring proper marking and identification of the affected aircraft.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comments and therefore is issuing a direct final rule. We believe we will not receive adverse or negative comments because this action will—

- Eliminate the need for operators to petition the FAA for an exemption from the nationality and registration marks requirements in §§ 45.27 and 45.29.
- Provide relief from a requirement which, due to varying aircraft designs, presents challenges for compliance.
- Not place any new requirements or additional burdens on affected operators, nor will it require any changes to existing aircraft.

The regulation will become effective on the date specified above unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the direct final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment which is within the scope of this rule, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policy web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You may also obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with these amendments.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this direct final rule. The reasoning for this determination follows:

This direct final rule will not impose any cost on operators of U.S. registered powered parachute and weight-shift-control aircraft. It is relieving in nature, and is intended to eliminate the need for affected operators to petition for an exemption from current nationality and registration marks requirements. It will not require any change to the location of existing nationality or registration marks.

FAA has, therefore determined that this direct final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This direct final rule will not impose any cost on operators of U.S. registered powered parachute and weight-shift-control aircraft. It is relieving in nature, and eliminates the need for affected operators to petition for an exemption from current nationality and registration marks requirements. It will not require any change to the location of existing nationality or registration marks.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this direct final rule and has determined that it will have only a domestic impact and, therefore, no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This direct final rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this direct final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this direct final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312 and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this direct final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the Executive Order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 45

Aircraft, Exports, Signs and symbols.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends part 45 of the Federal Aviation Regulations (14 CFR part 45) as follows:

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104–46304, 46306, 47122.

■ 2. Amend § 45.27 to revise paragraph (e) to read as follows:

§ 45.27 Location of marks; nonfixed-wing aircraft.

* * * * *

(e) *Powered parachutes and weight-shift-control aircraft.* Each operator of a powered parachute or a weight-shift-control aircraft must display the marks required by §§ 45.23 and 45.29(b)(2) of this part. The marks must be displayed in two diametrically opposite positions on the fuselage, a structural member, or a component of the aircraft and must be visible from the side of the aircraft.

■ 3. Amend § 45.29 to revise paragraph (f) to read as follows:

§ 45.29 Size of marks.

* * * * *

(f) If either one of the surfaces authorized for displaying required marks under § 45.25 is large enough for display of marks meeting the size requirements of this section and the other is not, full size marks shall be placed on the larger surface. If neither surface is large enough for full-size marks, marks as large as practicable shall be displayed on the larger of the two surfaces. If no surface authorized to be marked by § 45.27 is large enough for full-size marks, marks as large as

practicable shall be placed on the largest of the authorized surfaces. However, powered parachutes and weight-shift-control aircraft must display marks at least 3 inches high.

* * * * *

Issued in Washington, DC, on July 30, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. E7–18197 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9339]

RIN 1545–BG44

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9339) that were published in the **Federal Register** on Monday, July 16, 2007 (72 FR 38767) providing guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds.

DATES: The correction is effective September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones or Zoran Stojanovic, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 1397E of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9339) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9339), which was the subject of FR Doc. E7–13665, is corrected as follows:

1. On page 38767, column 3, in the preamble, under the caption **DATES:**, line 4, the language ''applicability, see § 1.1397E–1(m) of'' is corrected to read ''applicability, see § 1.1397E–1T(m) of''.

2. On page 38768, column 3, in the preamble, under the paragraph heading ''C. Proceeds for Purposes of the Use and Spending Requirements'', line 3 of the paragraph, the language ''provisions of QZAB provisions'' is corrected to read ''QZAB provisions''.

3. On page 38769, column 3, in the preamble, under the paragraph heading ''*II. Maximum Term*'', lines 1 and 2 from bottom of the fourth paragraph of the column, the language ''securities (*http://www.publicdebt.treas.gov*).'' is corrected to read ''securities (*https://www.treasurydirect.gov*).''.

4. On page 38772, column 1, in the preamble, under the subparagraph heading ''3. Failure to Properly Use Proceeds'', third paragraph, the language ''The Temporary Regulations retain these provisions.'' is inserted at the end of the paragraph.

5. On page 38774, column 1, in the preamble, under the paragraph heading ''Effective/Applicability Dates'', last line of the fourth paragraph, the language ''§ 1.1379E(m),'' is corrected to read ''§ 1.1379E—1T(m).''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–18180 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9339]

RIN 1545–BG44

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9339) that were published in the **Federal Register** on Monday, July 16, 2007 (72 FR 38767) providing guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds.

DATES: The correction is effective September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones or Zoran Stojanovic, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 1397E of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9339) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1397E–1T is amended by revising paragraphs (h)(2)(iii)(B), (h)(7)(ii)(D)(*2*)(*ii*), and (h)(9)(i)(6) to read as follows:

§ 1.1397E–1T Qualified zone academy bonds (temporary).

* * * * *

(h) * * *

(2) * * *

(iii) * * *

(B) The expenditure of at least 95 percent of the proceeds from the sale of the issue for a qualified purpose with respect to a qualified zone academy will continue to proceed with due diligence.

* * * * *

(7) * * *

(ii) * * *

(D) * * *

(*2*) * * *

(*ii*) The first date on which an action is taken that causes the issuer to fail actually to use at least 95 percent of the proceeds of the issue for a qualified purpose with respect to a qualified zone academy.

* * * * *

(9) * * *

(i) * * *

(6) *Certain defeasance escrow earnings.* With respect to a defeasance

escrow established in a remedial action for an issue of QZABs that meets the special rebate requirement under paragraph (h)(7)(ii)(C)(*2*) of this section, the QZAB issuer is treated as ineligible for the small issuer exception to arbitrage rebate under section 148(f)(4)(D) and paragraph (i)(5) of this section and compliance with that special rebate requirement is treated as satisfying applicable arbitrage investment restrictions under section 148 for that defeasance escrow.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–18186 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in October 2007. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during October 2007, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during October 2007, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during October 2007.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.51 percent for the first 20 years following the valuation date and 5.18 percent thereafter. These interest assumptions represent a decrease (from those in effect for September 2007) of 0.02 percent for the first 20 years following the valuation date and 0.02 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for September 2007. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during October 2007, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 168, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
168	10–1–07	11–1–07	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 168, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
168	10–1–07	11–1–07	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for October 2007, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
October 2007	.0551	1–20	.0518	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of September 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–18156 Filed 9–13–07; 8:45 am]

BILLING CODE 7709–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0042–200726, FRL–8466–5]

Approval and Promulgation of Implementation Plans Tennessee; Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP; Prevention of Significant Deterioration and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee on February 23, 2006, and amended on April 16, 2007; and revisions to the Nashville/Davidson County portion of the Tennessee SIP submitted by the State of Tennessee on May 31, 2006. The SIP revisions modify the Tennessee and Nashville/Davidson County Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the Tennessee SIP to address changes to the federal new source review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (commonly referred to as the ''2002 NSR Reform Rules''). EPA proposed approval of these revisions on July 23, 2007; no comments were received on that proposal. The revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plant-wide applicability limits, and

recordkeeping and reporting requirements.

DATES: *Effective Date:* This rule will be effective October 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0042. 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 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee State Implementation Plan, contact Mr. James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Mr. Hou can also be reached via electronic mail at *hou.james@epa.gov.* For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. The telephone number is (404) 562–9214. Ms. Adams can also be reached via electronic mail at *adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking?
II. What Is the Background for This Action?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is taking final action to approve revisions to the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP regarding the Tennessee and Nashville NSR programs. On February 23, 2006, and May 31, 2006, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP. Nashville/Davidson County is separately authorized to implement and enforce the NSR program in that region of Tennessee. The February 23, 2006, SIP submittal consists of changes to the Tennessee Air Pollution Control Regulations. Specifically, the proposed SIP revisions include changes to TDEC Rule .01 of chapter 1200–3–9 entitled, ''Construction Permits.'' The May 31, 2006, submittal consists of revisions to the Nashville Pollution Control Division's Regulation 3 entitled, ''New Source Review.'' TDEC submitted these revisions in response to EPA's December 31, 2002, revisions to the federal NSR program.

In a letter to EPA dated April 16, 2007, Tennessee requested to amend the February 23, 2006, SIP submittal in light of the decision issued by the U.S. Circuit Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) on June 24, 2005. Notably, on June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to exclude the portions that were vacated by the D.C. Circuit Court.

TDEC requested that the portion of the Tennessee SIP revision related to the EPA rules that were vacated by the D.C. Circuit Court (specifically the clean unit and pollution control project (PCP) provisions) not be approved into the SIP. The affected portions of the February 23, 2006, submittal are as follows: Sections (b)2.(i)(VIII), (b)4.(iii)(III), (b)4.(vi)(IV), (b)35., (b)39., (c)4.(v), (c)6., (p), (q), and (r) of Rule 1200–3–9–.01(4); sections (b)1.(v)(III)VIII, (b)1.(vi)(III)III, (b)1.(vi)(V)V, (b)1.(xxxvii), (b)1.(xli), (b)2.(v)(IX), (b)2.(v)(X), (b)2.(xvi), (b)2.(xix), (b)7., (b)8., and (b)9. of Rule 1200–3–9–.01(5); and all references to clean units and PCPs at sections (a)11. and (c)4.(vi) of Rule 1200–3–9–.01(4)., and sections (b)2.(xvii) and (b)5. of Rule 1200–3–9–.01(5). The May 31, 2006, submittal which consists of revisions to NPCD Regulation 3, did not include the clean unit and PCP provisions.

On July 23, 2007 (72 FR 40105), EPA published a notice of proposed rulemaking (NPR) in the **Federal Register**, proposing to approve the Tennessee SIP revisions. The July 23, 2007, NPR provides additional information about the proposed Tennessee SIP revisions and the rationale for this final action. The public comment period for the proposed action ended on August 22, 2007. No comments were received on EPA's proposed action. EPA is now taking final action to approve the SIP revisions submitted by TDEC on February 23, 2006, May 31, 2006, and April 16, 2007.

II. What Is the Background for This Action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to exclude the clean units and PCP provisions that were vacated by the D.C. Circuit Court on June 24, 2005. The purpose of this action is to approve the SIP submittals from the State of Tennessee, incorporating rule changes consistent with EPA's 2002 NSR Reform Rules.

The June 24, 2005, D.C. Circuit Court decision also involved a remand of the recordkeeping provisions of the 2002 NSR Reform Rules. EPA continues to move forward with its evaluation of the portion of its NSR Reform Rules that were remanded by the D.C. Circuit Court. On March 8, 2007 (72 FR 10445), EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply. The ''reasonable possibility'' standard identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. Tennessee's SIP revisions are approvable at this time because the Tennessee and Nashville rules are substantially the same as the current federal rules. If EPA adopts recordkeeping criteria that are more stringent than the current Tennessee and Nashville rules, the Tennessee and Nashville rules may need to be revised to be at least as stringent as the federal requirement.

On February 23, 2006, May 31, 2006, and April 16, 2007, the State of Tennessee submitted SIP revisions including changes to Tennessee's and Nashville's NSR programs. The NSR program changes were made primarily to adopt EPA's 2002 NSR Reform Rules. On July 23, 2007 (72 FR 40105), EPA published a NPR proposing to approve revisions to Tennessee's Rule .01 of chapter 1200–3–9 entitled, ''Construction Permits'' and Nashville's

Regulation 3 entitled, ''New Source Review.'' Tennessee's revisions are consistent with the federal NSR regulations published December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). As is discussed in greater detail in the NPR, EPA reviewed the SIP revisions and determined that they were at least as stringent as the federal NSR program. As a result, the SIP revisions are approvable pursuant to the CAA.

The July 23, 2007, NPR and the docket for this action provide more details about the SIP revisions being approved and the rationale for EPA's final action. For additional information on EPA's 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.*

III. Final Action

EPA is taking final action to approve changes to Tennessee's Rule 1200–3–9–.01 (Construction Permits) as submitted by TDEC on February 23, 2006, and amended on April 16, 2007, as revisions to the Tennessee SIP. In addition, EPA is taking final action to approve changes made to the Nashville Regulation 3 (New Source Review) as submitted by TDEC on May 31, 2006, as revisions to the Nashville/Davidson County portion of the Tennessee SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves state and local rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 5, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 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 RR—Tennessee

■ 2. In § 52.2220(c) Table 1 and Table 5 are amended as follows:

■ a. In Table 1 under Chapter 1200–3–9 by revising the entry for ''Section 1200–3–9–.01'',

■ b. In Table 5 under Article II. by revising the entries under Regulation No. 3 for ''Section 3–1'', ''Section 3–2'' and ''Section 3–3'', and

■ c. In Table 5 under Article II. by adding in numerical order a new entry under Regulation No. 3 for ''Section 3–4''.

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
CHAPTER 1200–3–9 CONSTRUCTION AND OPERATING PERMITS				
Section 1200–3–9–.01	Construction Permits	02/14/06	09/14/07 [Insert citation of publication].	
* *	*	*	* *	*

TABLE 5.—EPA-APPROVED NASHVILLE-DAVIDSON COUNTY, REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
Article II. Standards for Operation				
* *	*	*	* *	*
Regulation No. 3 New Source Review				
Section 3–1	Definitions	03/14/06	09/14/07 [Insert citation of publication].	
Section 3–2	New Source Review	03/14/06	09/14/07 [Insert citation of publication].	
Section 3–3	Prevention of Significant Deterioration (PSD) Review.	03/14/06	09/14/07 [Insert citation of publication].	
Section 3–4	Plantwide Applicability Limits (PAL).	03/14/06	09/14/07 [Insert citation of publication].	

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[EPA–HQ–RCRA–2003–0005; FRL–8468–3]

RIN 2050–AE23

Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the Comprehensive Procurement Guideline (CPG) for recovered content products. Specifically, EPA is revising the list of items designated in the category of landscaping products. First, EPA is changing the description of ''compost'' by consolidating all compost designations under one item designation: ''compost made from recovered organic materials.'' At the same time, the Agency is amending the definition of compost. The effect of the two changes will be to include compost from biosolids and manure, and not limit the designation to specific types of organic materials. Second, EPA has added ''fertilizer made from recovered materials'' as a designated landscaping item and added a definition for ''fertilizer made from recovered organic materials.'' (In the notices section of this **Federal Register**, EPA also is making available the final Recovered Materials Advisory Notice (RMAN) that contains recommendations for purchasing these designated items.)

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA) which requires EPA to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. This action harnesses government purchasing power to stimulate the use of recovered materials in the manufacture of products, thereby fostering markets for materials recovered from solid waste.

DATES: This final rule is effective on September 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2003–0005. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OSWER Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Marlene RedDoor, Office of Solid Waste, Municipal and Industrial Solid Waste Division (5306P), Environmental Protection Agency, 1200 Pennsylvania Avenue; 703–308–7276; fax number: 703–308–8686; e-mail address: *Regelski-RedDoor.Marlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action may potentially affect agencies that are procuring agencies under RCRA section 6002 that purchase the following items: compost made from recovered organic materials and fertilizers made from recovered organic materials. Section 6002 defines procuring agencies to include the following: (1) Any federal agency; (2) any state or local agency using appropriated federal funds for a procurement; or (3) any contractors of these agencies who are procuring these items for work they perform under the contract. See RCRA section 1004(17). The requirements of section 6002 apply to these procuring agencies only when the agencies procure designated items whose price exceeds $10,000 or when the quantity of the item purchased in the previous year exceeded $10,000. A list of entities that this rule may cover is provided in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A state agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year.
Local Government	A local agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive. To determine whether this action applies to your procurement practices, you should carefully examine the applicability criteria in 40 CFR 247.12. If you have questions about whether this action applies to a particular entity, contact Marlene RedDoor at 703–308–7276.

Preamble Outline

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I. National Technology Transfer and Advancement Act
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K. Congressional Review Act
IX. Supporting Information and Accessing Internet

I. What is the statutory authority for this amendment?

EPA (''the Agency'') is promulgating this amendment to the Comprehensive Procurement Guideline (CPG) under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962. This amendment is also consistent with Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' (72 FR 3919, January 26, 2007), which revoked Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' (63 FR 49643, September 14, 1998). Per section 2(d)(i) of Executive Order 13423, the head of each Federal agency shall require in the agency's acquisition of goods and services the use of, among other things, recycled content products.

II. Why is EPA taking this action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring those items. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

Between 1983 and 1989, EPA issued five guidelines for the procurement of

products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation. Table 2 summarizes designations of CPG I–IV and references the **Federal Register** publications.

TABLE 2.—CPG I–IV DESIGNATIONS

Designation	Date published	FR No.	Number items designated
CPG I	May 1, 1995	60 FR 21370	19 new, 5 previous in 8 product categories.
RMAN I	May 1, 1995	60 FR 21386.	
Paper Product RMAN	May 29, 1996	61 FR 26985.	
CPG II	November 13, 1997	62 FR 60962	12 new items.
RMAN II	November 13, 1997	62 FR 60975.	
Paper Product RMAN	June 8, 1998	63 FR 31214.	
CPG III	January 19, 2000	65 FR 3070	18 new items.
RMAN III	January 19, 2000	65 FR 3082.	
CPG IV	April 20, 2004	69 FR 24028	7 new, 3 revised.
RMAN IV	April 30, 2004	69 FR 24039.	

On December 10, 2003, EPA published the proposed CPG V (68 FR 68813) and draft RMAN V (68 FR 68919) which are finalized by this action.

EPA is consolidating all compost designations into one item designation: compost made from recovered organic materials. In addition, EPA is establishing a new item designation: ''fertilizers made from recovered organic materials.'' These items are being designated under the Landscaping Products category. Recovered organic materials include, but are not limited to, yard waste, food waste, manure, and biosolids. (For more information on CPG, go to the EPA Web site at *(http://www.epa.gov/cpg/.*)

III. What are the related requirements for biobased products?

Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) provides for the preferred procurement of biobased products by procuring agencies. 7 U.S.C. 8192. Under FSRIA, once the U.S. Department of Agriculture (USDA) designates an item, procuring agencies, when procuring the item, must, in specified circumstances, procure it as a biobased product. Some of the products that are biobased items designated for preferred procurement may also be items that EPA has designated under EPA's CPG program for recovered content products. Where that occurs, and where the item is used for the same purpose and the performance standards are the same for both the product containing recovered materials and the biobased item, an EPA-designated recovered content product (also known as ''recycled content products'' or ''EPA-designated products'') has priority in Federal procurement over the qualifying biobased product. See 71 FR 13686, *http://www.biobased.oce.usda.gov/fb4p/files/Round_1_Final_Rule.pdf*).

Composts and fertilizers can be both products containing recovered materials and biobased products. USDA has proposed to designate biobased fertilizer as a product for Federal procurement. Once USDA promulgates a final designation, if an agency purchases fertilizer or landscaping or facilities management services that require the use of fertilizer, then the agency should first consider specifying fertilizer containing recovered materials. This should satisfy both the requirement to purchase EPA-designated products and the requirement to purchase USDA-designated products. If such fertilizer will not meet the agency's reasonable performance needs, then the agency should specify other biobased fertilizer.

As noted previously, section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such items composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

IV. What criteria did EPA use to select items for designation?

RCRA section 6002(e) requires EPA to consider the following criteria when determining which items it will designate:

(1) Availability of the item.

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream.

(3) Economic and technological feasibility of producing the item.

(4) Other uses for the recovered materials used to produce the item.

Section 6002(e) also authorizes EPA to consider other factors in its designation decisions. EPA, consequently, also consulted with federal procurement officials to identify other criteria it should consider. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. Specifically, this provision requires that each procuring agency that procures an item that EPA has designated, procure the item that contains the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if the procuring agency determines: (1) The item is not available within a reasonable period of time; (2) the item fails to meet the performance standards that the procuring agency has set forth in the product specifications; or (3) the item is available only at an unreasonable price.

EPA recognized that these criteria could provide procuring agencies with a rationale for not purchasing EPA-designated items that contain recovered materials. For this reason, EPA considers the limitations cited in RCRA section 6002(c) when it selects items to designate in the CPG. In CPG I, the Agency outlined the following criteria that it continues to use when it selects items for designation:

- Use of materials found in solid waste.
- Economic and technological feasibility and performance.
- Impact of government procurement.
- Availability and competition.
- Other uses for recovered materials.

EPA discussed these criteria in the CPG I background documents and in Section II of the document entitled, ''Background Document for the Final Comprehensive Procurement Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V.'' The RCRA public docket for the proposed CPG V rule, Docket No. RCRA–2003–0005, contains this document.

In CPG I, EPA stated that it had adopted two approaches for designating items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories and provided information in the RMAN about the appropriate applications or uses for the items. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, specified the types of recovered materials or applications to which the designation applies. The Agency explained the approaches it took to designate items in the preamble to CPG I (60 FR 21373, May 1, 1995), and repeats them here for the convenience of the reader:

> EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material.

The Agency understands that some procuring agencies may believe that designating a broad category of items in the CPG requires that they (1) procure all items included in such category with recovered materials content and (2) establish an affirmative procurement program for the entire category of items, even when specific items within the category do not meet the procuring agency's performance standards. RCRA clearly does not require such actions. RCRA section 6002 does not require a procuring agency to purchase items that contain recovered materials if the items are not available or if they do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item that contains recovered material is only available at an unreasonable price, or if purchasing such items does not maintain a reasonable level of competition. See also 40 CFR 247.2(d). However, EPA stresses that the statute requires that a procuring agency must purchase the product made with the highest percentage of recovered materials practicable in the absence of the circumstances identified above.

The items designated have been evaluated against EPA's criteria. The Agency discusses these evaluations in the ''Background Document for the Proposed CPG V/Draft RMAN V,'' which the Agency has placed in the docket for the final CPG V and RMAN V. You may also access the document electronically. (See Section IX below for Internet access directions.)

V. What are the definitions of terms used in this action?

For this action, in 40 CFR 247.3, EPA is revising the previous definition of compost from CPG III (65 FR 3070) and adding a definition for ''fertilizer made from recovered organic materials.'' [1] EPA generally bases its definitions on industry definitions. Because there are a number of industry definitions for ''compost'' and ''fertilizer,'' EPA developed its own to prevent confusion to procuring agencies. EPA based its fertilizer definition in part on a USDA definition of ''fertilizer'' (see *http://www.ams.usda.gov/NOP/NOP/standards/DefineReg.html*).

Because the description of the items designated in CPG V uses the term ''recovered materials,'' the Agency also is providing a definition for that term in this notice. The Agency previously provided this definition in CPG I, and it is also provided at 40 CFR 247.3.

> *Recovered materials* means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

VI. What did commenters say about the proposed CPG V and draft RMAN V?

EPA received 395 comments on the proposed CPG V and the draft RMAN V. Many of the comments received on the proposed CPG V were equally applicable to the draft RMAN V.

In this section, EPA discusses the major comments that commenters provided on the proposed CPG V. The most significant comments received on the draft RMAN V are discussed in the preamble to the final RMAN V, which is published in the notices section of this **Federal Register**. You can find a more thorough summary of comments and EPA's responses in the ''Background Document for the Final Comprehensive Procurement Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V.'' The Final CPG V and RMAN V Background Document also has reference numbers to specific comments found in the CPG V Docket: EPA–HQ–RCRA–2003–0005.

A. Request for Comments

This section summarizes and responds to the comments that address the Agency's specific requests for comments in the CPG V proposed rule.

1. Items Selected for Designation

Comments: EPA received comments specifically regarding the designation of compost and/or fertilizers. Some commenters opposed consolidating all compost designations under one heading called ''compost made from recovered organic materials.'' A few of these comments described the proposed revision as deceptive or misleading due to an inconsistent use of the term ''organic.'' One commenter discussed the need for appropriate labeling were the revision to be carried out.

Many commenters also opposed revising the compost designation to include sewage sludge or generally opposed using biosolids, manure, and/or sewage sludge in compost or fertilizer. One of these comments claimed that composts and fertilizers made from these materials are likely to contaminate the land and cause adverse effects to human health and welfare and the environment.

One commenter specifically supported the revision of compost to include manure or biosolids and the designation of fertilizers containing recovered organic materials. One other commenter believed the proposed, more generic designation that defines compost as ''compost made from recovered organic materials'' is more accurate and encompassing.

Response: In the CPG V final rule, the Agency consolidated all compost designations under one item designation: ''compost made from recovered organic materials.'' This is being done partly in response to the request of procuring agencies that EPA

[1] In proposed CPG V, the Agency proposed that the definition be entitled ''organic fertilizer.'' However, in final CPG V, EPA is instead entitling the definition ''fertilizer made from recovered organic materials'' so that the definition title and the designation description are more consistent.

simplify the compost designations to make it easier for them to track and report their purchases of compost. For discussion on the labeling issue and the term ''organic,'' please see the responses below in sections VI.B.2 and 3, respectively.

Regarding those comments that opposed the designations for compost and fertilizer made with sewage sludge because of perceived risks, EPA notes that, if a compost product or fertilizer contains biosolids, then its use would be subject to the Part 503, Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503). EPA believes that these standards ensure protection of human health and the environment.

2. Accuracy of Information Presented in the Item Discussions

Comment: The U.S. Composting Council (USCC) commented on the accuracy of the information presented in the designation of compost. Specifically, USCC claimed that compost can be a sole source of plant nutrients when applied at sufficient application rates, countering EPA's background statement that ''compost is not a complete fertilizer unless amended.'' The commenter cited research projects demonstrating that compost alone can result in yields equivalent to those obtained with chemical fertilizers. The commenter requested that EPA correct this misconception in its background statement.

Response: EPA first explained that ''compost is not a complete fertilizer unless amended'' in the April 20, 1994 **Federal Register** notice for the proposed CPG I. (See 59 FR 18877.) EPA based its explanation on USCC's own description in its ''Composting Glossary'':

> Compost is the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has littleresemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, e.g., nitrogen, phosphorus, and potassium, which must be included in calculations for fertilizer application.

Since USCC has modified its position on this issue, as evidenced in their subsequent referenced comment, the Agency has removed this statement from the compost discussion in the final CPG V background document (see section VIII.A.6 of the background document).

3. Definitions of ''Organic Fertilizer'' and ''Compost''

Comments: EPA received comments on the definitions EPA provided for ''compost'' and ''organic fertilizers'' in its proposal. Several of these comments actually appear to address the ''designation'' of the items, rather than the ''definition,'' and EPA is responding to those comments in this section.

A few of the commenters stated that they agreed with the proposed definition of compost and/or organic fertilizers, or that they agreed with or supported including biosolids or manure in the definition of compost because it allows for the addition of other materials or appropriately broadens the definition to include other types of materials. One of these commenters also requested that EPA include some means to acknowledge and evaluate compost products that are produced at lower temperatures, short of thermophilic.

On the other hand, one commenter suggested that EPA amend the compost definition to require the composting process to meet the time-temperature relationships in 40 CFR part 503. A few other commenters stated concern that the definitions may cause confusion over the term ''organic'' or that the definitions must be carefully phrased so as not to conflict with organic food production laws. One of these commenters suggested using the term ''nutrient-rich products from recovered organic materials'' rather than ''fertilizers.'' One other commenter opposed re-defining compost to include sewage sludge because it would blur the distinction between sludge-based and non sludge-based compost.

Response: The CPG V defines compost as a thermophilic converted product and does not include compost products that are produced at lower temperatures, short of thermophilic. For more discussion on these issues, please see the response in section VI.B.8 below.

The definition does not include specific language about the time-temperature relationships in 40 CFR part 503. However, the Specifications section of the final RMAN V for compost does reference 40 CFR part 503. For more on the time-temperature requirements in Part 503, see pp. 28, 38, *et al*, of the EPA document entitled, *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge.* This document can be found at *http://www.epa.gov/ORD/NRMRL/Pubs/1992/625R92013.pdf.*

Regarding the potential confusion over the term ''organic,'' EPA acknowledges that USDA's National Organic Program (NOP) regulations prohibit the use of biosolids and sewage sludge for use in growing organic foods (*i.e.*, of or relating to foods grown or raised without synthetic fertilizers, pesticides, or hormones), as addressed in the proposed background document for CPG V/Draft RMAN V. However, in EPA's proposal, EPA used the term ''organic'' to mean ''of, relating to, or derived from living organisms.'' EPA is using the word ''organic'' in the phrase ''recovered organic materials'' because this is the term commonly used by those promoting the recovery and use of these materials. In these circumstances, EPA has concluded there is little potential for confusion. (See section VI.B.3 below for more discussion on the term ''organic.'')

Regarding a potential blurred distinction between sludge-based and non sludge-based compost, EPA has previously explained that, if biosolids are included as part of the compost, the processing and product are subject to the 40 CFR part 503 regulations which are protective of human health and the environment. (See 68 FR 68818.) Further, all users of sludge-based products also must comply with applicable local, state, and federal laws regarding the use of biosolids and sewage sludge.

4. Limitations on the Recovered Organic Materials Contained in the Fertilizers Proposed by EPA

Comments: EPA received comments asking that restrictions be placed on the materials used in fertilizers. Most of these comments either stated that sewage sludge or human waste should not be used as fertilizer, or made a reference to sewage sludge being too toxic, hazardous, or unsafe to use as fertilizer. One commenter did not support the use of biosolids in public projects due to possible toxic contamination of biosolids, which could contaminate organic production operations. Another commenter requested that EPA maintain a separation of sewage sludge and fertilizers that will be used for growing organic fruits and vegetables. Still another commenter claimed that the idea of proposing that composted ''municipal sludge'' be used as an ''organic'' fertilizer has already been rejected for ''Organic'' standards, as defined in NOFPA. (EPA could not identify ''NOFPA.'')

Another commenter stated that to be an effective fertilizer, the dung (i.e., sewage) must be totally vegan. Another

commenter mentioned a report that indicates that the ''greensands'' that EPA proposed as rock and mineral powders for ''organic fertilizers'' are highly contaminated with heavy metals and organic toxins. The commenter cites a report that refers to ''green sand'' that is foundry sand. The commenter concludes that greensand is not an adequate, appropriate, or effective substitution for virgin rock or minerals.

Response: Regarding the comments that sewage sludge should not be used as fertilizer or that sewage sludge is too toxic, hazardous, or unsafe to use as fertilizer, please see the responses in sections VI.B.4 and 5 below. Also, as previously stated, EPA has evaluated the potential risks of sewage sludge in developing the Part 503 Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503). EPA believes that these regulations will ensure that sewage sludge used in compliance with the Part 503 Standards will not be harmful to human health and the environment. Procuring agencies should not procure compost or fertilizer that is not appropriate for its intended use.

The commenter opposing the use of biosolids in public projects due to possible toxic contamination of biosolids, and who expressed concern that this could contaminate organic production operations, provided no further explanation as to what was meant by ''public projects'' or the mechanism by which contamination of organic production operations would occur.

Regarding a separation of sewage sludge from fertilizer that will be used for growing organic fruits and vegetables, in the final RMAN V for fertilizers, EPA references USDA's NOP regulations, which prohibit the use of biosolids in organic production. EPA also references the Organic Materials Review Institute (OMRI), which developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products, and the land application requirements for biosolids in 40 CFR part 503. For more discussion on the term ''organic,'' please see section VI.B.3 below.

EPA appreciates the comment that dung (i.e., sewage) should be vegan, but does not believe that this characteristic is necessary to achieve a high-quality fertilizer. Therefore, EPA is not addressing this issue in the recommendations for fertilizer in the final RMAN V. Finally, EPA has determined that the commenter who claimed that ''greensands,'' highly contaminated with heavy metals and organic toxins, and therefore not appropriate for use in fertilizer, was confusing the term EPA used with a different type of green sand—that which is found in foundry sand. EPA is clarifying that the proposed CPG V background document referenced greensand which is sedimentary rock containing the mineral glauconite. The two materials are unrelated.

5. Types of Recovered Materials Identified in the Item Recommendations, and Other Recommendations, Including Specifications for Purchasing the Designated Items

Comments: EPA received a number of comments on the types of recovered materials identified in the item designations, and other recommendations, but none that appeared to address specifications for purchasing the designated items. Several comments supported allowing biosolids and/or manure to be used for compost and/or fertilizer. Some of these commenters stated that the inclusion of biosolids in the compost and fertilizer designations will increase market demand for these recovered material products, but will also provide further support for the long-standing practice of biosolids land application.

EPA also received comments that suggested or implied that additions should be made to the list of materials covered by the scope of ''recovered organic materials'' in the compost and fertilizer item designations and RMAN recommendations such as EQ biosolids, cotton gin by-products, sawdust, and yard trimmings.

Yet another commenter encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence.

Response: EPA appreciates the comments supporting the use of biosolids and/or manure for compost and/or fertilizer and agrees that their designation will achieve one of the most important goals of the CPG program-to increase market demand for items made from recovered materials. For responses to comments opposing the use of biosolids, manure, and/or sewage sludge in compost and/or fertilizer, please refer to section VI.B.5.

EPA appreciates the suggestions for additional materials to be included in EPA's recommendations. In EPA's view, EQ biosolids, cotton gin by-products, sawdust, and yard trimmings are already included in the scope of the item designations and recommendations, because EPA has revised the description of fertilizer and compost to ''made with recovered organic materials,'' a term which does not restrict the organic content only to the specified material. Also, in CPG V and RMAN V, the Agency did not exclude any particular types of biosolids. Instead, in the final RMAN V, the Agency referred to Part 503, as well as to applicable federal, state, and local government regulations on the use of compost and fertilizer made with biosolids and other recovered organic materials.

Regarding the comments about permitting the use of sewage-derived products only on trees and non-vegetable crops, please refer to the comments and responses in section VI.B.4. In response to the comment which encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence, EPA did retain this language in the Preference Program section of the RMAN V for compost. However, the final CPG V compost designation language does not prescribe specific applications. Recognizing that government agencies typically use compost for numerous applications, such as landscaping, bioremediation, roadside maintenance, and erosion control, EPA wanted to be as inclusive as possible in terms of potential applications of compost, while ensuring that the Agency would not have to re-propose the compost designation each time it learned of an additional use by procuring agencies. Regarding the suggestion that the processing and handling protocols in Part 503 should be further emphasized, EPA referenced Part 503 in the final RMAN V for both compost and fertilizers.

6. Any Other Specifications the Agency Should Recommend That Pertain to Fertilizers Made With Recovered Organic Materials

Response: The Agency did not appear to receive any comments on other specifications pertaining specifically to fertilizers.

B. Issue-Specific Comments

This section summarizes and responds to other significant comments. Many of the comments were similar, and most could be grouped in one or more particular topic categories that captured the general essence of the comment.

1. General Comments About Sewage Sludge/Biosolids as Compost or Organic Compost

Comments: EPA received many comments that essentially found the idea of calling, renaming, or labeling biosolids as compost problematic, especially without labeling that indicated that the compost originated from sewage. Approximately half of the comments in this topic category were opposed to toxic, hazardous, or contaminated sewage sludge being called compost or organic. A few commenters mentioned negative impacts to human health from using sewage sludge as compost.

Some of the comments also mentioned that designating manure and biosolids compost is misleading to the public or is a misrepresentation of the labeling for organic products. Specifically, many comments were opposed to calling, renaming, labeling, or using biosolids as compost if there was not accurate labeling indicating that the compost originated from sewage.

Response: EPA is not renaming or re-labeling biosolids or sewage sludge as compost. This designation acknowledges that biosolids and treated and processed sewage sludge are components in recovered organic material used in commercial compost and fertilizer. For a discussion on the toxicity, health, and labeling issues, please see additional responses below in sections VI.B.5, 4, and 2, respectively.

2. Proper Labeling of Compost or Fertilizers

Comments: A number of commenters emphasized that compost and/or fertilizer made from biosolids should be appropriately labeled. While most of these commenters seem to oppose the designations, several do not seem to oppose it as long as the compost and/or fertilizer derived from biosolids is accurately labeled with what it contains so that users could make informed decisions when purchasing these products.

Many of these commenters made the general point that appropriate labeling was necessary. Some commenters specifically stated that proper labeling of these products was necessary in order to be fair to the consumer or the public. One other commenter suggested that labeling biosolids as ''recovered organic materials'' is not appropriate or honest.

Approximately half of the comments in this category suggested that appropriate labeling was particularly necessary due to the toxic or unsafe nature of biosolids.

Response: The final CPG V rule does not include a labeling requirement because under RCRA EPA is not authorized to promulgate labeling requirements, and because labeling requirements that ensure product safety exist under other Federal and State regulations such as the USCC's Test Methods for the Examination of Composting and Compost (TMECC) and USCC's Seal of Testing Assurance (STA) labeling program. In the draft (and final) RMAN V, EPA recommends that procuring agencies refer to USCC's TMECC, which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and support market claims. In addition to referencing the TMECC, the final RMAN V recommends that procuring agencies refer to the USCC's STA labeling program. STA is a compost testing and information disclosure program that uses the TMECC. Participating compost producers regularly sample and test their products using STA Program approved labs, all of which must use the same standardized testing methodologies. Participants must make test results available to customers and certify that they are in compliance with all applicable local, state, and federal regulations with respect to their compost products. The USCC then certifies the participants' compost as ''STA certified compost'' and allows the use of the STA logo on product packaging and literature. Procuring agencies may wish to consider specifying STA certified compost in their solicitations to the extent otherwise authorized. The USCC has developed sample specification and contract language, available at *http://www.compostingcouncil.org/pdf/Specifying_STA_Prog.pdf*. More information on TMECC and STA can be found at *http://www.composting council.org.*

3. Use of the Term ''Organic''

Comments: EPA received a number of comments that supported the proposal and discussed the use of the term ''organic'' when describing recovered materials used in compost. A couple of the commenters noted that the proposal, as it defines ''organic,'' is not renaming organic amendments or foods. The rest of these commenters suggested that the definitions presented in CPG V should be carefully worded so that they do not conflict with ''organic food production laws'' or ''USDA's organic farming and food standards.'' One commenter suggested using the term ''biologically-derived.''

EPA also received a large number of comments that opposed the proposal and took issue with the idea that EPA would label or represent compost made from biosolids as ''organic,'' many claiming that there is nothing organic about it. Some of these commenters were generally opposed to representing compost derived from biosolids or sewage sludge as organic.

Some commenters stated that this designation would dilute, compromise, or otherwise undermine the term ''organic'' as used or defined by USDA's NOP standards. Similarly, other commenters claimed that the use of the word ''organic'' would be misleading, deceptive, or confusing to the public. In addition, a number of comments argued that (biosolids) compost could not possibly be considered organic due to the toxic, hazardous, or polluting nature of chemicals that are found in sewage sludge.

A few commenters offered solutions to any confusion that may arise from using the term ''organic.'' One suggested that any compost labeled ''organic'' must have the same restrictions as food labeled as such. Another commenter suggested that EPA replace ''organic'' with the word ''natural'' or ''biobased'' to avoid confusion with materials produced under 7 CFR part 205.

Response: By the term ''organic,'' EPA means ''of, relating to, or derived from living organisms.'' EPA used the word ''organic'' in the phrase ''recovered organic materials,'' which include food and yard waste, biosolids, and manure, of animal or vegetable origin. EPA's use of the term ''organic materials'' is consistent with the compost and fertilizer industries' commercial use of that term. For this reason, EPA is not using an alternative word, such as those suggested by the commenters. Also, EPA is not using the term ''organic'' to refer to organic farming, organically grown food, or USDA's NOP standards. EPA recognizes that the NOP standards do not allow biosolids to be used in the production of organic food and the final CPG V does not revise the NOP standards in any way. In addition, in the final CPG V RMAN, EPA notes that the NOP standards prohibit the use of sewage sludge (biosolids) in organic production.

4. Use of Compost or Fertilizer Made from Sewage Sludge on Food or Crops

Comments: EPA received comments that emphasized that compost or fertilizers made from biosolids or sewage sludge should not be used on foods or crops. Many of these comments

expressed general opposition to the use of sewage sludge or biosolids on food or agricultural crops. Nearly half of the food/crop related comments mentioned the general issue of toxicity. Some included direct or indirect references to a 1992 determination or decision which the commenters claimed determined that biosolids are too toxic to be dumped in the ocean and questioned how they could be spread on crops; many of the commenters attributed this determination to EPA.[2] One commenter believed the proposed designations would make it more difficult for consumers to know what went into the production of their food. One comment requested studies to ensure the safety of food treated with sludge, and another suggested that any untested sewage sludge is unsafe for crops.

Response: EPA disagrees with the commenters who argue that the use of biosolids and or sewage sludge can not be safely used on foods or crops. (The basis for this position is discussed more fully below.) Therefore, in RMAN V, EPA recommends that procuring agencies can purchase and use fertilizer made from recovered organic materials in such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance. Both EPA (*http://www.epa.gov/owm/mtb/biosolids/*) and USDA (*http://www.ams.usda.gov/nop/NOP/NOPhome.html*) have promulgated regulations and requirements to be followed in the production, use and application of fertilizers made from recovered organic materials, including biosolids and sewage sludge. Also, OMRI (*http://www.omri.org*) has developed guidelines and lists of materials allowed or prohibited for use in the production, processing and handling of organically grown products. If a fertilizer is produced with recovered organic materials, including biosolids, it must have already met the standards for production or be in violation of legal requirements. As previously stated, EPA has concluded that these standards protect human health and the environment.

Specifically, in 1993, EPA promulgated regulations that limit pollutants and pathogen content in biosolids. These regulations (known as ''the Part 503 Standards for the Use or Disposal of Sewage Sludge'' (40 CFR part 503)) are designed to protect public health and the environment with an adequate margin of safety. If a composted product contains biosolids, the product and its processing are subject to Part 503. The regulations require that sewage sludge meet metals standards and require either the elimination or significant reduction of concentrations of pathogens in sewage sludge before land application. For Class B sewage sludge that contains reduced levels of pathogens, Part 503 standards impose crop-harvesting restrictions and site controls to ensure that the pathogen levels in the sewage sludge-soil mixture are reduced below pathogen background levels before crops may be harvested, domestic animals are allowed to graze or humans are allowed unrestricted access to the land application site. Class A sewage sludge contains no pathogens or pathogen indicator organisms. There are no restrictions in the use of Class A biosolids. (For more information, see subpart D of 40 CFR part 503.)

EPA's national sewage sludge standards are protective of public health and the environment, including sensitive human subpopulations, such as the elderly and small children. In establishing national standards for sewage sludge under the 40 CFR part 503 regulations, EPA assessed the exposure and hazard to members of a modeled highly exposed farm family who live on farms where sewage sludge is land-applied as a fertilizer or a soil amendment. Uses include fertilizer use on both pasture-land and crop land, and as a soil amendment on mining reclamation areas. The farm family's diet is assumed to include a significant portion of home-produced foods, including exposed and protected fruits and vegetables, root vegetables, beef, and milk. We also assumed that a child will consume a biosolids-soil mixture via hand to mouth exposure. Ecological species modeled include invertebrate and vertebrate animals and plants that may be exposed to contaminants through agricultural application of sewage sludge as a fertilizer or soil amendment.

Based on this assessment, the Agency concluded that the Part 503 regulations are protective of public health and the environment and continues to support biosolids management in full compliance with State and Federal regulations. Moreover, EPA is in an ongoing process to evaluate additional toxic pollutants for potential regulation under section 405(d) of the CWA, and the Part 503 Standards for the Use and Disposal of Sewage Sludge.

Finally, although EPA does not have baseline data on the amount of compost or fertilizers used by each federal agency, we believe that the major purchases by procuring agencies of compost or fertilizers would be used in landscaping applications.

5. Toxins in Sewage Sludge and Potential Health Effects

Comments: EPA received a number of comments regarding the toxic, radioactive, pathogenic, or chemical nature of biosolids. More than half of the comments in this category generally described sludge or biosolids as toxic, hazardous, poisonous, or containing harmful chemicals. Many of the comments mentioned specific substances found in wastewater and/or sludge, such as radionuclides, hormones, drugs, heavy metals, pesticides, solvents, and pathogens. Some comments focused particularly on pathogens present in sludge or biosolids. A few other commenters stated that radioactivity can end up in the sludge, because NRC, DOE, DOT, and EPA are proposing that nuclear waste go to landfills, with the resultant leachate going to wastewater treatment plants, and radioactivity is not monitored or regulated in sludge.

Other comments expressing concern about substances found in wastewater mentioned a variety of materials they believe homeowners and industry flush down the drain; one of these suggested education for households and industry to prevent contamination of biosolids with chemicals. A few comments also suggested that landfill and Superfund leachates are disposed of in local sewage treatment plants.

A little more than a dozen comments raised concerns over the potentially harmful human health effects of sewage sludge/biosolids. One in particular cited the 2002 Report of the Board of Environmental Studies and Toxicology of the National Academy of Sciences (NAS), which the commenter claimed underscored the uncertainties about the human health effects from exposure to biosolids. One commenter also suggested that, ''If the limits used in the HWIR also allow a hazardous waste to escape regulation as a hazardous waste, then they should be used as the upper limit delimiting solid that is allowed as fertilizer feedstock under the Procurement Rule.''

Response: As noted above, EPA has established standards for sewage sludge to protect public health and the environment. Thus, the Agency does not agree with those commenters who argue that the use of biosolids as compost or fertilizer is not protective of human

[2] We believe this is a reference to the Ocean Dumping Ban Act of 1988 that prohibited the dumping of sewage sludge in ocean waters. Specifically, the Act made it unlawful for any person to dump or transport for the purpose of dumping sewage sludge or industrial waste into ocean waters after December 31, 1991.

health and the environment. (For more information on Part 503, please refer to the response in section VI.B.4 above.) In addition, EPA has an ongoing effort to evaluate further pollutants for potential regulation in sewage sludge.

Regarding the 2002 NAS report cited by a commenter, EPA requested the NAS to prepare a study of sewage sludge to assist the Agency in evaluating regulatory requirements and non-regulatory measures with respect to the land application of biosolids. The NAS completed an 18-month study in July 2002 entitled, *Biosolids Applied to Land, Advancing Standards and Practices.* The overarching findings of the report indicated that there is no documented scientific evidence that the Part 503 rule has failed to protect public health. The findings went on to say that additional research is needed to reduce the persistent uncertainty concerning the potential for adverse human health effects from exposure to biosolids. The NAS report can be found at *http://www.epa.gov/waterscience/biosolids/nas/complete.pdf*.

As a result, in December 2003, EPA developed a biosolids action plan aimed at responding to the NAS report. The EPA action plan includes conducting a review to identify additional pollutants for possible regulation, conducting a targeted survey of potential pollutants, and evaluating the next steps for investigating adverse health allegations following land application of sewage sludge. A number of projects from the action plan are either completed or nearing completion, including field studies of application of treated sewage sludge, the targeted national analytical sewage sludge survey, and an exposure measurement workshop. Several analytical methods reports and several research projects have been published and a number of documents are scheduled to be published by the end of 2007. For more information see: *http://www.epa.gov/waterscience/biosolids/.*

One comment referred to EPA's Proposed Hazardous Waste Identification Rule (HWIR). EPA notes that it never finalized this rule.

6. Specific Applications of Sewage Sludge

Comments: EPA received a number of comments supporting the proposed CPG V that discussed specific applications of compost made from biosolids. A few commenters stated that they support the proposal because it would promote the use by government agencies and their contractors of biosolids-derived compost on landscaping and not on food crops. Use on farm land was supported by one commenter, who stated it resulted in significant crop growth and yield and reduces the need for chemical fertilizers. Another commenter stated that several municipalities in Georgia have used compost derived from a combination of biosolids and yard waste for use in landscaping, agriculture, and as landfill cover, with good success. Yet another commenter encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence. The commenter stated that the majority of materials procured in large quantities by government agencies and their contractors are used in applications that involve minimal public contact, such as highway construction, land reclamation after construction, landfill covers, parks, and golf courses. Encouraging such uses could reduce demand for biosolids applications in agriculture, which, while widely considered safe and effective, has been criticized by some. This commenter also stated that, in densely-populated regions, such as parts of New England, the nutrients and organic matter in biosolids are needed less in agriculture and more to build healthy urban and suburban soils that are then better able to absorb precipitation and reduce storm runoff and erosion.

EPA also received several comments that were opposed to certain types of land applications of sewage sludge or sludge products. One comment opposed all land applications of sludge. A few other commenters opposed application of sewage sludge near food, as an agricultural soil amendment, or on recreational public places. Some of these commenters did suggest, however, that there were appropriate land applications of sludge, such as on trees and non-vegetable crops or along roadways and similar places.

Response: Regarding the use of biosolids on food crops, please see the response in section VI.B.4 above. In response to the comment which encouraged EPA to retain the previous 40 CFR 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments* * *'' and add ''and other uses'' at the end of the sentence, EPA has retained this language in the Preference Program section of the RMAN V for compost. However, the final CPG V compost designation language does not prescribe specific applications. Recognizing that government agencies typically use compost for numerous applications, such as landscaping, bioremediation, roadside maintenance, and erosion control, it is appropriate to be as inclusive as possible in terms of potential applications of compost, while ensuring that the Agency would not have to re-propose the compost designation each time it learned of an additional use by procuring agencies.

As explained in sections VI.B.4 and 5 above, EPA's Part 503 regulations are protective of public health and the environment, and the Agency continues to support biosolids management that complies with the Part 503 regulations. EPA supports the beneficial reuse of biosolids as an option for biosolids use, but recognizes that any decisions regarding those choices are local decisions subject to state requirements in addition to federal regulations.

7. Manure

Comments: EPA received a few comments that discussed animal manure. A few of the commenters supported changes to the definition of compost and the description of the fertilizer designation that would have the effect of allowing the recovered material content of these designated items to include manure. A number of other commenters addressed both manure and biosolids. One of the commenters supported the use of manure as a recovered material, but also expressed concern that it (including human manure) could be very toxic regarding ''medications, diseases, and any products that are flushed in the toilet.'' Another opposed allowing manure or biosolids as recovered materials for the compost designation, asking how these materials are not considered ''a risk for human consumption, especially once they are [leached] into our ground water systems?'' One commenter was opposed to the use of manure, claiming that CAFOs produce manure full of hormones and antibiotics.

Response: As previously explained, EPA is only designating items that may be produced with recovered materials. In doing so, under section 6002 of RCRA, we evaluated a number of factors, including availability. Compost and fertilizers are available with manure content, one of many types of compost and fertilizers composed of recovered materials content. Accordingly, the descriptions of the compost and fertilizer designations do not address specific types of recovered organic materials in the compost or fertilizers. The use of the compost or fertilizer and their suitability for particular uses is a determination made by individual

procuring agencies. That decision made by individual procuring agencies will reflect many factors, including the required organic material content, necessary nutrient concentration, as well as the necessity for complying with all state and local limitations or restrictions relative to the organic content.

As discussed in the background document for proposed CPG V, if improperly managed, animal manures can and have created significant environmental problems, including human health issues caused by contamination of surface water and groundwater. Using animal manures as a raw material for compost, as opposed to applying it directly to the land or stockpiling it, represents an environmentally beneficial option for this waste product that should help in controlling the pathogens in the manure. With respect to more general concerns about animal manure, EPA notes that, under EPA regulations, Concentrated Animal Feeding Operations (CAFOs) must obtain permits, submit annual reports, and develop and follow nutrient management plans for proper handling of manure and wastewater associated with CAFO operations (68 FR 7176, February 12, 2003).

8. Thermophilic Process and Vermicompost

Comments: EPA received a few comments requesting that the agency include vermicompost (the end-product of the breakdown of organic matter by some species of earthworm) in the designation. One of the commenters requested that the Agency not require thermophilic treatment, while the other requested that EPA acknowledge compost products (e.g., vermicompost) that are produced at temperatures lower than thermophilic.

Response: Vermicompost (the end-product of the breakdown of organic matter by some species of earthworm) does not appear to meet the statutory criteria under RCRA section 6002 by which EPA evaluates products for designation, including widespread availability. The commenters did not provide sufficient information to assist EPA in evaluating vermicompost against those criteria. Furthermore, EPA understands that there are very few large-scale vermicomposting operations in the U.S. and that this could impact the availability of vermicompost. Therefore, EPA's definition of compost promulgated in the final CPG V is limited to compost produced by the thermophilic processes. Since vermicompost is not a thermophilic product, it is not covered by the definition, and therefore it is not included within the scope of the final CPG V compost designation.

As background, EPA sought to designate the broadest category of compost so as to promote its wide applicability for procuring agencies. Consequently, EPA originally designated compost produced under thermophilic conditions in CPG I in 1995 because these conditions result in mature, cured composts that can be used for a broad range of applications for which procuring agencies were known to use compost. Among these applications are landscaping, seeding of grass or other plants on roadsides and embankments, use as a nutritious mulch under trees and shrubs, erosion control, and land reclamation. This diverse range of applications requires that the compost have several characteristics. These include an ability to hold several times its weight in water and to change the infrastructure of soils. In addition, the compost should degrade the hydrocarbons found in petroleum products, pesticides, and wood preservatives; degrade volatile organic compounds (VOCs); and form metal, humus, and soil complexes that are too large to pass through the cell walls of plants grown in this compost. Thermophilic compost has these characteristics. Furthermore, thermophilic microorganisms that develop only at higher temperatures are needed to promote rapid composting and destroy pathogens and weed seeds that may be present in the composted materials. While vermicompost has been shown to enhance plant growth as a soil amendment, it does not appear to exhibit characteristics that would make it useful in the other applications previously mentioned.

VII. Where can agencies get information on the availability of EPA-designated items?

EPA has developed a searchable online Supplier Database containing the names of manufacturers, suppliers, and distributors of CPG-designated items (see section IX below for Internet access information). Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting their needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), private corporations, and trade associations. State and local recycling programs are also a potential source of information on local distributors and the availability of designated items. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

However, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the ''Economic Impact Analysis for the Comprehensive Procurement Guideline V.'' A copy of the analysis is available in the docket for this action and is briefly summarized here.

1. Summary of Costs

As shown in Table 3 below, EPA estimates that the annualized costs of the final rule will range from $1.75–$3.51 million, with costs being spread across all procuring agencies (i.e., federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors that use appropriated federal funds to procure designated items). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that influence the costs, EPA conducted a sensitivity analysis to identify the range of potential costs of the final rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with the final rule are provided in the Economic Impact Analysis (EIA) for this rule.

TABLE 3.—SUMMARY OF ANNUALIZED COSTS OF CPG V AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	$668–$1,336	$1,336
States	240–480	480
Local Governments	836–1,673	1,673
Contractors	10–20	20
Total	1,754–3,509	3,509

As a result of this rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for federal agencies, reporting and recordkeeping. The costs shown in Table 3 represent the estimated annualized costs associated with these activities. Table 3 also includes estimates for federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with this rule are included in the EIA.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that this final rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in their recycling programs.

EPA is unable to determine the number of businesses, including small businesses, which may be adversely impacted by this final rule. If a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet the new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of this action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that this final rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing.

Additionally, using compost can reduce the need for water, fertilizers, and pesticides. It serves as a marketable commodity and is a low-cost alternative to standard landfill cover and artificial soil amendments. Composting also extends municipal landfill life by diverting organic materials from landfills and provides a less costly alternative to conventional methods of remediating (cleaning) contaminated soil. The use of compost and fertilizer made from recovered organic materials reduces the need for chemical manufacturing and processing and reduces energy costs associated with that.

Recycling, in general, can affect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, this final rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many state and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in the increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of this rule to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the rule will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designated items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances, items with recovered materials content may be less expensive than items produced from virgin material.

EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are ''procuring agencies'' (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using appropriated federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, *i.e.*, not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a state or federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

After considering the economic impacts of this final rule on small entities, EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions is described in greater detail in the EIA for the final rule.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, EPA has concluded that the effect of this final rule will be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovations associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated aggregate cost of compliance

for state and local governments is not expected to exceed, at the maximum, $2.1 million annually. The cost of enforceable duties that may arise as a result of this action on the private sector is estimated to not exceed $20,000 annually. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from this rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $2.1 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on states and localities. As a result of this action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of this final rule will range from $1.75 to $3.51 million. EPA's estimate reflects the costs of the rule for all procuring agencies (i.e., federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors that use appropriated federal funds to procure designated items), not just states and localities. Thus, the costs to states and localities alone will be lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any mandate on tribal governments or impose any duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

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

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

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

The Agency has referenced USCC's Test Methods for the Examination of Composting and Compost (TMECC) and USCC's Seal of Testing Assurance (STA) labeling program, as well as the OMRI guidelines.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The effect, if any, of our action is to increase the procurement, and hence the quantity produced, of items with recovered materials content. This may result in the increased diversion of waste products from the disposal stream and thus may have positive effects on human health and the environment. Reuse of the waste materials may prevent improper disposal with its potential for adverse

consequences to public health or the environment. To the extent that disadvantaged populations are disproportionately at risk for such effects, this rule may well result in community benefits.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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). This rule will be effective September 15, 2008.

IX. Supporting Information and Accessing Internet

Supporting materials for this final CPG V are available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. Supporting materials can be accessed on the Internet at *www.regulations.gov.* Among the supporting materials available in the OSWER Docket and on the Internet are the following:

''Background Document for the Final Comprehensive Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V,'' U.S. Environmental Protection Agency, Office of Solid Waste, August, 2007.

''Economic Impact Analysis for Final Comprehensive Procurement Guideline V,'' U.S. Environmental Protection Agency, Office of Solid Waste, July 2007.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

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

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

■ 1. The authority citation for part 247 is revised to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; EO 13423, 72 FR 3919, 3 CFR, 1998 Comp., p. 210.

■ 2. Section 247.3 is amended by revising the definition of ''compost'' and adding a definition in alphabetical order for ''fertilizer made from recovered organic materials'' to read as follows:

§ 247.3 Definitions.

* * * * *

Compost is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

* * * * *

Fertilizer made from recovered organic materials is a single or blended substance, made from organic matter such as plant and animal by-products, manure-based or biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.

* * * * *

■ 3. In § 247.15, revise paragraph (b) and add paragraph (f) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from recovered organic materials.

* * * * *

(f) Fertilizer made from recovered organic materials.

[FR Doc. E7–18150 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: LSC is amending section 1626.10(a) of this regulation to permit LSC grant recipients to provide legal assistance to otherwise financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau legally residing in the United States.

DATES: This final rule is effective as of October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC-funded legal services providers are permitted to provide legal assistance only to citizens of the United States and aliens upon whom eligibility has been expressly conferred by statute. LSC regulations at 45 CFR part 1626 implement the various existing statutory authorities and set forth the eligibility standards based on citizenship and eligible alien status. Since 1996 Part 1626 has limited the eligibility of citizens of the Republic of the Marshall Islands (''RMI'') and the Federated States of Micronesia (''FSM'') and the Republic of Palau to services provided in those respective nations (unless the applicant is otherwise eligible under Part 1626). In connection with LSC's development of a 2007 Rulemaking Agenda, the Legal Aid Society of Hawai'i (LASH) and Legal Aid of Arkansas (LAA) have both requested that LSC engage in rulemaking to change the section 1626.10(a) to provide for the eligibility of citizens of RMI, FSM and Palau legally residing in the United States for legal assistance from LSC-funded programs.

LSC agreed that there was sufficient reason and authority for LSC to amend its regulation in this regard. To that end, the Operations and Regulations Committee of the LSC Board of Directors considered a Draft NPRM and the Board of Directors approved an NPRM for publication and comment at their respective meetings on July 28, 2007. That NPRM was published on August 2, 2007 (72 FR 42363).

LSC received twelve timely filed comments and one late filed comment on the NPRM. In addition to comments from grantees, LSC received comments from the Embassy of the Federated States of Micronesia, several organizations representing the Micronesian community, community services organizations providing aid and services to citizens of RMI, FSM and Palau, and two individual citizens.[1] All

[1] In addition to the comments filed directly in response to the NPRM, LSC also notes that it had, prior to the issuance of the NPRM, received letters from the Department of Interior's Office of Insular Affairs and the Embassy of Palau, a letter signed by several Members of Congress, and several oral

of the comments supported the proposed rule change.

History of FAS Eligibility for Legal Assistance From LSC-Funded Programs

At the time of the creation of LSC in 1974, the countries that are now the sovereign nations of the Republic of the Marshall Islands (''RMI''), the Federated States of Micronesia (''FSM''), and the Republic of Palau were possessions of the United States, known as the Trust Territories of the Pacific Islands (''the Trust Territories''). The LSC Act defined the Trust Territories as a ''State'' for the purposes of the Act. The Act thus conferred eligibility for LSC-funded legal services to Trust Territory residents to the same extent provided to residents of any other State of the United States. Section 1002(8) of the LSC Act, 42 U.S.C. 2996a(8).

In 1983, Congress placed the first statutory restrictions on representation of aliens on LSC recipients in LSC's appropriations bill for that year, Public Law 97–377. That law provided that none of the funds appropriated could be expended to provide legal assistance for or on behalf of any alien unless the alien was a resident of the U.S. and otherwise met certain statutorily specified criteria. On its face, this language would have appeared to imply that all non-U.S. citizens, including residents of RMI, FSM and Palau would be subject to these restrictions, notwithstanding their eligibility under the LSC Act. To deal with this problem, LSC included a ''special eligibility section'' (§ 1626.10) in the implementing regulations on representation of aliens, 45 CFR Part 1626, to exempt residents of the Trust Territory from the alien restrictions imposed by Congress.

In 1986 the trust governing the relationship between the U.S. and the Trust Territories was terminated. At that time the former Trust Territories were recognized as independent nations and a new relationship with RMI, FSM and Palau was created by the signing of two Compacts of Free Association, one with RMI and FSM and the other with Palau. The Compact with RMI and FSM contemplates the provision of certain services and programs of the U.S. to those nations. Specifically, section 224 of the Compact of Free Association with RMI and FSM provides that:

> The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia may agree from time to time to the extension of additional United States grant assistance, services and programs as provided by the laws of the United States, to the Marshall Islands or the Federated States of Micronesia, respectively.

The Compact of Free Association Act of 1985 (''CFA Act'') (Pub. L. 99–239, codified at 48 U.S.C. 1901 *et seq.*), which implemented the Compact, provides express authority for the provision of LSC-funded legal services. Specifically, section 105(h)(1)(A) of the CFA Act provides that:

> * * * pursuant to section 224 of the Compact the programs and services of the [Legal Services Corporation] shall be made available to the Federated States of Micronesia and to the Marshall Islands.

The implementing act for the Compact with Palau makes section 105 of the CFA Act applicable to the Republic of Palau. 48 U.S.C. 1932(b).[2]

After the signing of the respective Compacts and the corresponding implementing statutes, the FAS remained covered by the special eligibility section of Part 1626, notwithstanding their change in legal status vis-à-vis their relationship with the United States. In 1989 that section of the regulation was amended to make the section more precise in light of the termination of the trust. Under this version of the rule, the special eligibility section provided:

> (a) Micronesia. The alien restriction stated in the appropriations acts is not applicable to the legal services program in the following Pacific island entities:
> (1) Commonwealth of the Northern Marianas;
> (2) Republic of Palau;
> (3) Federated States of Micronesia;
> (4) Republic of the Marshall Islands
> All citizens of these entities are eligible to receive legal assistance, provided they are otherwise eligible under the [LSC] Act.

54 FR 18812 (April 29, 1989). The preamble to the Final Rule adopting this language explained that this change was intended to ''restate[] congressional intent that residents of these political entities be eligible to be clients of a legal services program.'' Id. at 18110. The special eligibility section addressing the FAS remained as set forth above until 1996.

As a result of new statutory restrictions contained in the LSC FY 1996 appropriations legislation (Pub. L. 104–134), additional changes to Part 1626 were made in 1996. Although the statutory amendments did not address this issue, § 1626.10(a) was again revised, this time in response to comments from the LSC Office of Inspector General (OIG). As explained in the preamble to the 1996 Final Rule:

> The OIG suggested that both the prior rule and the interim rule dealt with the question of special eligibility incorrectly and urged that the final rule refer only to the legal services programs serving people who were citizens of those jurisdictions. The effect of this change would be to make financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau only eligible for legal services from the recipients serving those areas * * * They would not be eligible for services from any other recipients unless they also came within one of the categories of eligible aliens listed in section 1626.5 * * *

62 FR 19413 (April 21, 1997). The OIG's comments were based upon its interpretation of the CFA Act that the language of the CFA Act provides authority for the provision of services within those nations, but does not expressly confer individual eligibility for services to the citizens of those nations without reference to where the service is to be provided. The Board considered the matter, agreed with the OIG analysis, and revised § 1626.10(a) as follows.

> This part [1626] is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

62 FR 19413 (April 21, 1997); 45 CFR 1626.10(a). Thus, since 1996 otherwise financially eligible residents of the FAS seeking assistance from legal services providers in the United States may only receive such assistance if they meet the alien eligibility requirements of § 1626.5.

Alternative Interpretation of the Compact Act

During the last session of Congress, legislation was passed in the Senate by unanimous consent on September 29, 2006, which would have definitively clarified the issue by clearly stating that LSC services were to be available to the citizens of the FAS. Specifically, section 5 of S.1830, provided:

> SEC. 5. AVAILABILITY OF LEGAL SERVICES.
> Section 105(f)(1)(C) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921d(f)(1)(C)) is amended by inserting before the period at the end the following: '', which shall also continue to be available to the citizens of the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands who legally reside in the United States (including territories and possessions)''.

comments presented at the July 28, 2007 Operations and Regulations Committee meeting. LSC considers these comments as entirely consistent with and supportive of the spirit and letter of the proposed change to the regulation.

[2] RMI, FSM and Palau are collectively referred to as the ''Freely Associated States'' or ''FAS.'' This designation will be used throughout the remainder of the supplementary information section.

The report accompanying S.1830 explained that:

> Section 5 clarifies that section 105(f)(1)(C) of the CFAAA is intended to continue eligibility for the programs and services of the Legal Services Corporation for FSM and RMI migrants who legally reside in the United States. Legal Services Corporation eligibility was extended by the first Compact Act in 1986 (P.L. 99–239), but in 1996, without any further action by Congress, the Legal Services Corporation, by rule, terminated the eligibility of FSM and RMI migrants. Section 104(e) of the original Compact Act, and of the CFAAA, state that it is 'not the intent of Congress to cause any adverse consequences for an affected area,' which are defined as Hawaii, Guam, the CNMI, and American Samoa. The Legal Services Corporation is one of those programs which had assisted local communities, in both the ''affected areas'' and in the mainland U.S., in responding to the impacts and needs of FSM and RMI citizens who were residing in U.S. communities. This section would restore eligibility as it existed from 1986 to 1996.

Similar legislation was introduced in the House, but was not acted on during the course of the 109th Congress. Accordingly, there was no final legislation enacted into law on this subject in the last Congress. More recently, on January 12, 2007, S.283, the Compact of Free Association Amendments Act was introduced in the Senate. On February 15, 2007, the bill was reported out of the Senate Committee on Energy and Natural Resources, accompanied by a written report. The operative language of the bill and report dealing with the availability of legal assistance from LSC recipients to citizens of the FAS, regardless of where they are obtaining those services, is the same as in last year's Senate bill (quoted above). A similar bill, H.R. 2705, has also been introduced in the House. As of the publication of this notice, both of the bills are still pending.

In addition, LSC received a letter dated June 1, 2007, from David Cohen, Deputy Assistant Secretary for Insular Affairs at the Department of Interior. In his letter, Deputy Assistant Secretary Cohen stated:

> I can assure you that it is consistent with Federal policy under the Compacts and the [implementing] public laws * * * to allow FAS citizens lawfully resident in the United States to receive LSC services * * * We are not aware of any intention to permit the extension of LSC benefits to FAS citizens in the FAS but to prevent the extension of those benefits to FAS citizens during their lawful residence in the United States.

Subsequently, representatives of LSC met with the Deputy Assistant Secretary, several members of his staff and an attorney from the Department of State. They reiterated their understanding of the Compact and the CFA Act. In particular, they explained that the United States and the FAS countries negotiated the Compacts as essentially an aid package and that the Departments of Interior and State, as well as the FAS nations themselves, consider the extension of benefits to the FAS to include the extension of benefits to FAS citizens, regardless of where those citizens are lawfully residing (in the FAS or the United States). As an example, they noted that the CFA Act extends the Pell Grant (educational grants) program to the FAS and that the grants are provided to FAS citizens regardless of whether they are attending institutions of higher education in the FAS or in the United States. Similarly, FAS citizens are eligible for Job Corps services being provided in the United States.

Several commenters specifically addressed the issue of interpretation of the treaty. These commenters agreed that the different interpretation of the CFA Act being considered was, indeed, the better interpretation. They urged LSC to amend the regulation to reflect this alternate interpretation.

In light of the above, it would appear that LSC's interpretation of the CFA Act, while permissible, was not the only permissible reading and perhaps, in hindsight, not the best available reading. Moreover, LSC appears to be within its legal authority under the law to amend § 1626.10 to permit FAS citizens to receive legal assistance anywhere LSC services are provided without requiring independent eligibility under Part 1626.

Need for Amendment of the Regulation—FAS Citizens in the United States

When LSC was created in 1974, there were probably no more than a few thousand Micronesians living in Guam and Hawai'i, and a scattering in the continental United States. Even when the first Compact was negotiated in 1986, there were probably still less than ten thousand Micronesians living within U.S. territory, still mostly in Guam and Honolulu. However, when the Compact was renegotiated and extended in 2002, it was then known that the migration pattern was showing greatly increased numbers in the continental United States. According to the Embassy of FSM there are, in addition to the traditionally high populations of Micronesians in Guam and Hawai'i, at least 30,000 to 40,000 FSM citizens living or going to school in the continental U.S. Further, LAA has noted in its request to LSC for rulemaking on this issue that there are also 6,000 to 10,000 Marshallese living in Northwest Arkansas alone.

Thus, while there was relatively little demand for legal services among FAS citizens in the United States in 1996, the increased migration of FAS citizens to the United States has significantly increased the potential demand for legal services among members of that community. The inability of financially eligible FAS citizens in the U.S. to access legal services from LSC programs assistance is a growing problem for the U.S. FAS community. LASH, for example, has noted that that FAS citizens working in Hawai'i are more likely to be victims of unscrupulous employers because they believe that such citizens have little recourse to legal services to protect their employment rights. Several commenters on the NPRM reiterated these statistics, emphasizing the increasing migration of FAS citizens to the U.S. and the legal vulnerability of many members of this community.

Amendment of § 1626.10(a)

LSC proposed to amend § 1626.10(a) to redesignate the existing language in paragraph (a) as paragraph (a)(1) and to add a new paragraph (a)(2) to read as follows: ''All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.'' This language makes explicit that FAS citizens are eligible under Part 1626 for legal assistance and is consistent with the other eligibility provision in § 1626.10 addressing the eligibility of Canadian-born American Indians at least 50% Indian by blood, members of the Texas Band of Kickapoo and foreign nationals seeking assistance pursuant to the Hague Convention. 45 CFR 1626.10(b); 1626.10(c); and 1626.10(d). The ''otherwise eligible'' language is meant to refer to financial eligibility (for the provision of LSC-funded legal assistance'') and to the permissibility of the legal assistance provided under applicable law and regulation. In light of the information in the record, LSC is now adopting the proposed amendment as set forth in the NPRM.

List of Subjects in 45 CFR Part 1626

Aliens, Grant programs—law, Legal services, Migrant labor, Reporting and recordkeeping requirements.

■ For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC is amending 45 CFR part 1626 as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

■ 1. The authority citation for part 1626 continues to read as follows:

Authority: Pub. L. 104–208, 110 Stat. 1321; Pub L. 104–134, 110 Stat. 3009.

■ 2. Amend § 1626.10 by revising paragraph (a) to read as follows:

§ 1626.10 Special eligibility questions

(a)(1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

* * * * *

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E7–18194 Filed 9–13–07; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XC56

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel With Gears Other than Jig in the Eastern Aleutian District and the Bering Sea Subarea in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 Atka mackerel total allowable catch (TAC) with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 11, 2007, through 1200 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Atka mackerel TAC for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea in the BSAI is 22,015 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 Atka mackerel TAC for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 21,915 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 10, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 11, 2007.

Alan D. Risenhoover

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

[FR Doc. 07–4561 Filed 9–11–07; 3:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC52

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for 12 hours for shallow-water species by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to allow the shallow-water species fishery in the GOA to resume.

DATES: Effective 0800 hrs, Alaska local time (A.l.t.), September 11, 2007, through 2000 hrs, A.l.t., September 11, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 26, 2007.

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

• Mail to: P.O. Box 21668, Juneau, AK 99802;

• Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
• FAX to 907–586–7557;
• E-mail to *inseason.fakr@noaa.gov* and include in the subject line of the e-mail the document identifier: goaswx4sre2.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or
• Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The shallow-water fishery in the GOA opened for 12 hours on September 1, 2007 (72 FR 49229, August 28, 2007), and reopened again for 12 hours on September 6, 2007 (72 FR xxxxx). NMFS has determined that approximately 130 mt remain in the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the shallow-water species fishery in the GOA to resume, NMFS is terminating the previous closure and is reopening directed fishing for shallow-water species for 12 hours by vessels using trawl gear in the GOA, effective 0800 hrs, A.l.t., September 11, 2007, through 2000 hrs, A.l.t., September 11, 2007. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' Vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA can continue to fish under their permit as authorized.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 7, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for the shallow-water species fishery in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 26, 2007.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 10, 2007.

Emily H. Menashes,

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

[FR Doc. 07–4562 Filed 9–11–07; 3:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XC57

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. This action is necessary to conduct directed fishing in the HLA in areas 542 and 543 and to prevent exceeding the HLA limits established for area 542 and area 543 pursuant to the 2007 Atka mackerel total allowable catch.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after the closure of the Eastern Aleutian District (area 541) and the Bering Sea subarea Atka mackerel directed fishery, also published in this issue. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

Action	Area	Effective Date[1]	
		From	To
Closed Atka Mackerel with gears other than jig gear	Eastern Aleutian District (area 541) and the Bering Sea subarea	1200 hrs, September 11, 2007	1200 hrs, December 31, 2007
Opening the first directed fishery in the HLA	542	1200 hrs, September 13, 2007	1200 hrs, September 20, 2007
	543	1200 hrs, September 13, 2007	1200 hrs, September 20, 2007
Opening the second directed fishery in the HLA	542	1200 hrs, September 22, 2007	1200 hrs, September 29, 2007
	543	1200 hrs, September 22, 2007	1200 hrs, September 29, 2007

[1]Alaska local time

In accordance with § 679.20(a)(8)(iii)(A) and (B), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (72 FR 46038, August 16, 2007).

In accordance with the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the B season allowance of the 2007 TACs in areas 542 and 543 are 8,214 mt and 2,664 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: for the first directed fishery in area 542, 4,107 mt; for the first directed fishery in area 543, 1,332 mt; for the second directed fishery in area 542, 4,107 mt; and for the second directed fishery in area 543, 1,332 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2007 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 10, 2007. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 11, 2007.

Alan D. Risenhoover

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

[FR Doc. 07–4563 Filed 9–11–07; 3:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XC55

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl and vessels using jig gear to catcher processor vessels using hook-and-line gear and vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2007 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective September 13, 2007, until 2400 hours, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific cod TAC in the BSAI is 170,720 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007). Pursuant to § 679.20(a)(7)(i), the allocations of the Pacific cod TAC are 240 mt to catcher vessels using hook-and-line gear, 64,030 mt to catcher processor vessels using hook-and-line gear, 2,641 mt to catcher processor vessels using pot gear, 12,006 mt to catcher vessels using pot gear, 37,110 mt to catcher processors using trawl gear, and 37,110 mt to catcher vessels using trawl gear. The allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear is 2,853 mt and to vessels using jig gear is 1,426 mt after two reallocations (72 FR 10428, March 8, 2007 and 72 FR 18595, April 13, 2007).

As of September 5, 2007, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using trawl gear will not be able to harvest 3,000 mt of the allocation under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*2*), NMFS apportions 2,850 mt of Pacific cod from catcher vessels using trawl gear to catcher processor vessels using hook-and-line gear, 27 mt of Pacific cod to catcher processor vessels using pot gear, and 123 mt of Pacific cod to catcher vessels using pot gear.

The Regional Administrator has also determined that vessels using jig gear will not harvest 1,300 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*), NMFS is reallocating 75 mt of Pacific cod to catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear. The Regional Administrator has determined that catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest the remaining amount of the available reallocation. Therefore, in accordance with § 679.20(a)(7)(ii)(B), NMFS is reallocating the unused amount of 1,225 mt of Pacific cod allocated to vessels using jig gear to catcher processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and adjustments (72 FR 10428, March 8, 2007 and 72 FR 18595, April 13, 2007) are revised as follows: 126 mt to vessels using jig gear, 68,105 mt to catcher processor vessels using hook-and-line gear, 12,129 mt to catcher vessels using pot gear, 2,668 mt to catcher processor vessels using pot gear, 34,110 mt to catcher vessels using trawl gear, and 2,928 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of Pacific cod in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 5, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 11, 2007.

Alan D. Risenhoover

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

[FR Doc. E7–18174 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XC54

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of the 2007 pollock incidental catch allowance (ICA) to the directed fisheries in the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2007 total allowable catch (TAC) of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective September 13, 2007, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands Management Area (BSAI) according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Bering Sea subarea, the portion of the 2007 pollock TAC allocated to the ICA is 35,129 mt as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

As of September 6, 2007, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the ICA has been set too high: 2,000 mt of the 2007 pollock ICA in the Bering Sea subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(i)(A)(1), NMFS reallocates 2,000 mt of the 2007 pollock ICA to the directed fisheries in the Bering Sea subarea.

As a result, in accordance with § 679.20(a)(5)(i)(A)(*3*), (*4*), and (*5*), the 2007 harvest specifications for pollock in the Bering Sea subarea included in the harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) are revised as follows: 33,129 to the pollock ICA, 366,841 to B season AFA catcher vessels harvesting pollock for processing by AFA inshore processors, 293,473 mt to B season AFA catcher processors and AFA catcher vessels delivering pollock to catcher processors, and 73,368 mt to B season AFA catcher vessels harvesting pollock for processing by AFA motherships. Furthermore, pursuant to § 679.20(a)(5)(i), Table 3 of the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451,

March 2, 2007) is revised for 2007 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2007 pollock ICA and directed fisheries in the Bering Sea subarea established at § 679.20(a)(5)(i)(A).

TABLE 3.—2007 AND 2008 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2007 Allocations	2007 A season [1]		2007 B season [1]	2008 Allocations	2008 A season [1]		2008 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,394,000	n/a	n/a	n/a	1,318,000	n/a	n/a	n/a
CDQ DFA	139,400	55,760	39,032	83,640	131,800	52,720	36,904	79,080
ICA	33,129	n/a	n/a	n/a	33,214	n/a	n/a	n/a
AFA Inshore	609,736	243,894	107,726	366,841	576,493	230,597	161,418	345,896
AFA Catcher/Processors [3]	487,788	195,115	136,581	293,473	461,195	184,478	129,134	276,717
Catch by C/Ps	446,326	178,531	n/a	267,796	421,993	168,797	n/a	253,196
Catch by CVs [3]	41,462	16,585	n/a	24,877	39,202	15,681	n/a	23,521
Unlisted C/P Limit [4]	2,439	976	n/a	1,463	2,306	922	n/a	1,384
AFA Mothership	121,947	48,779	34,145	73,368	115,299	46,119	32,284	69,179
Excessive Harvesting Limit [5]	213,407	n/a	n/a	n/a	201,773	n/a	n/a	n/a
Excessive Processing Limit [6]	365,841	n/a	n/a	n/a	345,896	n/a	n/a	n/a
Total Bering Sea DFA	1,358,871	543,548	380,484	817,322	1,284,787	513,914	359,740	770,872
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	10	n/a	n/a	n/a	10	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA −10 percent and the ICA −3.35 percent, is allocated as a DFA as follows: inshore component −50 percent, catcher/processor component −40 percent, and mothership component −10 percent. In the Bering Sea subarea, the A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1, is allocated 60 percent of the DFA. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance −10 percent and second the ICA −1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of pollock in the Bering Sea subarea. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased B season pollock allocations while value is optimum.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 11, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–4587 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 72, No. 178
Friday, September 14, 2007

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

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904–AB69

Alternative Fuel Transportation Program; Private and Local Government Fleet Determination

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed determination and public hearing.

SUMMARY: Pursuant to the Energy Policy Act of 1992 (EPAct 1992), the Department of Energy (DOE) proposes to determine that a regulatory requirement for the owners and operators of certain private and local government fleets to acquire alternative fueled vehicles (AFVs) is not necessary to achieve the recently modified EPAct 1992 Replacement Fuel Goal. DOE therefore also proposes to determine that it cannot issue a requirement for certain private and local government fleets to acquire alternative fueled vehicles.

DATES: Written comments (eight copies and, if possible, an e-mail copy) on the proposed determination must be received by DOE on or before November 13, 2007; electronic copies of comments may be sent to the e-mail address listed below.

Oral views, data, and arguments may be presented at the public hearing, which will be held from 9 a.m. until 4 p.m. on October 17, 2007. The length of each oral presentation is limited to 10 minutes. The public hearing will be held at the U.S. Department of Energy, Room GH–019, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Requests to speak at the hearing must be submitted to DOE no later than 4 p.m. on October 10, 2007.

ADDRESSES: Written comments (eight copies) and requests to speak at the public hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2G, RIN 1904–AB69, 1000 Independence Avenue, SW., Washington, DC 20585–0121. E-mails may be sent to: *regulatory_info@afdc.nrel.gov.* Comments may also be submitted through the Federal Rulemaking Portal at *http://www.regulations.gov.* DOE is currently using Microsoft Word. Organizations are strongly encouraged to submit comments electronically, to facilitate timely receipt of comments and ease inclusion in the electronic docket.

Copies of this notice, the transcript from the hearing, and written comments will be placed at the following Web site address: *http://www1.eere.energy.gov/vehiclesandfuels/epact/private/index.html.* Interested parties may also access these documents using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking, see the ''Opportunity for Public Comment'' section found in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9171; *regulatory_info@afdc.nrel.gov;* or Mr. Chris Calamita, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9507.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Under the Energy Policy Act of 1992 (EPAct 1992; Pub. L. 102–486), DOE is required to determine if a requirement for certain private and local government vehicle fleets to acquire alternative fueled vehicles (AFVs) is necessary, as specified in EPAct 1992. (42 U.S.C. 13257(e)) If DOE determines that the Private and Local Government Fleet Requirement is ''necessary,'' then DOE must issue regulations requiring certain fleets to acquire light-duty AFVs annually. (42 U.S.C. 13257(g)) Fleets subject to such a mandate would include all fleets that have at least 50 light duty motor vehicles, and would exclude Federal fleets, State fleets, and fleets covered under the Alternative Fuel Provider mandate. (42 U.S.C. 13257(g)(1)) If DOE determines that the Private and Local Government Fleet Requirement is not necessary then DOE must publish such determination in the **Federal Register** as a final agency action, including an explanation of the findings on which such a determination is made and the basis for the determination. (42 U.S.C. 13257(f))

Relevant to the evaluation of a Private and Local Government Fleet Requirement is the replacement fuel goal established in section 502(b) of EPAct 1992. (42 U.S.C. 13252(b)) Section 502(b)(2) establishes goals of producing sufficient replacement fuels to replace:

At least ten percent by the year 2000, and at least thirty percent by the year 2010 of the projected consumption of motor fuel in the United States for each such year, with at least half of such replacement fuels being domestic fuels. (Replacement Fuel Goal; 42 U.S.C. 13252(b)(2)) Under section 504(b) of EPAct 1992, if DOE determines that the

section 502 goals are unachievable, DOE must establish achievable goals. (42 U.S.C. 13254(b))

In determining whether to establish a Private and Local Government Fleet Requirement, DOE is directed to determine if such a requirement is ''necessary.'' (42 U.S.C. 13257(e)(1)) The ''necessity'' determination is a two part test. First, DOE must determine if the Replacement Fuel Goal established under section 502, or as modified under section 504 of EPAct 1992, is achievable absent a Private and Local Government Fleet Requirement. (42 U.S.C. 13257(e)(1)(A)) Next, the ''necessity'' determination requires DOE to determine if such a goal is practicable and actually achievable through implementation of a Private and Local Government Fleet Requirement in combination with voluntary means and other relevant programs. (42 U.S.C. 13257(e)(1)(B)) If DOE determines that the Replacement Fuel Goal is not achievable absent the Private and Local Fleet Requirement, and that such goal would be practicable and actually achievable through implementation of such a requirement, DOE must then establish the Private and Local Fleet Requirement under section 507(g). (42 U.S.C. 13257(e)(1)) If either of these findings cannot be made, then DOE is precluded from establishing the Private and Local Fleet Requirement under section 507(g).

Under the Private and Local Government Fleet provisions, if DOE initiates a rulemaking under section 507(g), DOE is again directed to determine whether to modify the Replacement Fuel Goal. (42 U.S.C. 13257(e)(2)) If the Replacement Fuel Goal is not achievable, DOE has to set a Replacement Fuel Goal that is achievable. (42 U.S.C. 13257(e)(2))

In a previous rulemaking, DOE has already determined that the original Replacement Fuel Goal of 30 percent in 2010 is not achievable and a modified Replacement Fuel Goal of 30 percent by 2030 was published March 15, 2007. 72 FR 12042. The purpose of today's document is to propose a determination whether or not the Private and Local Government Fleet Requirement is necessary to achieve the modified Replacement Fuel Goal.

DOE proposes to determine that it is not ''necessary'' to promulgate a regulation requiring private and local government fleets to acquire AFVs. DOE has initially determined that establishment of a Private and Local Government Fleet Requirement is not required for achievement of the Replacement Fuel Goal of 30 percent of U.S. motor fuels by 2030, as modified by DOE in March 2007. 72 FR 12041. As discussed below, this initial determination is based on DOE's analysis in revising the Replacement Fuel Goal, under which DOE demonstrated a pathway to achieve the modified Replacement Fuel Goal without establishment of a Private and Local Government Fleet Requirement. 72 FR 12041. Additionally, DOE also provides an analysis initially demonstrating that were a Private and Local Government Fleet Requirement established, the number of fleets potentially covered by such a requirement, the number of AFVs likely to be acquired, and the amount of replacement fuel likely displaced would not make an appreciable contribution towards achieving the modified Replacement Fuel Goal.

Today's document implements the March 6, 2006 order of the U.S. District Court for Northern District of California to prepare and publish a proposed determination on the Private and Local Government Fleets rule. *See Center for Biological Diversity* v. *U.S. Department of Energy et. al.,* C 05–01526 WHA (N.D. Cal. 2006) (Order Re Timing of Relief).

II. Statutory Requirements

A. Definitions

Under EPAct 1992, an ''alternative fuel vehicle'' is a ''dedicated vehicle or a dual fueled vehicle.'' (42 U.S.C. 13211(3))

A ''dedicated vehicle'' means ''a dedicated automobile, such as the term is defined in section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act or a motor vehicle other than an automobile, that operates solely on alternative fuels.'' (42 U.S.C. 13211(6))

A ''dual fuel vehicle'' is one ''capable of operating on alternative fuel and on gasoline or diesel fuel.'' (42 U.S.C. 13211(8)(A)) DOE notes that because a dual fueled vehicle can be operated on gasoline or diesel, the purchase of a dual fueled vehicle does not assure that ''alternative'' or ''replacement'' fuel will be used to operate the vehicle.

''Replacement fuel'' is defined by EPAct 1992 under section 301(14) to mean ''*the portion of any motor fuel* that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquefied fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel that the Secretary determines meets certain statutory requirements.'' (42 U.S.C. 13211(14); emphasis added).

''Alternative fuel'' is defined to include many of the same types of fuels as ''replacement fuel'' (such as methanol, natural gas, hydrogen and electricity), but also includes certain ''mixtures'' of petroleum-based fuel and other fuels. (10 CFR 490.2 (2002) [1]) Thus, a certain mixture might constitute an ''alternative fuel,'' but only the portion of the fuel that is within the definition of ''replacement fuel'' would actually constitute ''replacement fuel.'' For example, a mixture of 85 percent methanol and 15 percent gasoline would, in its entirety, constitute ''alternative fuel,'' but only the 85 percent that was methanol would constitute ''replacement fuel.'' Also by way of example, B20 (a fuel blend typically consisting of approximately 20 percent biodiesel and 80 percent diesel), considered as a total fuel blend, would not qualify as an ''alternative fuel,'' but the 20 percent that is biodiesel would qualify as ''replacement fuel.''

For the purpose of considering a Private and Local Government Fleet Requirement, the term ''covered fleet'' is a ''fleet, other than Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person under section 501 [of EPAct 1992].'' (42 U.S.C. 13257(g)) This is interpreted to mean all private and local government fleets not already covered under the existing fleet requirements program.

A ''fleet'' is defined in section 301(9) of EPAct 1992 as follows:

> [T]he term ''fleet'' means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—
>
> (A) Motor vehicles held for lease or rental to the general public;
>
> (B) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;
>
> (C) Motor vehicles used for motor vehicle manufacturer product evaluations or tests;
>
> (D) Law enforcement motor vehicles;
>
> (E) Emergency motor vehicles;
>
> (F) Motor vehicles acquired and used for military purposes that the Secretary of

[1] EPAct defines ''alternative fuel'' (*see* 42 U.S.C. 13211(2)), but DOE has exercised its authority to modify, by regulation, this definition. Therefore, the currently effective definition of ''alternative fuel'' is set forth at 10 CFR 490.2 (2006).

Defense has certified to the Secretary must be exempt for national security reasons;

(G) Nonroad vehicles, including farm and construction motor vehicles; or

(H) Motor vehicles which under normal operations are garaged at personal residences at night.

(42 U.S.C. 13211(9))

The key limitations in this definition include: (1) Only light duty vehicles (i.e., vehicles less that 8,500 GVWR) are covered, and all medium-duty and heavy duty vehicles are excluded; (2) the vehicles must be part of a fleet of 20 vehicles used primarily in a large metropolitan area; (3) the vehicles must be centrally fueled or capable of being centrally fueled; (4) they must be owned or controlled by a local government or an entity that owns at least 50 such vehicles; (5) fleets of rental vehicles are excluded; (6) law enforcement and emergency vehicles are excluded; and (7) vehicles garaged at personal residences are excluded.

The Replacement Fuel Goal is in terms of producing sufficient replacement fuels to replace on an energy equivalent basis, a specified percentage of the projected consumption of motor fuel in the United States for each such year, with at least one half of such replacement fuels being domestic fuels. (42 U.S.C. 13252(b)(2))

Section 301(12) of EPAct 1992 defines ''motor fuel'' as ''any substance suitable as fuel for a motor vehicle.'' (42 U.S.C. 13211(12)) Moreover, the term motor vehicle is defined in section 301(13) of EPAct 1992, through reference to 42 U.S.C. 7550(2), as a self-propelled vehicle that is designed for transporting persons or property on a street or highway. (42 U.S.C. 13261(13)) As DOE is required to evaluate the Replacement Fuel Goals established in section 502(b)(2) in terms of the capacity of producing sufficient replacement fuels to offset a certain percentage of U.S. ''motor fuel'' consumption, DOE, for the purposes of Title V of EPAct 1992, has interpreted the term motor fuel to include all fuels that are used in motor vehicles. This includes fuels used in light-, medium-, and heavy-duty on-road vehicles. 71 FR 54771 (September 9, 2006)

B. Key Statutory Requirements

The issue DOE addresses in this document is whether a Private and Local Government Fleet Requirement is ''necessary'' under section 507(e) of EPAct 1992. (42 U.S.C. 13257(e)(1)) Under section 507(e)(1) a Private and Local Government Fleet shall be promulgated if DOE determines such a program is ''necessary.'' (42 U.S.C. 13257(e)(1)) A Private and Local Government Fleet Requirement ''shall be considered necessary'' only if (1) DOE finds that ''the goal of replacement fuel use * * * is not expected to be actually achieved * * * without such a fleet requirement program;'' and (2) ''such goal is practicable and actually achievable * * * through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.'' (42 U.S.C. 13257(e)(1)(A) and (B))

EPAct 1992 authorizes DOE to conduct two separate rulemakings in order to determine whether to promulgate a Private and Local Government Fleet Requirement. First, section 507(b) directs DOE to conduct an early rulemaking, to be completed by December 15, 1996. (42 U.S.C. 13257(b)) The deadline for the ''early rulemaking'' passed without final action and has no continuing relevance. The second rulemaking provision is under section 507(e), which directs DOE to make a ''necessity'' determination by January 1, 2000. (42 U.S.C. 13257(e)(1)) It is under section 507(e) that DOE issues today's document.

C. Other Related Requirements

There are a number of other sections of EPAct 1992 which must be weighed in considering a potential Private and Local Government Fleet Requirement, primarily under the second prong of the ''necessity'' determination. These considerations include how such a requirement would be limited in application and practice, and other considerations and steps related to the determination process.

Under section 507(i), a promulgated Private and Local Government Fleet Requirement must provide for an exemption of a fleet from the applicable requirements on grounds of: (1) Non-availability of appropriate AFVs and alternative fuels; (2) non-availability of appropriate alternative fuels; and (3) with respect to local government entities, financial hardship. (42 U.S.C. 13527(i))

EPAct 1992 furthermore contains a petition provision in section 507(n). That section provides that:

> As part of the rule promulgated * * * pursuant to subsection * * * (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program * * * nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet.

(42 U.S.C. 13527(n)) As a result, even to the extent a fleet constitutes a ''fleet'' under the narrow EPAct 1992 definition, and does not otherwise qualify for one of the statutory exemptions, it could petition for relief or suspension of a fleet mandate for any one of several different reasons.

Section 507(m) of EPAct 1992 requires DOE to consult with the Secretary of Transportation (DOT) and Administrator of the Environmental Protection Agency (EPA) and other appropriate agencies in carrying out the requirements of section 507. DOE provided a pre-publication draft of today's notice of proposed rulemaking to DOT, EPA, and the Office of Management and Budget for their review.

D. No Fuel Use Requirement Authority

It is important to note that the ability of a Private and Local Government Fleet Requirement to affect petroleum consumption also depends, in significant part, on whether DOE can require covered fleets to use alternative or replacement fuels in addition to requiring that they acquire AFVs. The only explicit requirements for fuel use in EPAct 1992 are contained in section 501(a)(4), which applies only to alternative fuel provider fleets, and section 302(a)(2) (amending section 400AA of the Energy Policy and Conservation Act), which applies only to Federal fleets. (42 U.S.C. 13251(a)(4) and 6374(a)) Section 507 of EPAct 1992, which concerns private and local government fleets, does not contain any similar provision, nor does it contain a provision either authorizing DOE to mandate fuel use or explicitly prohibiting DOE from mandating fuel use.

DOE believes that because Congress specifically required use of alternative fuel in sections 501(a)(4) and 302(a)(2) of EPAct 1992, but not in section 507, the omission was deliberate. As a result, DOE believes that Congress did not intend for DOE, when acting under section 507, to have authority to promulgate regulations containing a requirement that fleet vehicles use particular types of fuel.

This interpretation is consistent with Congressman Philip Sharp(s remarks when he called up the conference report on EPAct 1992 for U.S. House of Representatives approval. Congressman Sharp was one of the key architects of EPAct 1992, and the floor manager for the bill in the House of Representatives. Congressman Sharp said:

> Under section 501, covered persons must actually run their alternative fueled vehicles on alternative fuels when the vehicle is

operating in an area where the fuel is available. This requirement was not included in the fleet requirement program under section 507, because the conferees were concerned that the alternative fuel providers might charge unreasonable fuel prices to the fleets that are not alternative fuel providers if such fleets were required to use the alternative fuel.

138 *Cong. Rec.* H11399 at H11400 (October 5, 1992).

III. Background

On August 7, 1996, and as required by EPAct 1992 sections 507(a)(3) and (b), DOE published in the **Federal Register** an advance notice of proposed rulemaking (ANOPR) to evaluate progress toward achievement of the Replacement Fuel Goals in EPAct 1992, identify problems with achieving those goals, assess the adequacy and practicability of the goals, and consider actions needed to achieve the goals. 61 FR 41032. DOE intended this notice to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and AFVs. Three hearings were held to receive oral comments on the ANOPR. They were held on September 17, 1996, in Dallas, Texas; on September 25, 1996, in Sacramento, California; and on October 9, 1996, in Washington, DC. A total of 70 persons spoke at the three hearings, and 105 written comments were received by November 5, 1996.

On April 23, 1997, DOE published in the **Federal Register** a Notice of Termination stating that DOE would not promulgate regulations to implement AFV requirements for private and local government fleets pursuant to the early rulemaking schedule of EPAct 1992 section 507(a)(1). 62 FR 19701.

On April 17, 1998, and for the purposes of EPAct 1992 sections 507(e), (g), and (k), DOE published in the **Federal Register** an ANOPR that asked for comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. 63 FR 19372. DOE held three hearings to receive oral comments on the ANOPR. They were held on May 20, 1998, in Los Angeles, California; on May 28, 1998, in Minneapolis, Minnesota; and on June 4, 1998, in Washington, DC. A total of 110 persons spoke at the three hearings, and/or submitted written comments.

On January 12, 2000, consistent with section 507(h) of EPAct 1992 (42 U.S.C. 13257(h)), DOE published in the **Federal Register** a notice, stating that it was extending by 90 days the January 1, 2000, deadline contained in section 507(e) in order to provide additional time for consultations with State and local officials, as required by Executive Order 13132. 65 FR 1831. On July 20, 2000, DOE published in the **Federal Register** a notice further extending the comment period in order to provide an opportunity for additional public comment, particularly comment from State and local governments, regarding the section 507 rulemaking proceedings. 65 FR 44987. DOE held workshops on August 1, 2000 in Chicago, Illinois; on August 22, 2000, in Denver, Colorado; and on September 26, 2000, in Washington, DC.

On January 2, 2002, EarthJustice, on behalf of the Center for Biological Diversity, Bluewater Network, and Sierra Club, filed a lawsuit in the U.S. District Court for the Northern District of California which, in part, sought to compel DOE to ''issue a proposed rule and final determination on the necessity of a private and municipal fleet program.'' (Plaintiffs Complaint for Injunctive and Declaratory Relief, pg 55, paragraph 171 dated January 2, 2002). On July 26, 2002, the Court granted plaintiffs' motion for summary judgment on the issue of whether DOE had missed the deadline set forth in EPAct 1992 section 507(e) for completing the rulemaking. *See Center for Biological Diversity* v. *Abraham, et al.* (218 F.Supp.2d 1143 (N.D. Cal., 2002)). On September 27, 2002, the District Court ordered DOE to complete its proposed rulemaking by January 27, 2003, and its final rule by November 27, 2003. *See Center for Biological Diversity* v. *Abraham, et al.*, No. C 02–00027 (N.D. Cal., 2002). On January 17, 2003, the Court subsequently granted a 30-day extension (to February 26, 2003) of the deadline for DOE to complete work on this notice of proposed rulemaking. (*Center for Biological Diversity* v. *Abraham, et al.* No. C 02–00027 (N.D. Cal., 2002), Order No. 55 (Entered 01/23/2003)).

On March 4, 2003, as required by section 507 of EPAct 1992 and in accordance with a Court order under *Center for Biological Diversity* v. *Abraham, et al.*, DOE issued a notice of a proposed determination regarding the Private and Local Fleet Requirement, in which DOE tentatively determined that a requirement was not ''necessary,'' and therefore should not be imposed. 68 FR 10320. DOE finalized the proposed determination that a regulation requiring private and local government fleets to acquire AFVs is not ''necessary'' and, therefore, cannot be promulgated, which was published January 29, 2004. 69 FR 4219. The necessity determination was based on DOE's findings that a private and local government fleet vehicle acquisition mandate would not appreciably increase the percentage of alternative fuel or replacement fuel used in motor vehicles in the United States and thus would make no more than a negligible contribution to the achievement of EPAct 1992's existing 2010 Replacement Fuel Goal of 30 percent, or of a revised Replacement Fuel Goal were one adopted.

Subsequent to the publication of the January 29, 2004, final rule, DOE was sued in Federal court by the Center for Biological Diversity and Friends of the Earth for failing to impose a private and local government fleet acquisition mandate and for not revising the replacement fuel production goal for 2010 as part of its determination. On March 6, 2006, the U.S. District Court for the Northern District of California vacated DOE's final determination regarding the Private and Local Government Fleet Mandate and ordered DOE to revise the replacement fuel production goal for 2010. *See Center for Biological Diversity* v. *U.S. Department of Energy et al.*, 419 F.Supp. 2d 1166 (N.D. Cal 2006). The Court directed DOE to prepare notices of proposed rulemaking and final rules on both the Replacement Fuel Goal for 2010 and the private and local government fleet determination. (Id. at 1171.)

On September 19, 2006, DOE published a notice announcing its proposed determination that the EPAct 1992 Replacement Fuel Goal of 30 percent by 2010 was not achievable and announced its proposal to extend the time for achieving the 30 percent replacement fuel production capacity goal to 2030. 71 FR 54771. In that notice, DOE evaluated four scenarios, which identified projected replacement fuel capacities of 8.65 percent, 17.84 percent, 35.25 percent, and 47.06 percent, by 2030. (Updated analyses conducted for the final rule resulted in the first and third of these becoming 7.38 percent and 33.13 percent, respectively.) These projections reflected considerations of numerous variables including oil prices, technological breakthroughs, and market acceptance. The modified goal proposed by DOE fell in the mid-range among these scenarios.

On March 15, 2007, DOE published a final rule for the Replacement Fuel Goal. 72 FR 12041. In the final rule, DOE determined that the EPAct 1992 goal of establishing sufficient replacement fuel production capacity to replace 30 percent on an energy equivalent basis of all U.S. motor fuel by 2010 was not achievable. This

determination was based on a similar evaluation of the projected U.S. production capacity of replacement fuels as was presented in the notice of proposed rulemaking. The Replacement Fuel Goal final rule extended the 30 percent Replacement Fuel Goal out to 2030 based on an analysis similar to that presented in the notice of proposed rulemaking. The Replacement Fuel Goal final rule complied with DOE's obligation under section 504(b) of EPAct 1992 to ''establish goals that are achievable, for the purposes of this title.'' (42 U.S.C. 13254(b))

Today's document revisits the Local and Private Fleet Requirement determination in light of the modified Replacement Fuel Goal.

IV. Analysis for Private and Local Fleets Rule Determination

As stated above, DOE must issue a Private and Local Government Fleet Requirement if DOE determines that such a requirement is ''necessary.'' (42 U.S.C. 13257(e)(1)) For the purpose of this determination, a Private and Local Government Fleet Requirement is necessary if:

(1) The Replacement Fuel Goal under section 502(b)(2)(B), or as modified under section 504, is not actually expected to be achieved by the 2010, or the date established under section 504, without such a fleet requirement; and

(2) Such a goal is practicable and actually achievable within the appropriate period, through implementation of such a fleet requirement in combination with voluntary means and the application of other programs relevant to achieving such goals.

(42 U.S.C. 13257(e)(1)(A) and (B))

A. Achievability of the Replacement Fuel Goal

As stated above, DOE recently determined that the Replacement Fuel Goal of 30 percent by 2010 established under section 502(b)(2)(B) is not achievable. 72 FR 12041. Pursuant to its statutory authority to do so, DOE established a modified goal by extending out the goal date to 2030, i.e., establishing a Replacement Fuel Goal of 30 percent by 2030. 72 FR 12041. In establishing the modified Replacement Fuel Goal, DOE determined that such a goal is achievable.

In evaluating and modifying the goal, DOE was directed to balance considerations in order to establish goals that are ''achievable.'' (42 U.S.C. 13254(b)) The Replacement Fuel Goal must promote replacement fuels to the ''maximum extent possible'' while remaining technologically and economically feasible. (42 U.S.C. 13254(a) and (b)(2)) DOE determined that the modified goal meets these requirements, for several reasons. First, DOE based its analysis on the best information available, from published and peer-reviewed sources. In particular, much of DOE's analysis was based on the Energy Information Administration's (EIA) Annual Energy Outlook (AEO) 2005 through 2007. Second, DOE's analysis generally was based on the current budget and policy framework, under which many technologies show reasonable potential for success and market penetration. Thus, the analysis assumed virtually no major new policies or funding initiatives beyond those already in place. Third and last, the modified goal balances the minimum and maximum projected replacement fuel production capacities from several reasonable scenarios. A complete discussion of the analysis relied on in the final rule for the modified Replacement Fuel Goal and the supporting documents can be reviewed at *http://www1.eere.energy.gov/vehiclesandfuels/epact/private/plg_docket.html.*

In evaluating a modification to the Replacement Fuel Goal, DOE analyzed four scenarios to generate a range of potential replacement fuel production capacities. In none of these scenarios did DOE include potential increases in alternative fuel production as a result of a Private and Local Government Fleet Requirement. As such DOE determined that the modified Replacement Fuel Goal of 30 percent by 2030 is expected to be achieved without establishing a Private and Local Government Fleet Requirement.

Given the determination in the modified Replacement Fuel Goal final rule that the modified goal is expected to be achieved by 2030 without a Private and Local Government Fleet Requirement, DOE has tentatively determined that the first prong of the ''necessity'' determination has not been met.

B. Potential Contribution of a Private and Local Government Fleet Requirement to the Production Capacity of Alternative Fuel

The second prong of the ''necessity'' determination requires DOE to find that the Replacement Fuel Goal is actually achievable were a Private and Local Fleet Requirement established. (42 U.S.C. 13257(e)(1)(B)) As stated above, DOE has determined that the modified Replacement Fuel Goal is achievable. Although DOE has tentatively determined that the Private and Local Government Fleet Requirement is not necessary to achieve the modified Replacement Fuel Goal, DOE also performed a preliminary analysis to estimate the contribution that such a requirement would make to the Replacement Fuel Goal, if such a requirement were established.

In the mid-1990s, DOE's initial estimate was between 1.7 and 7.3 million AFVs would be acquired over 19 years if a possible Private and Local Government Fleet Requirement was implemented. The purchases of AFVs under such a fleet program level out at approximately 400,000 to 500,000 AFVs annually starting in 2010. As discussed below, however, more detailed analyses showed DOE's initial estimates were probably too high.

Several follow-up analyses were conducted by DOE from 1996 to 2000 to attempt to determine not just how many AFVs would be required to be acquired, but more importantly, what the potential contribution of a Private and Local Government Fleet Requirement would be to replacing U.S. motor fuel consumption. The limitations on the potential contribution of a private and local government fleet program to the Replacement Fuel Goal are discussed in section II above. In brief, however, one DOE report issued in 1996 estimated that total fuel use from all fleets, including private and local government fleets, potentially covered by EPAct 1992 fleet programs to be approximately 1.2 percent of U.S. gasoline use. *See Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis* (DOE/PO–0042) (January 1996) [hereinafter *Technical Report 14*].

DOE's *Section 506 Report*[2] was only slightly more optimistic, indicating that ''[a]lternative fuel use by EPAct [1992] covered fleets, even with the contingent mandates for private and local government fleets, is unlikely to provide more than about 1.5 percent replacement fuel use[.]'' Section 506 Report at p. 35. In either case, subtracting out the portion of replacement fuel use represented by the existing (Federal, State, and alternative fuel provider) fleet programs would leave the potential private and local government fleet program contribution closer to a maximum of 1 percent.

However, both these earlier reports included calculations based only upon

[2] *See* Energy Efficiency and Renewable Energy, DOE, Replacement Fuel and Alternative Fuel Vehicle—Technical and Policy Analysis p. viii-ix (Dec. 1999—Amendments Sept. 2000); *http://www.ccities.doe.gov/pdfs/section506.pdf.*

the percentage of light-duty gasoline fuel use. For purposes of the goal contained in EPAct 1992, DOE has repeatedly asserted that fuel replacement should be considered in the context of all on-highway motor fuel use, including heavy-duty vehicle fuel use, because the goal contained in section 502 of EPAct 1992 are to be considered in the context of the ''projected consumption of motor fuel in the United States.'' (42 U.S.C. 13252(b)(2)).

The figures provided in these earlier reports, when adjusted to reflect the impact on all on-highway motor fuel use, show that a Private and Local Government Fleet Rule—even with a fuel use requirement, which as noted above DOE does not have the authority to impose—would provide at most on the order of 0.7–0.8 percent motor fuel replacement, assuming virtually complete use of alternative fuel in the AFVs required.

Both the analyses in *Technical Report 14* and the *Section 506 Report* were conducted before DOE had much experience with implementation and operation of the EPAct 1992 fleet programs. DOE's experience with those programs now has shown that the number of fleets originally envisioned to be covered was far larger than the number of fleets covered in actual practice, and that these fleets could not, in the absence of a specific mandate, be assumed to use alternative fuel in their AFVs 100 percent of the time. Thus, DOE believes that the figures in these reports probably overstated the potential impact of a Private and Local Government Fleet Rule. This view was supported by analyses contained in a later DOE-supported report, *The Alternative Fuel Transition: Results from the TAFV Model of Alternative Fuel Use in Light-Duty Vehicles 1996–2000*[3] *(TAFV Model Report),* which incorporated more realistic assumptions regarding these fleet programs. The *TAFV Model Report* stated that,

> In particular, over all of the price scenarios, we find that the [private and local government fleet] rule increases the alternative fuel penetration in 2010 from 0.12 % (without the private and local government rule) to, at most, 0.37 % [with a private and local government rule] of total fuel sales.

TAFV Model Report at p. 28. Thus, the analysis in the *TAFV Model Report* placed contributions from the Private and Local Government Fleet Rule at 0.25 percent. As with *Technical Report 14* and the *Section 506 Report,* these percentages were calculated based on the total fuel sales of the fuel used by light-duty vehicles only.

The projected contribution from a potential rule dropped to below 0.2 percent when evaluated as part of all on-highway motor fuel use and can be reconciled somewhat with those found by the earlier reports. As indicated in section II above, DOE does not have authority to mandate that AFVs acquired actually operate on alternative fuels. Experience with the existing State Fleet Program, where fleets are similarly not required to use alternative fuel, has shown that alternative fuel use rates are typically in the ten to twenty-five percent range. Thus, when adjusting the levels found in *Technical Report 14* and the *Section 506 Report* by such utilization levels, the overall projected impacts likely end up in about the 0.2 percent range.

It also should be noted that during earlier rulemaking processes, no commenter presented any persuasive analysis or data to counter or dispute the data and conclusions in *Technical Report 14,* the *Section 506 Report,* or the *TAFV Model Report.* Therefore, DOE concluded from these reports that a Private and Local Government Fleet Requirement under authority provided to DOE by EPAct 1992 section 507 would be expected to contribute, at best, an extremely small amount toward achievement of the Replacement Fuel Goal (below 1 percent and likely below 0.2 percent of all on-highway motor fuel use). Even without the additional statutory limitations described above that EPAct 1992 places on such a Private and Local Government Fleet Requirement, the contribution from such a mandate to the EPAct 1992 Replacement Fuel Goal would be very small.

When the prior private and local fleets determination was conducted in 2003 through 2004, the analyses relied upon by DOE were the most recent, relevant analyses that it had. As such, these were all dated 2000 or earlier. With the passage of several more years between that determination and this rulemaking, the DOE believed it was important to conduct an updated analysis to determine if circumstances had changed sufficiently to warrant imposition of acquisition requirements upon fleets. The approach taken was to first conduct a somewhat more simplified analysis than the previous ones, and if this analysis indicated significantly different results, than a more detailed and lengthy analysis would be commissioned.

To conduct the current analysis, the Department relied, in large part, upon fleet industry data developed by *Automotive Fleet,* a leading publisher in the field. Each year, *Automotive Fleet* publishes an annual Fact Book, which includes detailed data on a number of fleet subjects. Unfortunately, *Automotive Fleet* does not provide the specific data necessary to support today's draft determination (namely the likely number of AFVs that would need to be acquired by fleets meeting EPAct 1992's coverage criteria). Therefore the Fact Book data was used as a starting point, with other information (such as from the EIA Annual Energy Outlook) and various assumptions used to further refine the data to move closer to the specific types of numbers required for today's action.

For the purpose of today's notice, two analyses were conducted in order to determine what portion of U.S. motor fuel use might be replaced with replacement fuels by vehicle acquisitions resulting from a potential fleet rule. The first method compares annual acquisitions under a potential rule to the total annual U.S. acquisitions. The second method of analysis compares vehicles in operation due to a potential rule to all vehicles in operation. Both methods were used as analogs to determine the overall percentage replacement of U.S. motor fuel use.

According to the 2005 Fact Book (which reports data for 2004), fleets in the United States acquired 2,849,837 light-duty vehicles (cars and light trucks), of which 1,944,581 (68.2 percent) were acquired for rental fleets. Since rental vehicles are specifically excluded from coverage under EPAct 1992 section 301(9) (42 U.S.C. 13211(9)), the remaining potentially covered vehicle acquisitions drop to 905,256 vehicles. Note that this does not exclude any leased vehicles, of which the Fact Book indicates there were another 326,832 acquired in 2004. Many of these may ultimately be excluded as perhaps either shorter term leases or vehicles specifically held for lease to others (another excluded class). Since there is no way to determine which portion of these leased vehicles would most likely be excluded, the DOE chose to rely on the 905,256 value as the number of vehicles purchased by fleets that would potentially be subject to a Private and Local Government Fleet Requirement.

Next, the current annual acquisitions of vehicles already subject to EPAct 1992 fleet requirements needed to be subtracted. Data was obtained from the Department's EPAct 1992 Web sites, at *http://www.eere.energy.gov/vehiclesandfuels/epact/*. For Federal Fleets, there were 18,426 covered light-duty vehicles

[3] ORNL.TM2000/168) (September 17, 2000) *http://pzl1.ed.ornl.gov/tafv99report31a_ornltm.pdf.*

acquired in 2004. For State and Alternative Fuel Provider Fleets, there were 13,374 covered light-duty vehicles acquired. Thus, the remaining number of potentially covered acquisitions drops to 873,456.

In 2004, a total of 16,537,440 light-duty vehicles were acquired throughout the United States. This means that the maximum potential pool of covered light-duty vehicles under a Private and Local Fleet Requirement would represent 5.3 percent of total acquisitions for the year. Because the maximum acquisition requirement percentage under the potential Private and Local Government Fleet Rule is 70 percent (42 U.S.C. 13257(g)), the maximum potential number of AFVs that would need to be acquired on an annual basis would be 611,419. This number represents approximately 3.7 percent of all light-duty vehicles acquired in the United States.

DOE's experience, however, is that the maximum potential number of required acquisitions is quite different from the actual number of required acquisitions. This is because section 301(9) includes several basic requirements for coverage of a fleet's acquisitions. (42 U.S.C. 13211(9)) First, the fleet must be owned or controlled by an entity that owns at least 50 light-duty vehicles nationwide, of which 20 must reside in one of the 125 covered Metropolitan Statistical Areas (MSAs, with 1980 population of more than 250,000) and are centrally fueled or capable of being centrally fueled. (42 U.S.C. 13211(9)).

In arriving at the 50 and 20 light-duty vehicle minimums, several classes of vehicles are excluded from consideration, including emergency and law enforcement vehicles (42 U.S.C. 13211(9)(D) and (E), vehicles taken home at night by employees (42 U.S.C. 13211(9)(H)), and non-road vehicles (42 U.S.C. 13211(9)(G)). With these exclusions the number of potentially required AFV acquisitions drops even further. For example, if just the 2004 acquisitions of Ford Crown Victorias and Chevy Impalas are reviewed, the non-rental numbers acquired for commercial and government fleets totals nearly 90,000 vehicles (according to the 2005 Fact Book). These two vehicles are often acquired for use as police vehicles, or else taxicabs (a class of vehicles whose status under the program is undetermined for this analysis and for which many might not ultimately be covered due to fleet size, location, or other reasons).

Based on DOE's experience with the Federal, State, and Alternative Fuel Provider Fleet requirements and the vehicle classes excluded from consideration by EPAct 1992, DOE considered two scenarios for this analysis, one where 50 percent of the maximum potential annual acquisitions are required (305,710 AFVs), and one (considered much more likely) where 25 percent of the maximum potential annual acquisitions are required (152,855 AFVs). These two scenarios thus represent 1.8 and 0.9 percent, respectively, of overall annual light-duty acquisitions.

So the net result of this portion of the analysis is that a fleet rule could result in requirements to acquire between 150,000 and just over 600,000 AFVs each year, representing between approximately 1 to 3.7 percent of total annual light-duty vehicle acquisitions, based on 2004 data. This portion of the annual acquisition analysis is summarized below in Figure 1.

FIGURE 1.—SUMMARY OF ANNUAL ACQUISITION ANALYSIS, FLEET VEHICLES

Total New Cars and Trucks Registered by Fleets in 2004	2,849,837
Total New Cars and Trucks Registered by Rental Fleets in 2004	1,944,581
Percentage in Rental Fleets	[1] 68.2
Remainder of New Cars and Trucks, not in Rental Fleets 2004	905,256
New Covered LDV acquisitions in 2004, Federal Fleet	18,426
New Covered LDV acquisitions in 2004, State and Fuel Provider Fleets	13,374
Net New Cars/Truck Registered, not in Fleets Already Covered	873,456
Total New LDV Registrations, 2004	16,537,440
Max Potential Portion of 2004 Fleet acquisitions covered out of total registrations	5.3%
EPAct 1992 Maximum Acquisition Requirement	70%
Max Potential AFV Acquisitions per year, numbers of AFVs required	611,419
Max Potential AFV Acquisitions per year, percentage of total acquisitions	3.7%
If 50% of maximum potential actually covered, number of AFVs required	305,710
If 50% of maximum potential actually covered, percentage of total acquisitions	1.8%
If 25% of maximum potential actually covered, number of AFVs required	152,855
If 25% of maximum potential actually covered, percentage of total acquisitions	0.9%

The analysis above is in the context of light-duty vehicles and would represent between one and 3.7 percent of motor fuel consumption by light-duty vehicles. For the purpose of section 507(e)(1)(B), DOE must evaluate the potential contribution of a Private and Local Government Fleet Requirement to the Replacement Fuel Goal. (42 U.S.C. 13257(e)(1)(B)) The Replacement Fuel Goal is in terms of motor fuel consumption, including consumption from medium- and heavy-duty vehicles. As indicated in the Energy Information Administration's Annual Energy Outlook 2007 (AEO 2007), light-duty vehicles only account for 75.22 percent of on-road motor fuel use in the U.S., with the remainder consumed by medium- and heavy-duty classes, neither of which is covered by the Private and Local Government Fleet Requirement. In terms of total motor fuel consumption, the contribution of the potential AFV acquisitions under a Private and Local Government Fleet Requirement must be adjusted down to 0.7 to 2.8 percent.

The expected contribution of AFVs acquired under a Private and Local Government Fleet to alternative fuel consumption must be further adjusted. As explained above, EPAct 1992 does not allow DOE to require alternative fuel use in the required AFVs, the potential consumption values represent the portion of petroleum consumption replaced at an alternative fuel use level of 100 percent. Experience with programs for which fuel use is not required (such as the State Fleet Program) indicates that the assumption of 100 percent alternative fuel use is not realistic. DOE has seen alternative fuel usage levels as low as 10 percent.

For the purposes of this analysis, DOE looked at cases where alternative fuels were used 50, 25, and 10 percent of the time in the potentially required AFVs. These results yielded percentages of overall motor fuel consumption replaced of 0.1 to 1.4 percent, with the high value represented by the maximum potential case (already identified as

overly optimistic) with a 50 percent alternative fuel use level. Thus, the likely range of consumption replaced is better represented by the 25 and 50 percent of maximum potential acquisition cases, which ranged from 0.1 to 0.7 percent.

The summary for this portion of the analysis is shown in Figure 2, where the shaded zone represents the more likely range of results.

FIGURE 2.—SUMMARY OF ANNUAL ACQUISITION ANALYSIS, PORTION OF OVERALL MOTOR FUEL CONSUMPTION

	Maximum potential acquisitions (percent)	50% of maximum potential acquisitions (percent)	25% of maximum potential acquisitions (percent)
AFVs Required, Percentage of Total LDVs	3.7	1.8	0.9
Portion of Total Motor Fuel Use Due to LDVs	75.22	75.22	75.22
Potential Maximum Consumption Percentage for Required AFVs (*100% Alternative Fuel Use*)	2.8	1.4	0.7
Potential Consumption Percentage for Required AFVs (*50% Alternative Fuel Use*)	1.4	0.7	0.3
Potential Maximum Consumption Percentage for Required AFVs (*25% Alternative Fuel Use*)	0.7	0.3	0.2
Potential Maximum Consumption Percentage for Required AFVs (*10% Alternative Fuel Use*)	0.3	0.1	0.1

It should be noted that this likely range of consumption replacement under the potential rule, 0.1 to 0.7 percent, is very close to that predicted by the TAFV report in 2000 (0.2 to 0.8 percent).

The second analysis, as indicated above, sought to use the portion of the in-use inventory of vehicles on the road in the U.S. that were represented by the cumulative numbers of AFVs acquired under the potential rule as a way to determine the portion of overall motor fuel use replaced. This case then assumes that once the program reaches the maximum acquisition requirement (70 percent), and levels off, that all relationships between the consumption of the required AFVs and the overall on-road fleet are relatively unchanged over time. It also explicitly assumes that the AFVs acquired under this potential rule use the same amount of fuel, on average, as all other light-duty vehicles in operation in the United States.

This second analysis, therefore, uses the annual AFV acquisition requirements identified in the first analysis, ranging from just over 150,000 AFVs/year (25 percent of maximum potential acquisitions covered) to just over 610,000 AFVs/year (for maximum potential acquisitions covered). The 2004 Fact Book identifies that the average amount of time a light-duty vehicle stays in a fleet ranges from 31 to 56 months depending on model type, or just a bit less than five years. Therefore, in order to provide an estimate of the maximum portion of the on-road fleet that could be AFVs due to the potential rule, the DOE chose to use a five-year period for AFVs to operate in the covered fleets. DOE requests comment on use of a five-year period, and requests comment on the use of alternative fuels in AFVs after they leave a covered fleet.

The approach taken was to develop the percentage of the on-road vehicles in the United States that would be AFVs, once the potential Private and Local Government Fleet Requirements reached maximum, steady-state requirements. (Under section 507(g), the requirements actually include a ramp-up of the AFV acquisition requirements, starting at 20 percent and rising to 70 percent. (42 U.S.C. 13257(g))). This steady-state, maximum case status, therefore, would be determined by looking at the portion of the on-road fleet that would be AFVs based upon five years of acquisitions of the AFVs required under the program. For the maximum potential case, this meant roughly three million AFVs, while for the 50 percent and 25 percent of maximum potential cases this meant 1.5 million and 760,000 AFVs, respectively. Since AEO2007 identified the on-road inventory of light-duty vehicles in the United States in 2004 as just over 215 million vehicles, this means that the AFVs under this program would represent 0.4 to 1.4 percent of all light-duty vehicles on the road in the United States.

But, as indicated in the first (annual acquisition) analysis above, light-duty vehicles only represent approximately 75 percent of U.S. motor fuel use. Therefore, even if everything else is equal concerning consumption patterns, the percentage of all light-duty vehicles that the AFVs under the potential program represent must be adjusted before identifying the likely replacement of petroleum consumption. Thus, if these AFVs are assumed to use alternative fuels one hundred percent of the time, the maximum replacement of petroleum due to these vehicles ranges from 0.3 to 1.1 percent.

There is, however, one final adjustment that needs to be made. Just as in the first analysis, it must be noted that DOE cannot mandate alternative fuel use in these vehicles. To account for less than complete alternative fuel use, DOE further adjusted the analysis, developing estimates for alternative fuel use from ten to fifty percent of the time. Thus, the more likely contribution from the potential fleet rule ranged from 0.03 to 0.3 percent. Figure 3 summarizes these results.

FIGURE 3.—SUMMARY OF CUMULATIVE ANALYSIS

	Maximum potential acquisitions	50% of maximum potential acquisitions	25% of maximum potential acquisitions
AFVs Required Annually	611,419	305,710	152,855
AFVs Added to Fleet over Five Years, at Maximum Fleet Requirement (70%)	3,057,096	1,528,548	764,274
Total Number of Light-Duty Vehicles in Operation in the United States, 2004	215,370,000	215,370,000	215,370,000
Maximum Portion of On-Road LDV Fleet that are AFVs in this Program	[1] 1.4	[1] 0.7	[1] 0.4
Portion of U.S. Motor Fuel Use from Light-Duty Vehicles	75.22%	[1] 75.22	75.22%

FIGURE 3.—SUMMARY OF CUMULATIVE ANALYSIS—Continued

	Maximum potential acquisitions	50% of maximum potential acquisitions	25% of maximum potential acquisitions
Potential Maximum Consumption Percentage for Required AFVs (*100% Alternative Fuel Use*)	[1] 1.1	[1] 0.5	[1] 0.3
Potential Consumption Percentage for Required AFVs (*50% Alternative Fuel Use*)	[1] 0.53	[1] 0.27	[1] 0.13
Potential Maximum Consumption Percentage for Required AFVs (*25% Alternative Fuel Use*)	[1] 0.27	[1] 0.13	[1] 0.07
Potential Maximum Consumption Percentage for Required AFVs (*10% Alternative Fuel Use*)	[1] 0.11	[1] 0.05	[1] 0.03

[1]Percent.

In summary, the updated analysis conducted for today's action does not appear to change significantly from those analyses relied upon for the previous private and local fleet determination. Under either updated analysis approach used now, the potential contribution from a Private and Local Government Fleet rule appears to be far below one percent, probably on the order of 0.2–0.3 percent, similar to the levels identified in the 2003–2004 determination. Therefore no further analyses were deemed necessary by DOE.

V. Proposed Determination

In the Replacement Fuel Goal rulemaking, DOE demonstrated how the modified goal could be achieved through a number of replacement fuel technologies, including biofuels, other alternative fuels, and energy efficiency. In setting the new goal, DOE did not assume imposition of a Private and Local Government Fleet Requirement. Indeed, given the number of years between now and 2030, and the fact that even if DOE were to establish a Private and Local Government Fleet Requirement, the overall projected impact would likely be on the order of about 0.2 percent, DOE believes there is no basis for finding that such a requirement is ''necessary.''

Therefore, DOE has tentatively determined that the Private and Local Government Fleet Requirement is not ''necessary'' as specified in section 507(e)(1) of EPAct 1992, and DOE is not proposing to establish a Private and Local Fleet Requirement.

VI. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments with respect to the subject set forth in this notice and the proposals made by DOE. DOE encourages the maximum level of public participation possible in this proceeding. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, States or other government entities, and others are urged to submit written comments on the proposal. DOE also encourages interested persons to participate in the public hearing announced at the beginning of this notice. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Alternative Fuel Transportation Program: Private and Local Government Fleet Determination, NOPR, RIN 1904–AB69'' and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit written comments and cannot provide eight copies, alternative arrangements can be made in advance by calling Mr. Dana O'Hara at (202) 586–9171. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. Electronic copies should be e-mailed to *regulatory_info@afdc.nrel.gov*. DOE is currently using Microsoft Word.

All comments received on or before the date specified at the beginning of this notice of proposed rulemaking and other relevant information will be considered by DOE before final action is taken on the proposal. All comments submitted will be made available in the electronic docket set up for this rulemaking. This docket will be available on the World Wide Web at the following address—*http://www1.eere.energy.gov/vehiclesandfuels/epact/private/index.html.* Pursuant to the provisions of 10 CFR 1004.1, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as seven (7) copies, if possible, from which the information has been deleted. DOE will make a determination as to the confidentiality of the information and treat it accordingly.

C. Public Hearing Procedures

The time and place of the public hearing are set forth at the beginning of this notice. DOE invites any person who has an interest in this proceeding, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and should be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where he or she may be reached during the day. Each person selected to speak at the public hearing will be notified as to the approximate time that he or she will be speaking. A person wishing to speak should bring ten copies of his or her statement to the hearing. In the event any person wishing to speak at the hearing cannot meet this requirement, alternative arrangements can be made in advance by calling Mr. Dana O'Hara, at (202) 586–9171.

DOE reserves the right to select persons to be heard at the hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act. (42 U.S.C. 7191) At

the conclusion of all initial oral statements, each person may, if time allows, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. The hearing may be canceled in the event no public testimony has been scheduled in advance.

VII. Regulatory Review

A. Review Under Executive Order 12866

This proposed regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review. 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). A draft of today's action and any other documents submitted to OIRA for review are a part of the rulemaking record and are available for public review as provided in the **ADDRESSES** section of this notice of proposed rulemaking.

B. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The proposed negative determination under EPAct 1992 section 507(e) would not result in compliance costs on small entities. Therefore, DOE certifies that today's proposed determination will not have a significant economic impact on a substantial number of small entities, and accordingly, no initial regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

Because DOE has proposed not to promulgate requirements for private and local government fleets, no new recordkeeping requirements, subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, would be imposed by today's regulatory action.

D. Review Under the National Environmental Policy Act of 1969 (NEPA)

DOE has not prepared an environmental impact statement (EIS) or an environmental assessment (EA) for this rulemaking, and has tentatively determined that neither is required. This notice implements the March 6, 2006, Order of the U.S. District Court of California to issue a proposed determination under section 507(e) of EPAct 1992. *Center for Biological Diversity,* 419 F.Supp 2d 1166. The Court order held that the Secretary is not ''obligated to prepare an impact statement under NEPA in either accepting or rejecting a fleet rule.'' *Id.* at 1173.

EPAct 1992 requires DOE to issue a Private and Local Government Fleet Requirement if such a requirement is necessary. (42 U.S.C. 13257(e)) Today's notice tentatively determines that a Private and Local Government Fleet Requirement is not necessary, and therefore DOE is not proposing a requirement. Once the Secretary has made the determination, the Secretary has no discretion as whether to issue the requirement. *See Center for Biological Diversity,* 419 F.Supp. 2d 1166, 1173.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive Agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. Executive Order 12988 does not apply to this rulemaking notice because DOE is not proposing any regulations and instead is proposing to determine that regulations are not ''necessary'' under section 507(e) of EPAct 1992.

F. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed determination and has determined that it 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.

Because DOE is proposing to determine that a private and local government fleet AFV program is not ''necessary'' under section 507(e) and therefore is not proposing the promulgation of such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPAct 1992 fleet program is unchanged by this action.

G. Review of Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published in the **Federal Register** a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). Today's notice does not propose or contain any Federal mandate, so the requirements of the

Unfunded Mandates Reform Act do not apply.

H. Review of Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's notice of proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review of Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not ''necessary'' under EPAct 1992 section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's proposed negative determination is a significant regulatory action, if finalized the determination is not expected to have a significant adverse impact on the supply, distribution, or use of energy.

K. Review Under Executive Order 13432

Executive Order 13432, Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines, 72 FR 27717 (May 16, 2007) requires DOE to work with DOT and EPA when conducting rulemakings that could be considered to affect emissions. In particular, this Executive Order requires that ''the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall'' conduct the rulemaking jointly with other agencies, to the extent permitted by law; consider, as appropriate, laws, information, and recommendations of the other agencies; exercise the agency's authority effectively; and obtain concurrence or other views by the other agencies throughout the rulemaking process. In meeting this requirement, the Department has consulted with both the Department of Transportation and the Environmental Protection Agency throughout development of this proposed determination.

VIII. Approval by the Office of the Secretary

The issuance of the proposed determination for the Private and Local Government Fleet Determination has been approved by the Office of the Secretary.

Issued in Washington, DC, on September 6, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–18153 Filed 9–13–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1017

RIN 1992–AA35

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes to amend regulations that prohibit the unauthorized dissemination of certain unclassified but sensitive information identified as Unclassified Controlled Nuclear Information (UCNI). DOE is amending these regulations to clarify the types of information that may be identified as UCNI to prevent overly-broad application of UCNI controls and to streamline the UCNI program by simplifying the process for identifying information as UCNI.

DATES: Written comments (7 copies) may be submitted on or before November 13, 2007. A public hearing will be held in Washington, DC, on October 29, 2007. Requests to speak at the hearing must be received by October 22, 2007.

ADDRESSES: You may submit comments and requests to speak at the hearing, identified by RIN 1992–AA35, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: emily.puhl@hq.doe.gov. Include RIN 1992–AA35 in the subject line of the message.

Fax: (301) 903–1230.

Mail: Emily A. Puhl, Department of Energy, Office of Classification, HS–91/Germantown Building, 1000 Independence Ave., SW., Washington, DC 20585–1290.

A public hearing will be held on October 29, 2007, from 9:30 a.m. until 11:30 a.m. at the U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC, room GJ–015.

All submissions must include the agency name for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Electronic submissions are encouraged.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Prospero, Office of Classification, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, (301) 903–9967; Jo Ann Williams, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6899.

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Proposed Changes
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under the Treasury and General Government Appropriations Act, 2001

J. Review Under Executive Order 13211
IV. Public Comment Procedures
A. Written Comments
B. Public Hearing
V. Approval of the Office of the Secretary

I. Background

Under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), DOE is charged with the operation of programs for: (1) Research, development, testing, and production of nuclear weapons; (2) nuclear material production for defense activities; and, (3) certain defense related nuclear reactors. In 1981, Congress and DOE became increasingly concerned about the possibility of terrorist or other criminal acts directed against a Government nuclear defense activity. This concern was based, in part, on the increased incidence of acts of terrorist-inspired violence, the increased sophistication of these acts, and the increased availability of the technological resources, including information in the public domain, necessary to commit these acts.

In response to this threat, Congress, in 1982, amended the Atomic Energy Act of 1954 (hereafter ''the Act'') by adding section 148 (''Prohibition Against the Dissemination of Certain Unclassified Information''), which directed DOE to adopt regulations to safeguard certain types of unclassified but sensitive information from unauthorized dissemination in the interest of protecting both the health and safety of the public and the common defense and security of the Nation. Congress recognized that while much information concerning atomic energy defense programs was classified, a new statutory provision was necessary to protect certain sensitive information that could not be classified under statute or executive order for operational or legal reasons.

Section 148 was not without precedent. In 1980, the Congress amended the Act to add section 147. Section 147 of the Act requires the Nuclear Regulatory Commission to prohibit the unauthorized disclosure of Safeguards Information, which includes a licensee's or applicant's procedures and security measures for the protection of special nuclear material, source material, or byproduct material. Under section 147, Safeguards Information also includes security measures for the protection of and location of certain plant equipment vital to the safety of production or utilization facilities. The major purpose of section 148 is to require DOE to control similar sensitive information about its atomic energy defense programs as section 147 protects with respect to commercial and other non-DOE nuclear facilities.

Section 148 directs the Secretary of Energy (the Secretary) to prescribe regulations, after notice and opportunity for public comment, or issue orders as may be necessary to prohibit the unauthorized dissemination of certain unclassified information concerning atomic energy defense programs. This information must pertain to the following:

1. The design of production or utilization facilities;

2. Security measures (including security plans, procedures, and equipment) for the physical protection of (a) production or utilization facilities or (b) nuclear material, regardless of its physical state or form, contained in these facilities or in transit; or,

3. The design, manufacture, or utilization of nuclear weapons or components that were once classified as Restricted Data, as defined in section 11y. of the Act.

In order for the information in the above categories to be controlled under section 148, the Secretary must determine that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of: (1) The illegal production of nuclear weapons, or (2) the theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

UCNI only includes Government information that: (1) Is not classified; (2) concerns atomic energy defense programs; (3) falls within at least one of the three categories described above; (4) meets the adverse effect test described above; and (5) is not exempt from being UCNI under these regulations.

II. Description of Proposed Changes

The intent of this proposed rule is to describe more precisely the information that may be identified as UCNI. Section II.A. of this preamble describes new definitions intended to more clearly define the kind of information that may be identified as UCNI. Section II.B. discusses proposed changes intended to simplify and to streamline the UCNI program based on experience gained in the program to date. Section II.C. briefly describes a number of conforming technical changes.

A. Amendments To Clarify Information That May Be Identified as UCNI

1. New Definitions: ''Production Facility'' and ''Utilization Facility''

DOE proposes to add definitions of ''production facility'' and ''utilization facility'' to define more precisely the types of information that may be identified as UCNI. These definitions are based on sections 11.v. and 11.cc., respectively, of the Act, and include lists of specific categories of equipment and devices that are subject to UCNI controls. These proposed lists are definitive; no additions may be made to them except through the process for amending these regulations. The inclusion of these more precise definitions of ''production facility'' and ''utilization facility'' would clarify what information may be identified as UCNI. DOE emphasizes that the proposed definitions of ''production facility'' and ''utilization facility'' are intended to only apply to these proposed regulations and do not constitute a more general interpretation of these statutory terms.

The key to determining that a facility is a production or utilization facility for purposes of these proposed regulations is establishing whether the facility ever produced (in the case of a production facility) or ever used (in the case of a utilization facility) ''special nuclear material'' as defined in section 11.aa. of the Act. Production facilities include uranium enrichment activities and plutonium production reactors since both produce special nuclear material. Conversely, tritium production reactors are not considered production facilities because tritium is not a ''special nuclear material.'' However, tritium production reactors are considered utilization facilities because they use special nuclear material to make tritium. Similarly, weapons plants, such as DOE's Pantex Plant, that make use of special nuclear material to produce nuclear weapons or components are examples of utilization facilities. In contrast, weapons plants that do not make use of special nuclear material in producing nuclear weapons or components, such as the Kansas City Plant, which makes nonnuclear electronic and mechanical components, are not considered utilization facilities. In addition, special nuclear material storage facilities are not considered to be utilization facilities since storage is not considered use. Therefore, facilities such as the Yucca Mountain waste repository and the Waste Isolation Pilot Plant are not considered utilization facilities, and UCNI controls cannot apply to them.

The fact that a facility meets the definition of production or utilization facility does not mean that all information about the facility is automatically treated as UCNI. All of the criteria in proposed § 1017.7 must also be met for information to be identified as UCNI.

2. Simplification of ''Adverse Effect Test''

In order for information to be identified as UCNI, it must meet the ''adverse effect test'' described in section 148.a.(2) of the Act and the current regulations in § 1017.9. DOE is proposing to add two new definitions to the regulations (see proposed § 1017.4) that simplify the ''adverse effect test'' in order to reduce ambiguities in the UCNI determination process. The terms are ''essential technology-related information'' and ''exploitable security-related information.'' ''Essential technology-related information'' means technical information the unauthorized dissemination of which could significantly increase the likelihood of the illegal production of a nuclear weapon. ''Exploitable security-related information'' means information whose unauthorized dissemination could significantly increase the likelihood of the theft, diversion, or sabotage of nuclear material, equipment, or facilities. If information is not covered by one of these definitions, it cannot be identified as UCNI because it fails to meet the ''adverse effect test.'' Experience gained in implementing the UCNI program for over 20 years has convinced DOE that the proposed new definitions will eliminate ambiguities and promote consistency in application of the statutory criteria.

3. Clarification of the Concept of ''Widely Disseminated in the Public Domain''

DOE proposes to clarify the concept of ''widely disseminated in the public domain.'' In § 1017.6(b)(2) of the current regulations, a document that has been at any time ''widely disseminated in the public domain'' cannot be protected as UCNI. The intent of this language was to make clear that documents that were not only widely disseminated in the past, but also are currently available in the public domain cannot be protected as UCNI. However, the concept of ''widely disseminated in the public domain'' was not intended to apply to documents that were disseminated in the past but are no longer available. A document that cannot be located during a reasonable search is not considered ''widely disseminated in the public domain'' and is eligible to be protected as UCNI today. For example, a report sent to a university library in 1960 that cannot be located today at the university library or anywhere else would not be ''widely disseminated in the public domain.'' Therefore, copies of the report held by DOE may be protected as UCNI.

DOE proposes to address the concept of ''widely disseminated in the public domain'' in a new section, proposed § 1017.15 (''Review Process''), which is intended to further clarify the concept by describing more clearly the process for reviewing documents or material for UCNI in order to minimize the likelihood of UCNI controls being erroneously applied.

4. Revised Definition for ''Atomic Energy Defense Programs''

DOE proposes to revise the definition of ''atomic energy defense programs'' (see proposed § 1017.4) to more clearly reflect the statute's intent to include not only Government activities, equipment, and facilities currently engaged in support of (1) Developing, producing, testing, sampling, maintaining, repairing, modifying, assembling or disassembling, using, transporting, or retiring nuclear weapons or components of nuclear weapons, or (2) producing, using, or transporting nuclear material that could be used in nuclear weapons or military-related utilization facilities, but also those activities, equipment, and facilities that are capable of performing these activities. This amendment is necessary to protect nuclear defense activities, equipment, and facilities that are not currently being conducted or used by the U.S. Government to support nuclear weapons or components development, but that were once conducted or used in support of such programs and that could be conducted or used again in the future to support the national security. Information about activities, equipment, and facilities relating to programs that are no longer active clearly may represent a national security risk and, if so, should be protected as UCNI. For example, gaseous diffusion technology is not currently being used to enrich uranium for nuclear weapons production, yet the activities, equipment, and facilities previously involved with this technology remain sensitive because of their potential for misuse by proliferants or terrorists.

In addition, we are proposing to delete one part (subparagraph (3)) of the definition of ''atomic energy defense programs'' that concerns the ''safeguarding of activities, equipment, or facilities which support the functions in paragraphs (b)(1) and (b)(2) of this section, including the protection of nuclear weapons, components of nuclear weapons, or nuclear material for military applications at a fixed facility or in transit.'' DOE is proposing to delete this subparagraph to clarify the original intent of the definition in these regulations. In order for security measures to be identified as UCNI, they must pertain to the physical protection of production or utilization facilities, nuclear material contained in these facilities, or nuclear material in transit. In other words, the security measures must pertain to nuclear material. Because subparagraph (3) does not include this ''nuclear material'' limitation, it does not express the original intent of the definition, and we are therefore proposing to delete it.

5. Clarification of Materials That Can Be Determined To Be ''Nuclear Material''

DOE proposes to clarify what materials other than byproduct, source, or special nuclear material can be determined to be ''nuclear material.'' Under § 1017.10(a)(2)(i) of the current regulations, the Secretary may determine that specific material that ''could be used as a hazardous environmental contaminant'' is within the scope of the term ''nuclear material.'' DOE is proposing to revise this paragraph to state ''could be used as a hazardous, radioactive environmental contaminant'' in order to clarify the intent of this section. Adding ''radioactive'' would ensure that only materials capable of releasing hazardous radioactivity could be determined to be ''nuclear material.''

B. Changes Made To Simplify and Streamline the UCNI Program

1. Designated Officials

DOE proposes to delete the position of ''Controlling Official'' described in the current regulations in § 1017.3(e) and § 1017.7(a) to simplify the UCNI review process by removing a concept that has often led to confusion and uncertainty. In the current regulations, the Controlling Official is responsible for applying control criteria (i.e., the adverse effect test) to information and using the results of the ''test'' to develop UCNI guidance, whereas the Reviewing Official is responsible for following instructions in UCNI guidance. This division in responsibilities has led to confusion in implementation over the past 20 years, with the most common error being that Reviewing Officials have attempted to apply the ''adverse effect test'' during review of a document rather than simply following instructions in UCNI guidance. Deleting the concept of Controlling Official

would limit the application of the ''adverse effect test'' to the Secretary or his or her designee, which would remove any confusion in roles and improve the UCNI review process.

In addition, DOE proposes to amend the definition of Denying Official to include a reference to DOE's Freedom of Information Act regulations at 10 CFR part 1004. This amendment would clarify under what authority a Denying Official is empowered to withhold information from the public.

2. Routine Access

DOE proposes to revise current § 1017.16 to remove redundancies in the eligibility requirements for routine access to UCNI. No substantive changes would be made to this section.

3. Limited Access

A definition of ''limited access'' is proposed to be added to proposed § 1017.4. The same concept appears in the current regulations in § 1017.16(b) but is identified as ''special access'' to UCNI. The new term more accurately conveys that this form of access has more restrictions than does routine access to UCNI.

4. Requesting a Deviation

A new § 1017.5 is proposed to establish a process for requesting a deviation for any requirements in these regulations.

5. Subject Areas Eligible To Be UCNI

DOE proposes to revise § 1017.8 to delete extraneous language; no substantive changes would be made.

6. Information Exempt From Being UCNI

Current § 1017.6, Exemptions, would be revised to delete exemptions that are redundant or that are no longer necessary. DOE proposes to delete existing § 1017.6 subparagraphs (a)(1) (non-Government information) and (a)(2) (non-atomic energy defense programs) because these exemptions are covered in the criteria for information to be identified as UCNI in proposed § 1017.7. DOE proposes to delete Restricted Data, Formerly Restricted Data, and National Security Information from current § 1017.6 subparagraph (a)(3) because these are categories of classified information and as such are excluded from being identified as UCNI because only unclassified information may be UCNI. DOE proposes to delete subparagraphs (a)(5), (a)(6), (a)(8), and (a)(10) of current § 1017.6 because the proposed new definitions of ''production facility'' and ''utilization facility'' provide explicit language that eliminates ambiguity in these exemptions.

7. Review Process for Documents

Although the procedure for reviewing documents for UCNI would not substantively change, DOE is proposing to clarify the review process currently described in § 1017.12 by adding a new § 1017.15. The proposed language would emphasize that reviewing documents to identify UCNI begins with the Reviewing Official determining whether the document is ''widely disseminated in the public domain.'' This is an essential part of the review process because documents determined to be ''widely disseminated in the public domain'' cannot be protected as UCNI. The current regulations do not explain this clearly. Proposed § 1017.15 also contains a paragraph that exempts documents already in files from requiring review and clarifies how these documents are to be handled.

8. UCNI Markings on Documents or Material

DOE proposes to revise § 1017.15 to clarify the marking procedures for documents and material. Proposed § 1017.16 would add a requirement for separate front markings and page markings. Proposed § 1017.16 would also prohibit the marking of classified documents as UCNI. Finally, proposed § 1017.16 would prohibit the use of the ''May Contain UCNI'' marking. Although originally intended to protect documents that were likely to contain UCNI pending their transmittal to a Reviewing Official for a determination, a lack of understanding has led to widespread misuse of the stamp.

9. Determining That a Document or Material No Longer Contains or Does Not Contain UCNI

DOE proposes to add a new § 1017.17 to address how Reviewing and Denying Officials should handle documents or material that, after review, are determined no longer to contain or not to contain UCNI. A new stamp with the marking, ''Does Not Contain UCNI,'' is being proposed for use in these situations.

10. Enforcement of Civil Penalty Provisions

DOE proposes to revise the civil penalty enforcement provisions in the current regulations to achieve greater consistency with procedures in other DOE civil penalty enforcement regimes, particularly those related to violations of classified information protection requirements. DOE issued ''Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations'' (10 CFR part 824) (70 F.R. 3599, January 26, 2005), to implement section 234B of the Act. To the extent appropriate, the procedures proposed today adopt the procedures in 10 CFR part 824.

C. Technical Changes

DOE proposes a number of technical changes to the present regulations to reflect, among other matters, DOE organizational changes and minor changes in Federal Government procedures.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this notice of proposed rulemaking was not subject to review by OMB under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.* DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

Today's proposed rule would amend DOE's policies and procedures regarding UCNI. The rule, if promulgated, will apply to all agencies, persons, and entities that generate and maintain UCNI documents or material. The Department estimates that fewer than five Federal Government entities have access to UCNI documents or material. Each of these Government entities may, in turn, have contractors or consultants who have access to UCNI documents or material.

Section 1017.14 would impose on Government and non-Government entities the requirement that persons who review documents for UCNI be properly trained and certified. The economic impact of the training requirement on non-Government entities would be limited to the labor hours required to familiarize those persons reviewing documents for UCNI with the training materials provided by DOE.

Section 1017.16 would require that Government and non-Government Reviewing Officials clearly mark or authorize the marking of a new document or material to convey that it contains UCNI. The burden of the marking requirement would vary depending on the number of documents or amount of material the entity generates. DOE considers the proper marking of a controlled document to be an act integrated in the act of creating the document. As such, the marking of documents or material containing UCNI imposes minimal costs on the entity generating new UCNI documents or material.

DOE recognizes that in most cases non-Government entities that generate documents or material containing UCNI will do so pursuant to a Government contract. In such cases, any costs incurred in compliance with these regulations will be charged back to the Government. Infrequently, DOE may enter into an agreement (e.g., a Cooperative Research and Development Agreement) with a non-Government entity in which DOE provides UCNI to the entity without any vehicle for reimbursement by the Government for increased security costs. However, since UCNI is protected in a manner similar to how a company protects proprietary or employees' personal information, the incremental cost of protecting UCNI would be negligible. In these cases, this rule would have only a minor economic impact on very few small entities.

On the basis of the foregoing, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a written assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2. U.S.C. 1534.

The proposed rule would not impose a Federal mandate on State, local and tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it

is not necessary to prepare a Family Policymaking Assessment.

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

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed amendments to these regulations set forth in this notice. Written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking will be assessed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information and to treat it in accordance with its determination. See 10 CFR 1004.11.

B. Public Hearing

Requests to speak at the hearing must be submitted to the address and by the date indicated in the **DATES** section of this notice of proposed rulemaking. Requests for oral presentations should contain a telephone number where the requester may be contacted prior to the hearing. Speakers are requested to submit copies of their statement to DOE at the hearings.

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to fifteen minutes. The hearing will begin at 9:30 a.m. A DOE official will be designated to preside at the hearing. It will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room. Transcripts may be purchased from the hearing transcriber/reporter.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of today's proposed rule.

List of Subjects in 10 CFR Part 1017

Administrative practice and procedure, Government contracts, Nuclear energy, Penalties, Security measures.

Issued in Washington, DC on September 7, 2007.

Glenn Podonsky,

Office of Health, Safety and Security.

For the reasons set out in the preamble, DOE proposes to revise part 1017 of Chapter X of Title 10 of the Code of Federal Regulations to read as follows:

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

Subpart A—General Overview

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1017.1 Purpose and scope.
1017.2 Applicability.
1017.3 Policy.
1017.4 Definitions.
1017.5 Requesting a deviation.

Subpart B—Initially Determining What Information Is Unclassified Controlled Nuclear Information

1017.6 Authority.
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1017.10 Adverse effect test.
1017.11 Information exempt from being Unclassified Controlled Nuclear Information.
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1017.14 Designated officials.
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Subpart D—Access to Unclassified Controlled Nuclear Information

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Subpart E—Physical Protection Requirements

1017.22 Notification of protection requirements.
1017.23 Protection in use.
1017.24 Storage.
1017.25 Reproduction.
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1017.27 Transmission.
1017.28 Processing on Automated Information Systems (AIS).

Subpart F—Violations

1017.29 Civil penalty.

1017.30 Criminal penalty.

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2168; 28 U.S.C. 2461.

Subpart A—General Overview

§ 1017.1 Purpose and scope.

(a) This part implements section 148 of the Atomic Energy Act (42 U.S.C. 2168) which prohibits the unauthorized dissemination of certain unclassified Government information. This information identified by the term ''Unclassified Controlled Nuclear Information'' (UCNI) consists of certain design and security information concerning nuclear facilities, nuclear materials, and nuclear weapons.

(b) This part:

(1) Provides for the review of information prior to its designation as UCNI;

(2) Describes how information is determined to be UCNI;

(3) Establishes minimum physical protection standards for documents and material containing UCNI;

(4) Specifies who may have access to UCNI; and,

(5) Establishes a procedure for the imposition of penalties on persons who violate section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations.

(c) This part does not apply to information controlled under 10 U.S.C. 128 by the Department of Defense.

§ 1017.2 Applicability.

This part applies to any person who is or was authorized access to UCNI, requires authorized access to UCNI, or attempts to gain or gains unauthorized access to UCNI.

§ 1017.3 Policy.

The Department of Energy (DOE) strives to make information publicly available to the fullest extent possible. Therefore, this part must be interpreted and implemented to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security consistent with the requirement in section 148 of the Atomic Energy Act to prohibit the unauthorized dissemination of UCNI.

§ 1017.4 Definitions.

As used in this part:

Atomic Energy Act means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

Atomic energy defense programs means Government activities, equipment, and facilities that are capable of:

(1) Developing, producing, testing, sampling, maintaining, repairing, modifying, assembling or disassembling, using, transporting, or retiring nuclear weapons or components of nuclear weapons; or

(2) Producing, using, or transporting nuclear material that could be used in nuclear weapons or military-related utilization facilities.

Authorized Individual means a person who has routine access to UCNI under § 1017.20.

Component means any operational, experimental, or research-related part, subsection, design, or material used in the manufacture or utilization of a nuclear weapon, nuclear explosive device, or nuclear weapon test assembly.

Denying Official means a DOE official designated under 10 CFR 1004.2(b) who is authorized to deny a request for unclassified information that is exempt from release when requested under the Freedom of Information Act (FOIA).

Director means the DOE Official, or his or her designee, to whom the Secretary has assigned responsibility for enforcement of this part.

Document means the physical medium on or in which information is recorded, regardless of its physical form or characteristics.

DOE means the United States Department of Energy, including the National Nuclear Security Administration (NNSA).

Essential technology-related information means technical information whose unauthorized dissemination could significantly increase the likelihood of the illegal production of a nuclear weapon.

Exploitable security-related information means information whose unauthorized dissemination could significantly increase the likelihood of the theft, diversion, or sabotage of nuclear material, equipment, or facilities.

Government means the Executive Branch of the United States Government.

Government information means any fact or concept, regardless of its physical form or characteristics, that is owned by, produced by or for, or otherwise controlled by the United States Government, including such facts or concepts that are provided by the Government to any person, including persons who are not employees of the Government.

Guidance means detailed written instructions that describe decisions made by the Secretary or his/her designee issued under Subpart B of these regulations concerning what specific information is UCNI.

Illegal production means the production or manufacture of a nuclear weapon in violation of either domestic (e.g., the Atomic Energy Act) or international (e.g., the Treaty on the Non-Proliferation of Nuclear Weapons) law.

In transit means the physical movement of a nuclear weapon, a component of a nuclear weapon containing nuclear material, or nuclear material from one part to another part of a facility or from one facility to another facility. An item is considered ''in transit'' until it has been relinquished to the custody of the authorized recipient and is in storage at its ultimate destination. An item in temporary storage pending shipment to its ultimate destination is ''in transit.''

Limited access means access to specific UCNI granted by the cognizant DOE Program Secretarial Officer or a Deputy Administrator of the NNSA to an individual not eligible for routine access (see § 1017.21).

Material means a product (*e.g.*, a part or a machine) or substance (*e.g.*, a compound or an alloy), regardless of its physical form or characteristics.

Need to know means a determination made by an Authorized Individual that a person requires access to specific UCNI to perform official duties or other Government-authorized activities.

Nuclear material means special nuclear material, byproduct material, or source material as defined by sections 11.aa., 11.e., and 11.z., respectively, of the Atomic Energy Act (42 U.S.C. 2014 aa., e., and z), or any other material used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons that the Secretary determines to be nuclear material under § 1017.9(a).

Nuclear weapon means atomic weapon as defined in section 11.d. of the Atomic Energy Act (42 U.S.C. 2014 d).

Person means any person as defined in section 11.s. of the Atomic Energy Act (42 U.S.C. 2014 s) or any affiliate or parent corporation thereof.

Production facility means:

(1) Any equipment or device capable of producing special nuclear material in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public; or

(2) Any important component part especially designed for such equipment or device.

(3) For the purposes of this part, equipment and devices described in

paragraphs (1) and (2) of this definition include only:

(i) Government uranium isotope enrichment equipment or devices and any other uranium isotope enrichment equipment or devices that use related technology provided by the Government; or

(ii) Government plutonium production reactors, isotope enrichment equipment or devices, and separation and purification equipment or devices and other such equipment or devices that use related technology provided by the Government.

Reviewing Official means an individual authorized under § 1017.14(a) to make a determination, based on guidance, that a document or material contains UCNI.

Routine access means access to UCNI granted by an Authorized Individual to an individual eligible to receive UCNI under § 1017.20 in order to perform official duties or other Government-authorized activities.

Secretary means the Secretary of Energy.

Unauthorized dissemination means the intentional or negligent transfer of UCNI documents or material to any person other than an Authorized Individual or a person granted limited access to UCNI under § 1017.21.

Unclassified Controlled Nuclear Information or UCNI means certain unclassified Government information concerning nuclear facilities, materials, weapons, and components whose dissemination is controlled under section 148 of the Atomic Energy Act and this part.

Utilization facility means:

(1) Any equipment or device, or any important component part especially designed for such equipment or device, except for a nuclear weapon, that is capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public. For the purposes of this part, such equipment or devices include only Government equipment or devices that use special nuclear material in the research, development, production, or testing of nuclear weapons, nuclear weapon components, or nuclear material capable of being used in nuclear weapons; or

(2) Any equipment or device, or any important component part especially designed for such equipment or device, except for a nuclear weapon, that is peculiarly adapted for making use of nuclear energy in such quantity as to be of significance to the common defense and security or in such manner as to affect the health and safety of the public. For the purposes of this part, such equipment or devices include only:

(i) Naval propulsion reactors;

(ii) Military reactors and power sources that use special nuclear material;

(iii) Tritium production reactors; and,

(iv) Government research reactors.

§ 1017.5 Requesting a deviation.

(a) Any person may request a deviation, or condition that diverges from the norm and that is categorized as:

(1) A variance (*i.e.*, an approved condition that technically varies from a requirement in these regulations);

(2) A waiver (i.e., an approved nonstandard condition that deviates from a requirement in these regulations and which, if uncompensated, would create a potential or real vulnerability); or

(3) An exception (i.e., an approved deviation from a requirement in these regulations for which DOE accepts the risk of a safeguards and security vulnerability) according to the degree of risk involved.

(b) In writing, the person must:

(1) Identify the specific requirement for which the deviation is being requested;

(2) Explain why the deviation is needed; and,

(3) If appropriate, describe the alternate or equivalent means for meeting the requirement.

(c) DOE employees must submit such requests according to internal directives. DOE contractors must submit such requests according to directives incorporated into their contracts. Other individuals must submit such requests to the Office of Classification, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290. The Office of Classification's decision must be made within 30 days.

Subpart B—Initially Determining What Information Is Unclassified Controlled Nuclear Information

§ 1017.6 Authority.

The Secretary, or his or her designee, determines whether information is UCNI. These determinations are incorporated into guidance that each Reviewing Official and Denying Official consults in his or her review of a document or material to decide whether the document or material contains UCNI.

§ 1017.7 Criteria.

To be identified as UCNI, the information must meet each of the following criteria:

(a) The information must be Government information as defined in § 1017.4;

(b) The information must concern atomic energy defense programs as defined in § 1017.4;

(c) The information must fall within the scope of at least one of the three subject areas eligible to be UCNI in § 1017.8;

(d) The information must meet the adverse effect test described in § 1017.10; and

(e) The information must not be exempt from being UCNI under § 1017.11.

§ 1017.8 Subject areas eligible to be Unclassified Controlled Nuclear Information.

To be eligible for identification as UCNI, information must concern at least one of the following categories:

(a) The design of production or utilization facilities;

(b) Security measures (including security plans, procedures, and equipment) for the physical protection of production or utilization facilities or nuclear material, regardless of its physical state or form, contained in these facilities or in transit; or

(c) The design, manufacture, or utilization of nuclear weapons or components that were once classified as Restricted Data, as defined in section 11y. of the Atomic Energy Act.

§ 1017.9 Nuclear material determinations.

(a) The Secretary may determine that a material other than special nuclear material, byproduct material, or source material as defined by the Atomic Energy Act is included within the scope of the term ''nuclear material'' if it meets the following criteria:

(1) The material is used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons; and

(2) Unauthorized acquisition of the material could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security because the specific material:

(i) Could be used as a hazardous radioactive environmental contaminant; or

(ii) Could be of significant assistance in the illegal production of a nuclear weapon.

(b) Designation of a material as a nuclear material under paragraph (a) of this section does not make all

information about the material UCNI. Specific information about the material must still meet each of the criteria in § 1017.7 prior to its being identified and controlled as UCNI.

§ 1017.10 Adverse effect test.

In order for information to be identified as UCNI, it must be determined that the unauthorized dissemination of the information under review could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of:

(a) Illegal production of a nuclear weapon; or

(b) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

§ 1017.11 Information exempt from being Unclassified Controlled Nuclear Information.

Information exempt from these regulations includes:

(a) Information protected from disclosure under section 147 of the Atomic Energy Act (42 U.S.C. 2167) that is identified as Safeguards Information and controlled by the United States Nuclear Regulatory Commission;

(b) Basic scientific information (i.e., information resulting from research directed toward increasing fundamental scientific knowledge or understanding rather than any practical application of that knowledge);

(c) Radiation exposure data and all other personal health information; and,

(d) Information concerning the transportation of low level radioactive waste.

§ 1017.12 Prohibitions on identifying Unclassified Controlled Nuclear Information.

Information, documents, and material must not be identified as being or containing UCNI in order to:

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person or organization;

(c) Restrain competition; or,

(d) Prevent or delay the release of any information that does not properly qualify as UCNI.

§ 1017.13 Report concerning determinations.

The Office of Classification or successor office shall issue a report by the end of each quarter that identifies any new information that has been determined for the first time to be UCNI during the previous quarter, explains how each such determination meets the criteria in § 1017.7, and explains why each such determination protects from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security. A copy of the report may be obtained by writing to the Office of Classification, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290.

Subpart C—Review of a Document or Material for Unclassified Controlled Nuclear Information

§ 1017.14 Designated officials.

(a) *Reviewing Official.*—(1) *Authority.* A Reviewing Official with cognizance over the information contained in a document or material is authorized to determine whether the document or material contains UCNI based on applicable guidance. A Reviewing Official marks or authorizes the marking of the document or material as specified in § 1017.16.

(2) *Request for designation.* Procedures for requesting that a DOE Federal or contractor employee be designated as a Reviewing Official are contained in Departmental directives issued by the Secretary. DOE may also designate other Government agency employees, contractors, or other individuals granted routine access under § 1017.20 as Reviewing Officials.

(3) *Designation.* Prior to being designated as a Reviewing Official, each employee must receive training approved by DOE that covers the requirements in this regulation and be tested on his or her proficiency in using applicable UCNI guidance. Upon successful completion of the training and test, he or she is designated as a Reviewing Official only while serving in his or her current position for a maximum of 3 years. The employee does not retain the authority when he or she leaves his or her current position. The employee cannot delegate this authority to anyone else, and the authority may not be assumed by another employee acting in the employee's position. At the end of 3 years, if the position still requires the authority, the employee must be retested and redesignated by DOE as a Reviewing Official.

(b) *Individuals approved to use DOE or joint DOE classification guidance*—(1) *Authority.* Other Government agency employees who are approved by DOE or another Government agency to use classification guidance developed by DOE or jointly by DOE and another Government agency may also be approved to review documents for UCNI and to make UCNI determinations. This authority is limited to the UCNI subject areas contained in the specific classification guidance that the individual has been approved to use.

(2) *Designation.* Individuals must be designated this authority in writing by the appropriate DOE or other Government agency official with cognizance over the specific DOE or Joint DOE classification guidance.

(c) *Denying Official*—(1) *Authority.* A DOE Denying Official for unclassified information with cognizance over the information contained in a document is authorized to deny a request made under statute (e.g., the FOIA, the Privacy Act) or the mandatory review provisions of Executive Order 12958, as amended, ''Classified National Security Information,'' and its successor orders, for all or any portion of the document that contains UCNI. The Denying Official bases his or her denial on applicable guidance, ensuring that the Reviewing Official who determined that the document contains UCNI correctly interpreted and applied the guidance.

(2) *Designation.* Information on the designation of DOE Denying Officials is contained in 10 CFR part 1004, *Freedom of Information* (see definition of the term ''Authorizing or Denying Official.'')

§ 1017.15 Review process.

(a) *Reviewing documents for UCNI.* Anyone who originates or possesses a document that he or she thinks may contain UCNI must send the document to a Reviewing Official for a determination before it is finalized, sent outside of his or her organization, or filed. If the originator or possessor must send the document outside of his or her organization for the review, he or she must mark the front of the document with ''Protect as UCNI Pending Review'' and must transmit the document in accordance with the requirements in § 1017.27. The Reviewing Official must first determine whether or not the document is widely disseminated in the public domain, which means that the document under review can be found in a public library or open literature source, or it can be accessed on the Internet using readily available search methods.

(1) If the document is determined to be widely disseminated in the public domain, it cannot be controlled as UCNI. The Reviewing Official returns the document to the person who sent it to the Reviewing Official and informs him or her why the document cannot be controlled as UCNI. This does not preclude control of the same

information as UCNI if it is contained in another document that is not widely disseminated.

(2) If the document is not determined to be widely disseminated in the public domain, the Reviewing Official evaluates the information in the document using guidance to determine whether the document contains UCNI. If the Reviewing Official determines that the document does contain UCNI, the Reviewing Official marks or authorizes the marking of the document as specified in § 1017.16. If the Reviewing Official determines that the document does not contain UCNI, the Reviewing Official returns the document to the person who sent it and informs him or her that the document does not contain UCNI. For documentation purposes, the Reviewing Official may mark or authorize the marking of the document as specified in § 1017.17(b).

(3) If no applicable guidance exists, but the Reviewing Official thinks the information should be identified as UCNI, then the Reviewing Official must send the document to the appropriate official identified in applicable DOE directives issued by the Secretary or his or her designee. The Reviewing Official should also include a written recommendation as to why the information should be identified as UCNI.

(b) *Review exemption for documents in files.* Any document that was permanently filed prior to May 22, 1985, is not required to be reviewed for UCNI while in the files or when retrieved from the files for reference, inventory, or similar purposes as long as the document will be returned to the files and is not accessible by individuals who are not Authorized Individuals for the UCNI contained in the document. However, when a document that is likely to contain UCNI is removed from the files for dissemination within or outside of the immediate organization, it must be reviewed by a Reviewing Official with cognizance over the information.

(c) *Reviewing material for UCNI.* Anyone who produces or possesses material that he or she thinks may contain or reveal UCNI must consult with a Reviewing Official for a determination. If the Reviewing Official determines that the material does contain or reveal UCNI, the Reviewing Official marks or authorizes the marking of the material as specified in § 1017.16(b).

§ 1017.16 Unclassified Controlled Nuclear Information markings on documents or material.

(a) *Marking documents.* If a Reviewing Official determines that a document contains UCNI, the Reviewing Official must mark or authorize the marking of the document as described in this section.

(1) *Front marking.* The following marking must appear on the front of the document:

Unclassified Controlled Nuclear Information Not for Public Dissemination

Unauthorized dissemination subject to civil and criminal sanctions under section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).
Reviewing Official:

_____
(Name/Organization)

Date: _____
Guidance Used: _____

(2) *Page marking.* The marking ''Unclassified Controlled Nuclear Information'' must be placed on the bottom of the front of the document and on the bottom of each interior page of the document that contains text or if more convenient, on the bottom of only those interior pages that contain UCNI. The page marking must also be placed on the back of the last page. If space limitations do not allow for use of the full page marking, the acronym ''UCNI'' may be used as the page marking.

(3) *Classified documents.* UCNI front and page markings are not applied to a classified document that also contains UCNI. If a classified document is portion marked, the acronym ''UCNI'' is used to indicate those unclassified portions that contain UCNI.

(4) *Obsolete ''May Contain UCNI'' marking.* The ''May Contain UCNI'' marking is no longer used. Any document marked with the ''May Contain UCNI'' marking is considered to contain UCNI and must be protected accordingly until a Reviewing Official or Denying Official determines otherwise. The obsolete ''May Contain UCNI'' marking reads as follows:

Not for Public Dissemination
May contain Unclassified Controlled Nuclear Information subject to section 148 of the Atomic Energy Act of 1954 (42 U.S.C. 2168). Approval by the Department of Energy prior to release is required.

(b) *Marking material.* If possible, material containing or revealing UCNI must be marked as described in § 1017.16(a)(1). If space limitations do not allow for use of the full marking in § 1017.16(a)(1), the acronym ''UCNI'' may be used.

§ 1017.17 Determining that a document or material no longer contains or does not contain Unclassified Controlled Nuclear Information.

(a) *Document or material no longer contains UCNI.* A Reviewing Official with cognizance over the information in a document or material marked as containing UCNI may determine that the document or material no longer contains UCNI. A Denying Official may also determine that such a document or material no longer contains UCNI. The official making this determination must base it on guidance and must ensure that any UCNI markings are crossed out (for documents) or removed (for material). The official marks or authorizes the marking of the document (or the material, if space allows) as follows:

DOES NOT CONTAIN UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION
Reviewing/Denying Official:

_____
(Name and organization)

Date: _____

(b) *Document or material does not contain UCNI.* A Reviewing Official may confirm that an unmarked document or material does not contain UCNI based on guidance. No markings are required in this case; however, for documentation purposes, the Reviewing Official may mark or may authorize the marking of the document or material with the same marking used in § 1017.17(a).

§ 1017.18 Joint documents or material.

If a document or material marked as containing UCNI is under consideration for decontrol and falls under the cognizance of another DOE organization or other Government agency, the Reviewing Official or Denying Official must coordinate the decontrol review with that DOE organization or other Government agency. Any disagreement concerning the control or decontrol of any document or material that contains UCNI that was originated by or for DOE or another Government agency is resolved by the Secretary or his or her designee.

Subpart D—Access to Unclassified Controlled Nuclear Information

§ 1017.19 Access limitations.

A person may only have access to UCNI if he or she has been granted routine access by an Authorized Individual (see § 1017.20) or limited access by the DOE Program Secretarial Officer or NNSA Deputy or Associate Administrator with cognizance over the UCNI (see § 1017.21). The Secretary, or his or her designee, may impose

additional administrative controls concerning the granting of routine or limited access to UCNI to a person who is not a U.S. citizen.

§ 1017.20 Routine access.

(a) *Authorized Individual.* The Reviewing Official who determines that a document or material contains UCNI is the initial Authorized Individual for that document or material. An Authorized Individual, for UCNI in his or her possession or control, may determine that another person is an Authorized Individual who may be granted access to the UCNI, subject to limitations in paragraph (b) of this section, and who may further disseminate the UCNI under the provisions of this section.

(b) *Requirements for routine access.* To be eligible for routine access to UCNI, the person must have a need to know the UCNI in order to perform official duties or other Government-authorized activities and must be:

(1) A U.S. citizen who is:

(i) An employee of any branch of the Federal Government, including the U.S. Armed Forces;

(ii) An employee or representative of a State, local, or Indian tribal government;

(iii) A member of an emergency response organization;

(iv) An employee of a Government contractor or a consultant, including those contractors or consultants who need access to bid on a Government contract;

(v) A member of Congress or a staff member of a congressional committee or of an individual member of Congress;

(vi) A Governor of a state, his or her designated representative, or a State government official;

(vii) A member of a DOE advisory committee; or,

(viii) A member of an entity that has entered into a formal agreement with the Government, such as a Cooperative Research and Development Agreement or similar arrangement; or,

(2) A person who is not a U.S. citizen but who is:

(i) A Federal Government employee or a member of the U.S. Armed Forces;

(ii) An employee of a Federal Government contractor or subcontractor;

(iii) A Federal Government consultant;

(iv) A member of a DOE advisory committee; or,

(v) A member of an entity that has entered into a formal agreement with the Government, such as a Cooperative Research and Development Agreement or similar arrangement; or,

(3) A person who is not a U.S. citizen but who needs to know the UCNI in conjunction with an activity approved by the DOE Program Secretarial Officer or NNSA Deputy or Associate Administrator with cognizance over the UCNI.

§ 1017.21 Limited access.

(a) A person who is not eligible for routine access to specific UCNI under § 1017.20 may request limited access to such UCNI by sending a written request to the DOE Program Secretarial Officer or NNSA Deputy or Associate Administrator with cognizance over the information. The written request must include the following:

(1) The name, current residence or business address, birthplace, birth date, and country of citizenship of the person submitting the request;

(2) A description of the specific UCNI for which limited access is being requested;

(3) A description of the purpose for which the UCNI is needed; and,

(4) Certification by the requester that he or she:

(i) Understands and will follow these regulations; and

(ii) Understands that he or she is subject to the civil and criminal penalties under Subpart F of this part.

(b) The decision whether to grant the request for limited access is based on the following criteria:

(1) The sensitivity of the UCNI for which limited access is being requested;

(2) The approving official's evaluation of the likelihood that the requester will disseminate the UCNI to unauthorized individuals; and,

(3) The approving official's evaluation of the likelihood that the requester will use the UCNI for illegal purposes.

(c) Within 30 days of receipt of the request for limited access, the appropriate DOE Program Secretarial Officer or NNSA Deputy or Associate Administrator must notify the requester if limited access is granted or denied, or if the determination cannot be made within 30 days, of the date when the determination will be made.

(d) A person granted limited access to specific UCNI is not an Authorized Individual and may not further disseminate the UCNI to anyone.

Subpart E—Physical Protection Requirements

§ 1017.22 Notification of protection requirements.

(a) An Authorized Individual who grants routine access to specific UCNI under § 1017.20 to a person who is not an employee or contractor of the DOE must notify the person receiving the UCNI of protection requirements described in this subpart and any limitations on further dissemination.

(b) A DOE Program Secretarial Officer or NNSA Deputy or Associate Administrator who grants limited access to specific UCNI under § 1017.21 must notify the person receiving the UCNI of protection requirements described in this subpart and any limitations on further dissemination.

§ 1017.23 Protection in use.

An Authorized Individual or a person granted limited access to UCNI under § 1017.21 must maintain physical control over any document or material marked as containing UCNI that is in use to prevent unauthorized access to it.

§ 1017.24 Storage.

A document or material marked as containing UCNI must be stored to preclude unauthorized disclosure. When not in use, documents or material containing UCNI must be stored in locked receptacles (e.g., file cabinet, desk drawer), or if in secured areas or facilities, in a manner that would prevent inadvertent access by an unauthorized individual.

§ 1017.25 Reproduction.

A document marked as containing UCNI may be reproduced without the permission of the originator to the minimum extent necessary consistent with the need to carry out official duties, provided the reproduced document is marked and protected in the same manner as the original document.

§ 1017.26 Destruction.

A document marked as containing UCNI must be destroyed, at a minimum, by using a cross-cut shredder that produces particles no larger than ¼-inch wide and 2 inches long. Other comparable destruction methods may be used. Material containing or revealing UCNI must be destroyed according to agency directives.

§ 1017.27 Transmission.

(a) Physically transmitting UCNI documents or material.

(1) A document or material marked as containing UCNI may be transmitted by:

(i) U.S. First Class, Express, Certified, or Registered mail;

(ii) Any means approved for transmission of classified documents or material;

(iii) An Authorized Individual or person granted limited access under § 1017.21 as long as physical control of the package is maintained; or,

(iv) Internal mail services.

(2) The document or material must be packaged to conceal the presence of the

UCNI from someone who is not authorized access. A single, opaque envelope or wrapping is sufficient for this purpose. The address of the recipient and the sender must be indicated on the outside of the envelope or wrapping along with the words ''TO BE OPENED BY ADDRESSEE ONLY.''

(b) Transmitting UCNI documents over telecommunications circuits. Encryption algorithms that comply with all applicable Federal laws, regulations, and standards for the protection of unclassified controlled information must be used when transmitting UCNI over a telecommunications circuit (including the telephone, facsimile, radio, e-mail, Internet).

§ 1017.28 Processing on Automated Information Systems (AIS).

UCNI may be processed or produced on any AIS that complies with the guidance in OMB Circular No. A–130, Revised, Transmittal No. 4, Appendix III, ''Security of Federal Automated Information Resources,'' or is certified for classified information.

Subpart F—Violations

§ 1017.29 Civil penalty.

(a) Any person who violates an UCNI security requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR Part 1017—Identification and Protection of Unclassified Controlled Nuclear Information; or

(2) Any other DOE regulation related to the safeguarding or security of UCNI if the regulation provides that violation of its provisions may result in a civil penalty pursuant to section 148 of the Act.

(b) If, without violating a requirement of any regulation issued under section 148, a person by an act or omission causes, or creates a risk of, the loss, compromise or unauthorized disclosure of UCNI, the Secretary may issue a compliance order to that person requiring the person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest the compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $100,000 for each violation.

(d) *Settlements.* The Director may enter into a settlement, with or without conditions, of an enforcement proceeding at any time if the settlement is consistent with the objectives of DOE's UCNI protection requirements.

(e) *Investigations.* The Director may conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with DOE security requirements specified in these regulations and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection, including signing, issuing and serving subpoenas.

(f) *Preliminary notice of violation.* (1) In order to begin a proceeding to impose a civil penalty under this part, the Director shall notify the person by a written preliminary notice of violation sent by certified mail, return receipt requested, of:

(i) The date, facts, and nature of each act or omission constituting the alleged violation;

(ii) The particular provision of the regulation or compliance order involved in each alleged violation;

(iii) The proposed remedy for each alleged violation, including the amount of any civil penalty proposed;

(iv) The right of the person to submit a written reply to the Director within 30 calendar days of receipt of such preliminary notice of violation; and,

(v) The fact that upon failure of the person to pay any civil penalty imposed, the penalty may be collected by civil action.

(2) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation. The reply must:

(i) State any facts, explanations, and arguments that support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE;

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice; and,

(v) Include copies of all relevant documents.

(3) If a person fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(i) The person relinquishes any right to appeal any matter in the preliminary notice; and

(ii) The preliminary notice, including any remedies therein, constitutes a final order.

(4) The Director, at the request of a person notified of an alleged violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

(g) *Final notice of violation.* (1) If a person submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must make a final determination whether the person violated or is continuing to violate an UCNI security requirement.

(2) Based on a determination by the Director that a person has violated or is continuing to violate an UCNI security requirement, the Director may issue to the person a final notice of violation that concisely states the determined violation, the amount of any civil penalty imposed, and further actions necessary by or available to the person. The final notice of violation also must state that the person has the right to submit to the Director, within 30 calendar days of the receipt of the notice, a written request for a hearing under paragraph (h) of this section.

(3) The Director must send a final notice of violation by certified mail, return receipt requested, within 30 calendar days of the receipt of a reply.

(4) Subject to paragraphs (g)(7) and (g)(8) of this section, the effect of final notice shall be:

(i) If a final notice of violation does not contain a civil penalty, it shall be deemed a final order 15 days after the final notice is issued.

(ii) If a final notice of violation contains a civil penalty, the person must submit to the Director within 30 days after the issuance of the final notice:

(A) A waiver of further proceedings; or

(B) A request for an on-the-record hearing under paragraph (h) of this section.

(5) If a person waives further proceedings, the final notice of violation shall be deemed a final order enforceable against the person. The person must pay the civil penalty set forth in the notice of violation within 60 days of the filing of waiver unless the Director grants additional time.

(6) If a person files a request for an on-the-record hearing, then the hearing process commences.

(7) The Director may amend the final notice of violation at any time before the time periods specified in paragraphs (g)(4)(i) or (g)(4)(ii) of this section expire. An amendment shall add 15 days to the time period under paragraph (g)(4) of this section.

(8) The Director may withdraw the final notice of violation, or any part thereof, at any time before the time periods specified in paragraphs (g)(4)(i) or (g)(4)(ii) of this section expire.

(h) *Hearing.* (1) Any person who receives a final notice of violation under paragraph (g) may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Director within 30 calendar days of receipt of the final notice of violation.

(2) Upon receipt from a person of a written request for a hearing, the Director shall:

(i) Appoint a Hearing Counsel; and

(ii) Select an administrative law judge appointed under section 3105 of Title 5, U.S.C., to serve as Hearing Officer.

(i) *Hearing Counsel.* The Hearing Counsel:

(1) Represents DOE;

(2) Consults with the person or the person's counsel prior to the hearing;

(3) Examines and cross-examines witnesses during the hearing; and,

(4) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Act and DOE security requirements.

(j) *Hearing Officer.* The Hearing Officer:

(1) Is responsible for the administrative preparations for the hearing;

(2) Convenes the hearing as soon as is reasonable;

(3) Administers oaths and affirmations;

(4) Issues subpoenas, at the request of either party or on the Hearing Officer's motion;

(5) Rules on offers of proof and receives relevant evidence;

(6) Takes depositions or has depositions taken when the ends of justice would be served;

(7) Conducts the hearing in a manner which is fair and impartial;

(8) Holds conferences for the settlement or simplification of the issues by consent of the parties;

(9) Disposes of procedural requests or similar matters;

(10) Requires production of documents; and,

(11) Makes an initial decision under paragraph (m) of this section.

(k) *Rights of the person at the hearing.* The person may:

(1) Testify or present evidence through witnesses or by documents;

(2) Cross-examine witnesses and rebut records or other physical evidence, except as provided in paragraph (l)(4) of this section;

(3) Be present during the entire hearing, except as provided in paragraph (l)(4) of this section; and

(4) Be accompanied, represented, and advised by counsel of the person's choosing.

(l) *Conduct of the hearing.* (1) DOE shall make a transcript of the hearing.

(2) Except as provided in paragraph (l)(4) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial, or unduly repetitious evidence.

(3) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (l)(4) of this section.

(4) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information, UCNI, or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The UCNI status shall not, however, preclude information from being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is protected.

(5) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

(m) *Initial decision.* (1) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

(i) The nature, circumstances, extent, and gravity of the violation or violations;

(ii) The violator's ability to pay;

(iii) The effect of the civil penalty on the person's ability to do business;

(iv) Any history of prior violations;

(v) The degree of culpability; and,

(vi) Such other matters as justice may require.

(2) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE 30 days after the filing of the initial decision unless the Secretary files a Notice of Review. If the Secretary files a Notice of Review, he shall file a final order as soon as practicable after completing his review. The Secretary, at his discretion, may order additional proceedings, remand the matter, or modify the amount of the civil penalty assessed in the initial decision. DOE shall notify the person of the Secretary's action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final order shall pay the full amount of the civil penalty assessed in the final order within 30 days unless otherwise agreed by the Director.

(n) *Collection of penalty.* (1) The Secretary may request the Attorney General to institute a civil action to collect a penalty imposed under this section.

(2) The Attorney General has the exclusive power to uphold, compromise or mitigate, or remit any civil penalty imposed by the Secretary under this section and referred to the Attorney General for collection.

(o) *Direction to NNSA.* (1) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues, serves, or takes the following actions that direct NNSA employees, contractors, subcontractors, or employees of such NNSA contractors or subcontractors.

(i) Subpoenas;

(ii) Orders to compel attendance;

(iii) Disclosures of information or documents obtained during an investigation or inspection;

(iv) Preliminary notices of violation; and,

(v) Final notice of violations.

(2) The Administrator shall act after consideration of the Director's recommendation. If the Administrator disagrees with the Director's recommendation, and the disagreement cannot be resolved by the two officials, the Director may refer the matter to the Deputy Secretary for resolution.

§ 1017.30 Criminal penalty.

Any person who violates section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, may be subject to a criminal penalty under section 223 of the Atomic Energy Act (42 U.S.C. 2273). In such case, the Secretary shall refer the matter to the

Attorney General for investigation and possible prosecution.

[FR Doc. E7–18052 Filed 9–13–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28957; Directorate Identifier 2007–CE–069–AD]

RIN 2120–AA64

Airworthiness Directives; CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.) Model Eagle 150B 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:

An operator has reported severe exfoliation corrosion on Wing/Canard Flap Hinges, P/N 5731D01–16 (middle and outboard hinges) on his Eagle 150B. The corrosion has been detected during 100-hour inspection. The aircraft has accumulated more than 1000 flight hours. The corrosion is so severe that one of the Flap Hinges thickness has been reduced by 50%. The corrosion is not easily detected because the Flap Hinge is sandwiched between the Flap Hinge Support Bracket P/N 5731D01–01.

The failure of the hinge bracket may result in disintegration of flap / canard wing thus leading to loss of control, with catastrophic consequences.

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 October 15, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; 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–2007–28957; Directorate Identifier 2007–CE–069–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://dms.dot.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

The Department of Civil Aviation (DCA), which is the aviation authority for Malaysia, has issued AD No. CAM AD 001–07–2007, dated July 20, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An operator has reported severe exfoliation corrosion on Wing / Canard Flap Hinges, P/N 5731D01–16 (middle and outboard hinges) on his Eagle 150B. The corrosion has been detected during 100-hour inspection. The aircraft has accumulated more than 1000 flight hours. The corrosion is so severe that one of the Flap Hinges thickness has been reduced by 50%. The corrosion is not easily detected because the Flap Hinge is sandwiched between the Flap Hinge Support Bracket P/N 5731D01–01.

The failure of the hinge bracket may result in disintegration of flap / canard wing thus leading to loss of control, with catastrophic consequences.

The MCAI requires you to visually inspect the flap hinges and flap hinge support brackets for any corrosion. You are to take corrective action if you find any corrosion.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

CTRM Aviation Sdn. Bhd. has issued Mandatory Service Bulletin SB 1126, dated, July 19, 2007. 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

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,440, or $240 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $226, for a cost of $546 per product. We have no way of determining the number of products that may need these actions.

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, 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:

CTRM Aviation Sdn. Bhd. (Formerly Eagle Aircraft (Malaysia) Sdn. Bhd.): Docket No. FAA–2007–28957; Directorate Identifier 2007–CE–069–AD.

Comments Due Date

(a) We must receive comments by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD affects Model Eagle 150B airplanes, all serial numbers, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An operator has reported severe exfoliation corrosion on Wing/Canard Flap Hinges, P/N 5731D01–16 (middle and outboard hinges) on his Eagle 150B. The corrosion has been detected during 100-hour inspection. The aircraft has accumulated more than 1000 flight hours. The corrosion is so severe that one of the Flap Hinges thickness has been reduced by 50%. The corrosion is not easily detected because the Flap Hinge is sandwiched between the Flap Hinge Support Bracket P/N 5731D01–01.

The failure of the hinge bracket may result in disintegration of flap/canard wing thus leading to loss of control, with catastrophic consequences.

The MCAI requires you to visually inspect the flap hinges and flap hinge support brackets for any corrosion. You are to take corrective action if you find any corrosion.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the flap hinges and flap hinge support brackets for any corrosion, following CTRM Aviation Mandatory Service Bulletin SB 1126, dated July 19, 2007.

(2) Before further flight, if you find any corrosion as a result of any inspection required by paragraph (f)(1) of this AD, take corrective action following CTRM Aviation Mandatory Service Bulletin SB 1126, dated July 19, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No Differences.

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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; 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, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Department of Civil Aviation Malaysia AD No. CAM AD 001–07–2007, dated July 20, 2007; and CTRM Aviation Mandatory Service Bulletin SB 1126, dated July 19, 2007, for related information.

Issued in Kansas City, Missouri, on September 10, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18148 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 215

RIN 1215–AB58

Amendment to Guidelines for Processing Applications for Assistance To Conform to Sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users and To Improve Processing for Administrative Efficiency

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Proposed rule

SUMMARY: Pursuant to section 5333(b) of the Federal transit law, the Department of Labor (Department) must certify, as a condition of certain grants of Federal financial assistance, fair and equitable labor protective provisions to protect the interests of employees affected by such Federal assistance.[1] The Department administers this program through guidelines set forth at 29 CFR part 215. The Department's proposed changes conform the guidelines to recently enacted federal legislation, in particular, sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users. In addition to changes mandated by statute, the Department also proposes revisions to the guidelines that will enhance the speed and efficiency of the Department's processing of grant certifications. The proposed revisions to existing procedures for processing grant applications under the Federal transit law are intended to ensure timely certifications in a predictable manner, and remain consistent with the transit law's statutory objectives.

DATES: Comments on these proposed revisions to the guidelines must be received on or before October 15, 2007.

ADDRESSES: You may submit comments, identified by RIN 1215–AB58, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: (202) 693–1342.

Mail, Express Delivery, Hand Delivery, and Messenger Service: Mailed or delivered comments should be addressed to Ann Comer, Chief, Division of Statutory Programs, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5112, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination of government mail, you should take this into consideration when submitting comments to ensure meeting submission deadlines. It is recommended that you confirm receipt of your comments by contacting (202) 693–0126 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Docket Access: Electronic access to the docket and comments received is available through the Federal eRulemaking Portal (*www.regulations.gov*). Comments will also be available for public inspection and copying during normal business hours in Room N–5112 at the address below.

The Department invites written comments on these proposed guidelines from members of the public. The proposed guidelines are available on the Federal eRulemaking Portal at *www.regulations.gov* and on the Web site maintained by the Office of Labor-Management Standards (''OLMS'') at *http://www.olms.dol.gov.* Anyone who is unable to access this information on the Internet can obtain copies by contacting the Division of Statutory Programs, OLMS at *OLMS-TransitGrant@dol.gov* or by calling (202) 693–0126 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Ann Comer, Chief, Division of Statutory Programs, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *OLMS-TransitGrant@dol.gov,* (202) 693–0126 (this is not a toll-free number), or (800) 877–8399 (TTY/TDD). Because comments sent to the docket are available for public inspection, the Department cautions commenters against including in their comments personal information such as social security numbers and birth dates.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, the Department must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees. Federal law requires such arrangements to be ''fair and equitable,'' and the Department must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. These employee protective arrangements must include provisions that may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions related to employment; assurances of employment to employees of acquired transportation systems; assurances of priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs.

Federal transit grants requiring the Department's certification are processed in accordance with published guidelines, 29 CFR part 215. In most cases, the guidelines call for the Department to refer a pending grant application to interested parties—recipients and representatives of transit employees—to afford them an opportunity to provide their views on substantive employee protections. The parties may object to the proposed terms and conditions and, if the Department finds their objections to be sufficient, they will be afforded an opportunity to negotiate specified provisions. There are, however, exceptions to the general rule requiring the referral of grant applications to the parties for their consideration, and, as explained below, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144 (2005)) (SAFETEA–LU) incorporates certain of those exceptions into the law.

SAFETEA–LU provides for the reauthorization of funds for Federal aid to highways, highway safety programs, transit programs, and other transportation-related programs and projects. In addition to the funding reauthorization, SAFETEA–LU modifies or clarifies statutory standards applicable to the Department's certification of employee protections associated with transit grants. Consequently, the Department proposes a number of revisions to its guidelines to conform to the requirements of the statute. First, section 3031 of SAFETEA–LU mandates that grant applications to purchase like-kind equipment or facilities shall not be referred to parties for review. Second, section 3031 similarly excepts from the Department's referral requirement grant

[1] See 49 U.S.C. 5333(b).

amendments that do not materially revise or amend existing assistance agreements. Third, section 3013(h) of SAFETEA–LU addresses the processing of grants under 49 U.S.C. 5311, which applies to formula grants for ''Other Than Urbanized'' transit operations.[2] Labor protections for ''Other Than Urbanized'' grants are currently approved through application of a certified Special Warranty without referral to the affected parties, and a transit grant recipient must accept the certified arrangement as a condition of the grant. SAFETEA–LU codifies this practice of non-referral.

Another important provision of SAFETEA–LU addresses substantive rights of parties should a dispute arise when a public transit authority replaces one private transit bus service contractor with another through competitive bidding. Section 3031 of SAFETEA–LU directs the Department to follow certain substantive principles enunciated in the Department's decisions for grant NV–90–X021 (decision of September 21, 1994, supplemented by decision of November 7, 1994, also called the ''Las Vegas decisions'') when making determinations involving assurances of employment when one private transit bus service contractor replaces another through competitive bidding. See 49 U.S.C. 5333(b)(5). SAFETEA–LU also specifies that, when making determinations regarding the sufficiency of objections, the principles enunciated in the Las Vegas decisions shall not serve as a basis for a party's objection to employee protective arrangements. The Las Vegas decisions involve a number of issues, but key to the new statutory provision are those portions of the decisions that address assurances of employment in the context of an acquisition. The decisions set forth criteria for determining whether an acquisition has occurred, and conclude that where an acquisition has occurred, only subsection 5333(b)(2)(D) provides for assurances of employment. In cases where no acquisition has occurred, subsections 5333(b)(2)(A) and (B) may provide the bases for providing assurances of employment, if a right to such employment is mandated by other sources, such as other laws, a collective bargaining agreement, a personnel manual, other protective agreements, or past practice. Because the Department's Guidelines are procedural in nature, and do not encompass substantive principles governing the adjudication of rights of parties, this provision of SAFETEA–LU will not be reflected in the revisions of the Guidelines. Although not incorporated in the Guidelines, the Department, of course, will adhere to the statutory mandate of section 3031.

In addition to these statutorily mandated changes, the Department proposes to revise certain existing procedures to improve administrative efficiency and ensure that timely certifications are issued in a predictable manner while still adhering to statutory standards. First, the Department proposes the implementation of a Unified Protective Arrangement (UPA) for new grants for both operating and capital expenditures where the parties do not have a pre-existing negotiated protective agreement or certain other protections explained further below. Under the current guidelines, existing negotiated protective agreements are applied to new grants. Where, however, no such agreement exists, the Department proposes and certifies separate standardized arrangements depending on whether the grant is for operating or capital expenditures. This practice of implementing separate arrangements depending on the nature of the grant expenditure is not required by statute, and has led to a proliferation of protective arrangements. Under the Department's proposal, the Department will apply a Unified Protective Arrangement, which is derived primarily from the Department's current Capital Arrangement, to both capital and operating grants, with the exceptions explained below.

Second, the Department proposes to expedite processing of employee protection certifications by applying a warranty arrangement to grants for the Over-the-Road Bus Accessibility Program (OTRB).[3] Presently, a warranty certification process is used only for ''Other Than Urbanized'' grants under the program established in 49 U.S.C. 5311, as noted above. The Department initially applied the more extensive referral procedure of 29 CFR 215.3(b) to the OTRB grants program, which was established primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). However, this referral process was not required under the Federal transit law.[4] Moreover, based on the Department's experience with the OTRB program, it is now clear that a warranty process, which applies certified protections without referral, is a suitable procedure for this program and will increase the timely processing of the Department's certifications. The Department is therefore proposing adoption of the warranty procedure for the OTRB program.

II. Revisions to Section 5333(b) Processing of Federal Transit Grants

A. Processing of Grant Applications To Replace Equipment or Facilities of ''Like-Kind''

The Department proposes amending the guidelines to conform to section 3031 of SAFETEA–LU, which added a new subparagraph to section 5333(b) relating to grants for the purchase of like-kind equipment or facilities. Section 5333(b)(4) now explicitly requires that employee protective arrangements for grants requesting assistance to purchase like-kind equipment or facilities be certified by the Department without referral to the parties. The current guidelines, at section 215.3(b)(1), reflect this practice, except that this provision creates an exception to non-referral if the Department determines that the grant application has a potential material effect on employees. To conform the Guidelines to the statutory mandate, the proposed guidelines, at section 215.3(a)(4)(iii), provide that employee protections relating to grants funding equipment and/or facilities of like-kind shall be certified without a referral, and the ''material effect'' exception is deleted. Section 215.3(a)(4)(iii) further addresses the terms the Department will apply in like-kind grant applications. That section states that if the Department determines that changed circumstances, which may include negotiated revisions to previously certified agreements or modifications to State law, render the previously certified arrangement insufficient to satisfy the requirements of the statute, the Department will make minimally necessary modifications to the

[2] The ''Other Than Urbanized'' transit grant program authorized by 49 U.S.C. 5311 was previously known as the ''small urban and rural program.'' For clarity and consistency, this program will generally be referred to throughout this document as the ''Other Than Urbanized'' program and not by its section number in Title 49 of the U.S. code.

[3] The OTRB program was first established by Congress in section 3038 of TEA–21, Pub. L. No. 105–178, 112 Stat. 107 (1998). It has been amended a number of times, most recently by section 3039 of SAFETEA–LU. The authority for the program currently appears in the Historical and Statutory Notes to 49 U.S.C. 5310. For clarity and consistency, the OTRB program will be referred to as such throughout this document, and not by reference to either its public law number or to the historical note to section 5310 of title 49 of the U.S. code.

[4] See original 49 U.S.C. 5310(f) in Historical and Statutory Notes following 49 U.S.C. 5310 (specifying that OTRB grants ''shall be subject to all of the terms and conditions applicable to'' grants under section 5311).

applicable protections to ensure statutory compliance.

B. Processing of Amendatory Grant Applications

The Department proposes amending section 215.5 of the guidelines to conform to section 3031 of SAFETEA–LU, which provides that ''grant amendments which do not materially amend existing assistance agreements'' will not be subject to the Department's referral procedures. The guidelines have been revised to reflect this requirement and to identify some types of grant amendments that will be certified without referral. These include (1) administrative amendments that modify or clarify in immaterial respects certain terms, conditions or provisions of a previously certified grant without changing the scope, amount or purpose of the grant; (2) grant amendments that do not include an increase of more than 20 percent of the previously certified total Federal grant amount, and do not add a new project activity; and (3) Full Funding Grant Agreement (FFGA) Amendments to grants that included the full budget and scope of activities for the project in a grant previously certified by the Department.

The Department will continue to refer grant amendments to the parties for review under the procedures set forth in section 215.3 in those cases in which applications materially amend or revise a grant. Finally, the Department's proposed guidelines include language addressing budget revisions. The Federal Transit Administration permits grant applicants to undertake certain limited changes without prior FTA approval. In those situations the Department's prior certification of the project funded under the existing assistance agreement will also be applicable to any budget revisions. *See* 29 CFR 215.5.

C. Special Warranty Procedures for Grant Applications for Other Than Urbanized Areas and Grant Applications for Over-the-Road Bus Accessibility Programs

For grant applications for ''Other Than Urbanized'' areas, SAFETEA–LU requires the use of a warranty as the sole mechanism for protections to be applied to the small urban and rural grant program and eliminates the Secretary of Labor's options to either waive the application of section 5333(b) or to apply alternative comparable arrangements. Section 3013(h) of SAFETEA–LU specifies that employee protections will apply only ''if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees.'' The procedures in this section will also apply to Over-the-Road Bus grants, which are discussed in greater detail below in subsection E.

Prior to the enactment of SAFETEA–LU, the Department followed procedures contained in a ''Guidebook'' published in September 1979 governing the processing of small urban and rural grants. The Department is discontinuing use of the 1979 Guidebook, and has included in sections 215.3(a)(4)(i) and 215.7 several changes to the process established in its Guidebook for the application of a warranty without referral when processing small urban and rural grants. First, as required under SAFETEA–LU, the Department will eliminate waivers and procedures to request alternative comparable arrangements. Second, the Department will eliminate the requirement that States or other applicants provide the Department with letters of assurance indicating that grant subrecipients have signed the Special Section 13(c) Warranty, as was previously done for small urban and rural grants. Instead, the Department will include a requirement in the new Special Warranty Arrangement, which will be developed for application to the Other Than Urbanized and OTRB programs, that the protective arrangements are binding upon any subrecipients assisted under the grant. Third, the Department will eliminate any need for unions to request to become a party to the Special Warranty Arrangement in connection with a specific grant by specifying in the warranty that any labor organization representing transit employees in the service area of the grant recipient(s) will be deemed a party to the arrangement. Finally, the Department will no longer make findings of ''non-compliance'' for States or other applicants under the Other Than Urbanized program. The Special Warranty Arrangement will provide dispute resolution procedures for resolution of any disputes concerning the States' or other applicants' compliance with the requirements of the warranty.

In addition to the modifications noted above, the Department proposes in revised 215.7 to utilize the Special Warranty for grants under the OTRB program, in addition to its current utilization of the Special Warranty in the ''Other Than Urbanized'' program. The OTRB was established primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). As a result, grants under this program routinely involve equipment adaptations or, in some cases, training, and the requests for funds have been very similar over time. Accordingly, because the grants are routine and relatively undifferentiated, standardized protections are more appropriate than project-specific protections. In utilizing the Special Warranty in the OTRB program, employee rights and interests will be continue to be protected, while at the same time permitting enhanced program efficiencies.

The Department also intends to revise its internal operating procedures when it utilizes the Special Warranty in both the OTRB and ''Other Than Urbanized'' programs. These new procedures require that the current version of the Special Warranty Arrangement be included in every contract of assistance between FTA and the applicant receiving assistance for ''Other Than Urbanized'' or OTRB programs. The FTA will notify the Department that it has funded ''Other Than Urbanized'' and OTRB grants by transmitting information copies of the grant applications to the Department upon award of the grant. The ''Other Than Urbanized'' applications will include information identifying labor organizations representing transit employees of each subrecipient, the unions representing employees of other transit providers in the service area, and a list of those other transit providers. To facilitate inclusion of this information in the grant application, a sample form will be posted on the OLMS Web site. The Department will work with FTA to utilize this information to inform labor organizations representing affected transportation employees of OTRB grants and their rights under the Special Warranty Arrangement. The OTRB applications will only need to include information identifying the labor organizations representing employees of the grant recipient(s). If necessary, the Department will use available information or may contact the applicant to identify labor organizations in the service area of OTRB grant recipients. These may include a broad range of unions where charter services that operate throughout the country receive assistance. These revised procedures will be implemented because the Department's prior procedures were not well understood by the regulated community, and permit a more streamlined and certain manner by which to notify the parties of their rights under the protective arrangement. The revised procedures will assure that appropriate, legally-binding and legally-sufficient protections are in place with

no diminution of statutory standards, while simultaneously advancing administrative efficiency.

The Department intends to modify the Special Warranty Arrangement to limit the Department's involvement as a claims arbitrator under the Other Than Urbanized and OTRB programs. The Special Warranty will now set out a process by which the parties will designate a neutral, third-party arbitrator to resolve claims involving employees represented by a union, in contrast to the current Special Section 13(c) Warranty that requires the Secretary of Labor to act as the arbitrator ''in the event [the parties] cannot agree upon such procedure.'' Because revisions to the Special Warranty involve programmatic changes that are not within the scope of this NPRM, which deals solely with revisions to the Department's guidelines, specific revisions to the Special Warranty will not be set out in detail here. However, the Department intends to include in the Special Warranty an arbitration process similar to that set out in paragraph 15 of the National Model Agreement, which can be found on the Department's Web site at *http://www.dol.gov/esa/regs/compliance/olms/agreement.htm.* The Department recognizes that a dispute resolution mechanism, although not expressly required by the statute, is essential to a fair and equitable protective arrangement. Private arbitration of disputes over the interpretation, application and enforcement of protective agreements has historically been the preferred dispute resolution mechanism in protective arrangements, both in transit employee protection as well as under other statutes providing for rail labor protection. In addition, designation of a Cabinet-level official as the responsible arbitrator, which is unique in comparison to other statutory programs providing analogous employee protections, has created an excessive burden on Departmental resources during this period of increased fiscal restraint. For these reasons, the Department will remove the Secretary as ''fallback'' arbitrator for disputes arising under the Special Warranty and specify that parties to claims disputes should employ arbitration by a neutral third party to resolve those disputes.[5] Employees not represented by a labor organization will still be able to request that the Department resolve claims involving the interpretation, application and enforcement of an arrangement.

The new Special Warranty Arrangement will also contain provisions to ensure that employees are provided with appropriate notice that the transit provider is the recipient of Federal transit assistance and has agreed to the requirements of the Special Warranty Arrangement. As with the revised Unified Protective Arrangement discussed below, the Special Warranty Arrangement will be included on the Department's Web site and may be updated from time to time to reflect developments in the employee protection program. The latest version will, in each instance, be incorporated by reference in the contract of assistance between the FTA and any grant recipient.

D. Unified Protective Arrangement

The Department is proposing to amend section 215.3(b)(2) and (3) of the guidelines to implement use of a unified protective arrangement (UPA) for both operating and capital grants where there is no existing appropriate negotiated protective agreement. The Department has determined that the requirements of the statute will be satisfied through the application of a single arrangement that applies for both operating and capital assistance grants. The principal difference between the current Operating and Capital Assistance Protective Arrangements is the ''sole provider clause,'' which is currently included only in the Operating Arrangement. When the Department developed the Operating Arrangement, which was based on the National (Model) Agreement negotiated between transit unions and operators, it incorporated the sole-provider clause contained in the Model Agreement. The sole provider clause was not included in the Department's Capital Arrangement, because that arrangement was based on the Special Warranty, which did not include the clause. The Department's inclusion of the clause in its Operating Arrangement was not the product of negotiations between the transit unions and operators, and is not required in order to meet the requirements of the statute. Therefore, under this proposal, the UPA will not contain a sole provider clause. Moreover, application of a single unified document to future grants will simplify the preparation of referrals, expedite processing of grant applications, and continue to satisfy the requirements of the statute.

In lieu of the multiple Operating and Capital Arrangements certified since January 1996, a single UPA generally will be proposed when certifying future grants. This will prevent the proliferation of new protective arrangements each time a new union is recognized or service is expanded to areas involving additional unions. It will also provide administrative certainty for the applicant and union because, with the exception of existing negotiated agreements and certain arrangements which are the product of negotiations or determinations, only the Unified Protective Arrangement will be applied to any particular grant. The UPA certified for a grant will always reflect current program policies and statutory standards applicable to grants, and will be updated whenever necessary. This process remains consistent with the intent of the Department's 1996 guidelines to preserve existing negotiated protective agreements while providing a process in which arrangements can be put in place quickly for new applicants or subrecipients.

The Department proposes to revise section 215.3(b) to provide that a UPA will be proposed for the protection of transit employees represented by a union, except in those cases in which protective terms set by other instruments are appropriate to the grant. Under those exceptions, the Department will make a referral based on labor protective provisions contained in (1) a signed negotiated protective agreement or the National Model Agreement as subscribed to by unions and grant recipients; (2) agreed-upon terms adopted by a state or local government; (3) an arrangement that is based on an agreement by the parties that resolves issues not addressed by the UPA; or (4) a determination by the Department of disputed protections that are not otherwise addressed in the UPA. In those cases in which unions and grant recipients have previously agreed to modify a proposed protective arrangement or the Department resolved disputed issues in a proposed arrangement, and those same issues are

[5] For similar reasons, the Department intends to modify its standard certification letter that currently provides that the Secretary will ''designate a neutral third party or appoint a staff member to serve as arbitrator'' to resolve disputes by service area employees over the interpretation, application and enforcement of the terms of protective arrangements. In the future, the Department's certification letters will reflect that in those cases in which service area employees are represented by a labor organization that is deemed to be a party to a protective arrangement, the dispute resolution mechanism of that arrangement will be applicable to those service area employees. In those cases in which service area employees are not party to the protective arrangement, the revised certification letter will now set out a process by which the grant recipient and the service area employees will designate a neutral, third-party arbitrator to resolve claims of service area employees. Finally, as to claims by service area employees not represented by a union, the certification letter will state, as is current practice, that the Secretary may designate a neutral third party or appoint a staff member to serve as arbitrator.

addressed in the UPA in a manner that is consistent with the prior agreed-upon or determined arrangement, the Department will propose application of the UPA to the project. If the parties' arrangement is inconsistent with the UPA, but continues to satisfy the requirements of the statute, the parties' arrangement will continue to be proposed for new projects.

For example, assume that an applicant has a pending project including both operating and capital assistance and is also a party to an executed agreement with a union dated September 30, 1985, and several Operating and Capital Assistance Protective Arrangements with various other unions dated between January 29, 1996, when the new process took effect, and September 30, 2005. Under the revised procedures, the Department will propose certification of the applicant's next pending grant on the basis of the September 30, 1985 Agreement for the union covered by that agreement; as to the other unions, however, the Department will propose certification on the basis of the current Unified Protective Arrangement instead of the provisions in the numerous Operating and Capital Arrangements dated between 1996 and 2005.

Protections that are the product of negotiations often contain provisions unique to the transit property involved. Such protections may also include a provision allowing an additional local union to become a party. Under the proposed procedures, the Department will accommodate the wishes of the parties to employ such an existing provision in its certification. As previously indicated, the Department will also continue to apply certain existing protective terms certified as a Departmental determination of issues in dispute where those issues are not otherwise addressed in the current Unified Protective Arrangement.

The UPA will be available on the OLMS Web site and may be updated from time to time to reflect developments in the employee protective program. The latest version will, in each instance, be incorporated by reference in the contract of assistance between the FTA and the grant applicant.

E. Exclusion of Over-the-Road Bus Accessibility Program From the Department's Referral Process

The Department is proposing to amend section 215.3(a)(4) of the guidelines to specify that OTRB grants will no longer be subject to its referral process. The OTRB program was established in 1998 by TEA–21, and intended primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). Section 3038 of TEA–21 stated that OTRB grants ''shall be subject to all of the terms and conditions applicable to subrecipients'' of grants for the ''Other Than Urbanized'' program, which requires no referral process. Although TEA–21 did not require use of referral procedures for the certification of protections for Over-the-Road Bus grants, the Department applied the established referral procedure at the outset of the program. The Department's experience with this program now suggests that it is appropriate to apply a warranty arrangement, and eliminate the use of the referral process, as originally contemplated by TEA–21. The Department has included procedures for processing of OTRB grants in new section 215.7, which also provides procedures to be followed for the Other Than Urbanized program.

F. Administrative Changes

Several adjustments have been made to the guidelines to reflect current administrative practices. First, the Department has eliminated language contained in section 215.2 of the 1999 guidelines indicating that it will process applications that are in ''preliminary'' form. This section now requires that applications ''be in final form,'' based on the Department's determination that its administrative processes not be engaged until the grant application reflects the actual project activities to be undertaken. Also, section 215.6 has been revised to further explain how interested parties may utilize the July 23, 1975 Model Agreement. In particular, section 215.6 now contains procedures, comparable to those in paragraphs 26, 27, and 28 of the Model Agreement itself, by which applicants and unions may become a party to or withdraw from the Model Agreement. In addition, section 215.8 will be modified to add an e-mail address and correct the room number of the Statutory Programs office. Finally, the text of section 5333(b) of the Federal transit law, which is set out in its entirety in section 215.1 of the current Guidelines, has been removed from that section in the proposed Guidelines so that modifications of the Guidelines will not be necessary each time statutory changes are enacted.

III. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this notice of proposed rulemaking is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has also determined that this notice of proposed rulemaking is not ''economically significant'' as defined in section 3(f)(1) of Executive Order 12866. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required.

Regulatory Flexibility Act

This proposed rule addresses the procedural steps for obtaining the Department's certification that employee protective arrangements under the Federal transit law are in place as required under SAFETEA–LU. The amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Assistant Secretary for Employment Standards has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

These guidelines contain no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

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

based companies in domestic and export markets.

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards, hereby proposes to amend part 215 of title 29 of the Code of Federal Regulations as set forth below.

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

1. The authority citation for part 215 is revised to read as follows:

Authority: Secretary's Order No. 4–2007, 72 FR 26159, May 8, 2007.

2. Section 215.1 is revised to read as follows:

§ 215.1 Purpose.

The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

§ 215.2 [Amended]

3. Section 215.2 is amended by removing ''may be in either preliminary or final form'' and adding in its place ''must be in final form''.

4. Section 215.3 is amended as follows:

a. Revise paragraphs (a)(3), (a)(4), (b) introductory text, (b)(1), and (2);

The revisions and additions read as follows:

§ 215.3 Employees represented by a labor organization.

(a) * * *

(3) If an application involves a grant to a state administrative agency or designated recipient that will pass assistance through to subrecipients, the Department will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency or designated recipient has previously provided employee protections on behalf of subrecipients in accordance with the terms of a negotiated agreement, the referral will be based on those terms and conditions.

(4) The referral procedures set forth in paragraphs (b) through (h) of this section are not applicable to the following grants:

(i) Grants to applicants for the Over-the-Road Bus Accessibility Program, and grant applications for the Other Than Urbanized Program; a special warranty will be applied to such grants under the procedures in § 215.7.

(ii) Grants to applicants serving populations under 200,000 under the Job Access and Reverse Commute Program or grants to capitalize SIB accounts under the State Infrastructure Bank Program.

(iii) Grants involving only capital assistance for replacement of equipment and/or facilities of like-kind; these will be certified by the Department without referral on the basis of existing agreements or the Unified Protective Arrangement as referenced in paragraphs (b)(1) or (b)(2) of this section. Where application of the existing protective agreement(s) or the Unified Protective Arrangement would not satisfy the requirements of the statute in the circumstances presented, the Department will make any necessary modifications to the existing protections to ensure that the requirements of the statute are satisfied.

(b) Upon receipt from the Federal Transit Administration of an application involving affected employees represented by a labor organization, the Department will refer a copy of the application and proposed terms for certification to that organization and to the applicant, and will also provide a copy to subrecipients with unions in their service area.

(1) The Department's referral will be based on a single Unified Protective Arrangement except in those cases in which the application involves an applicant or subrecipient that has protective terms and conditions, appropriate to the grant, set by:

(i) A signed negotiated agreement or formal acceptance of the July 23, 1975 National (Model) Agreement;

(ii) Agreed-upon terms adopted by a State or local government through a resolution or similar instrument;

(iii) A protective arrangement agreed to by the parties to resolve issues not otherwise addressed by the Unified Protective Arrangement; or

(iv) A determination of protective terms by the Department involving issues not otherwise addressed by the Unified Protective Arrangement.

Note to paragraphs (b)(1)(i) through (iv): In the above cases (i–iv), the Department's referral will incorporate such protections as appropriate.

(2) The terms and conditions of the Unified Protective Arrangement shall be similar to those contained in the Department's Capital Arrangement. The Capital Arrangement was derived from the Special Section 13(c) Warranty initially developed and certified for the small urban and rural program in 1979, which incorporates provisions of the July 23, 1975 Model Agreement;

* * * * *

5. Section 215.5 is revised to read as follows:

§ 215.5 Processing of amendments.

(a) Grant modifications in the form of grant amendments will be transmitted by the Federal Transit Administration to the Department for review. Applications amending a grant for which the Department has already certified fair and equitable arrangements to protect the interests of transit employees affected by the project, will be processed by the Department following one of the two procedures described in paragraphs (a)(1) and (2) of this section.

(1) When an application amends in immaterial respects a grant for which the Department has already certified fair and equitable arrangements, the Department will, on its own initiative and without referral to the parties, certify the subject grant on the same terms and conditions as were certified for the project as originally constituted. The Department's processing of these applications will be expedited and copies will be forwarded to interested parties. Grants that do not materially amend existing grants of assistance include but are not limited to:

(i) Administrative Amendments that modify or clarify in a purely immaterial manner terms, conditions or provisions of a previously certified grant;

(ii) Grant Amendments and Revised Grants that do not include a total budget increase of more than 20 percent of the previously certified Federal amount and do not add a new project activity; and

(iii) Full Funding Grant Agreement (FFGA) Amendments that included the full budget and scope of activities for the project in a grant previously certified by the Department.

(2) When an application amends a grant for which the Department has previously certified fair and equitable arrangements in a manner that materially changes or amends an existing grant of assistance, the Department will refer and/or process the labor certification provisions of the amended grant according to procedures specified under §§ 215.3 and 215.4, as appropriate.

(b) Budget Revisions that make minor changes within the scope of the existing grant agreement and do not require a Federal Transit Administration grant amendment, as set forth in Federal Transit Administration guidance, will be covered under the Department's original certifications.

6. Section 215.6 is amended as follows:

a. Designate the existing text as paragraph (a) and remove ''(b)(3)(i)'' and add in its place ''(b)(2)'';

b. Add new paragraphs (b), (c), and (d) to read as follows:

§ 215.6 The Model Agreement.

(a) * * *

(b) A grant applicant that is an employer not initially a party to the Model Agreement but seeking to use the Model Agreement as the basis of the Department's certification may become party thereto by serving written notice of its desire to do so upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. In the event of any objection to the addition of such employer as a signatory, then the dispute as to whether such employer shall become a signatory shall be determined by the Secretary of Labor.

(c) A labor organization that is the collective bargaining representative of urban mass transportation employees in the service area of a grant recipient but not initially a party to the Model Agreement, and who may be affected by the assistance to the recipient, may become a party to the Model Agreement by serving written notice of its desire to do so upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to the Model Agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(d) Any signatory employer may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. Any labor organization may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. Written notice to withdraw must be served one hundred twenty (120) days prior to October 1, which is the annual renewal date of the Model Agreement.

7. Section 215.7 is amended as follows:

a. Remove ''(b)(3)(ii)'' and add ''(b)(2)'' in its place;

b. Remove the phrase ''small urban and rural program under section 5311 of the Federal Transit Statute'' and add in its place ''Other Than Urbanized program''.

c. Designate the existing text as paragraph (a) and add two sentences to the end; and

d. Add new paragraphs (b) and (c).

The revisions and additions read as follows:

§ 215.7 The Special Warranty.

(a) * * * The Special Warranty Arrangement applicable to OTRB and ''Other Than Urbanized'' grants will be derived from the terms and conditions of the May 1979 Special Section 13(c) Warranty, and the Department's subsequent experience under 49 U.S.C. 5333(b). From time to time, the Department may update this Special Warranty Arrangement to reflect developments in the employee protection program.

(b) The requirements of 49 U.S.C. 5333(b) for OTRB and ''Other Than Urbanized'' grants are satisfied through application of a Special Warranty Arrangement certified by the Department of Labor; a copy of the current arrangement will be included on the OLMS Web site.

(c) The Federal Transit Administration will include the current version of the Special Warranty Arrangement, through reference in its Master Agreement, in each OTRB and ''Other Than Urbanized'' grant of assistance under the statute.

(1) The Federal Transit Administration will notify the Department that it is funding an OTRB or ''Other Than Urbanized'' grant by transmitting to the Department an information copy of each grant application upon approval of the grant.

(i) Each grant of assistance for an ''Other Than Urbanized'' program will contain a labor section identifying labor organizations representing transit employees of each subrecipient, the labor organizations representing employees of other transit providers in the service area, and a list of those transit providers. A sample format is posted on the OLMS Web site to facilitate the inclusion of this information in the grant application.

(ii) OTRB grants of assistance will contain a labor section identifying labor organizations representing transit employees of the recipient.

(2) The Department will notify labor organizations representing potentially affected transit employees of OTRB grants and inform them of their rights under the Special Warranty Arrangement.

§ 215.8 [Amended]

8. Section 215.8 is amended as follows:

a. Remove ''Director,'' and add in its place ''Chief, Division of'';

b. Remove ''Suite N5603,''; and

c. Add the phrase ''or e-mailed to *OLMS-TransitGrant@dol.gov*'' at the end of the paragraph.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

Donald Todd,

Deputy Assistant Secretary, Office of Labor-Management Standards.

[FR Doc. E7–18040 Filed 9–13–07; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB21

Multi-Employer Pension Plan Information Made Available on Request

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that, upon adoption, would implement amendments to the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), requiring the administrator of a multi-employer plan to provide copies of certain actuarial and financial information about the plan to participants and others upon request. The amendments, enacted by the Pension Protection Act of 2006, added subsection (k) to section 101 of ERISA. The proposed regulation would affect plan administrators, participants and beneficiaries of multi-employer plans, as well as employee representatives of such participants and employers that have an obligation to contribute to such plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before October 15, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov,* or by using the Federal eRulemaking portal at *www.regulations.gov* (follow

instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: ERISA 101(k) Regulation. Comments received will be posted without change to *www.regulations.gov* and *www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 502(a)(1) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA), which was enacted on August 17, 2006, amended the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), by adding section 101(k). Section 101(k)(1) of ERISA requires the administrator of a multi-employer pension plan, upon written request, to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that are required to be furnished are: (A) A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess a civil penalty of not more than $1,000 a day for each violation of section 101(k). Section 502(a)(3) of the PPA provides that the Secretary of Labor shall prescribe regulations under section 101(k)(2) not later than one year after the date of enactment of the PPA. Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

B. Overview of Proposed Regulation

Included in this notice is a proposed regulation that, upon adoption, would implement the new disclosure requirement under section 101(k) of the Act. Interested parties are invited to comment on all aspects of the regulation. The Department intends to publish a separate regulation implementing the Secretary's authority to assess civil penalties under section 502(c)(4) of ERISA at a later date.

Paragraph (a) of the proposed regulation provides that the administrator of a multi-employer pension plan shall furnish copies of actuarial, financial and funding-related documents to certain persons who make written requests to the plan.

For purposes of paragraph (a), a person entitled to request and receive documents is any participant within the meaning of section 3(7) of the Act; any beneficiary receiving benefits under the plan; any labor organization representing participants under the plan; or any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act. See § 2520.101–6(d). In this regard, the phrase ''any employer that has an obligation to contribute to the plan'' under section 101(k) of the Act has been construed under paragraph (d)(4) of the proposed regulation in a manner that is consistent with the construction given to similar language under section 101(f) of ERISA, which relates to annual funding notices of multi-employer defined benefit pension plans.[1]

Paragraph (b)(1) of the proposed regulation provides that the plan administrator must furnish the requested document or documents to the requester not later than 30 days after the date the written request is received by the plan, subject to the limitations in paragraphs (b)(3) and (b)(4).

Paragraph (b)(3) of the proposed regulation provides that a plan administrator is not required to furnish to any requester more than one copy of a document described in paragraph (c) during any 12-month period. Thus, an eligible requester would not be entitled to receive more than one copy of the same financial report within a 12-month period. This limitation, however, does not mean that an eligible requester would not be entitled to request and receive copies of two different reports (e.g., one financial report and one actuarial report) during any 12-month period. For purposes of the application of this 12-month limitation, the Department is of the view that the 12-month period commences from the earlier of the date the plan actually responds to a request or the 30th day referenced in paragraph (b)(1) of the regulation.

Paragraph (b)(4) of the proposed regulation permits the plan administrator to charge the requester for the reasonable costs of furnishing documents. The PPA specifically authorizes the Department to prescribe in regulations the maximum amount that would be considered a reasonable charge for furnishing documents under this section. For this purpose, the Department proposes that a reasonable charge may not exceed the lesser of the actual cost to the plan for the least expensive means of acceptable reproduction of the document, or 25 cents per page, plus the cost of mailing or otherwise delivering the requested document. This standard adopts the existing reasonable charge standard under 29 CFR 2520.104b–30, but also permits the plan administrator to charge the requester the actual cost to the plan of mailing or delivering the document or information.

Paragraph (b)(2) provides that such documents must be furnished in a manner consistent with the general furnishing requirements set forth in 29 CFR 2520.104b–1 including the use of electronic media. See § 2520.104b–1(c). In this regard, wherever possible, the Department encourages plan administrators to use electronic media to furnish requested information in order to reduce compliance costs under the regulation.[2]

Paragraph (c) of the proposed regulation delineates the documents that must be disclosed pursuant to section 101(k). Paragraph (c)(1) provides that information subject to the disclosure requirement in paragraph (a) consists of a copy of any periodic

[1] See 29 CFR 2520.101–4(f)(4); 71 FR 1904, Jan. 11, 2006.

[2] As part of a separate rulemaking initiative, the Department is undertaking a review of the rules in paragraph (c) of § 2520.104b–1 relating to disclosure through electronic media. The Department is reviewing these rules in light of advances in technology and new disclosure requirements under ERISA following enactment of the PPA.

actuarial report (including any sensitivity testing) received by the plan that has been in the plan's possession for at least 30 days before the plan receives the written request; a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days before the plan receives the written request; and a copy of any application filed by the plan sponsor with the Secretary of the Treasury requesting an amortization extension under section 304 of the Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

To provide plan administrators with clarity regarding their disclosure obligations under section 101(k), the proposed regulation clarifies that financial reports prepared by advisors are subject to disclosure without regard to whether the advisor or advisors are fiduciaries within the meaning of section 3(21) of ERISA. See § 2520.101–6(c)(1)(ii). The Department specifically requests comments on whether this clarification alone provides sufficient certainty as to what financial reports are required to be disclosed, or, whether, in addition, the term ''financial report'' should also be clarified in regulation and, if so, how.

Paragraph (c)(2) provides that documents required to be disclosed under the regulation shall not include certain information. In this regard, paragraph (c)(2)(i) provides that required disclosures do not include the information or data which served as the basis for such report or application, e.g., the data behind or underlying a report or application. In addition, paragraph (c)(2)(ii) of the proposed regulation provides that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be either individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The Department specifically invites comment on whether clarification is needed with respect to determinations regarding what information should be considered ''proprietary'' or ''individually identifiable'' in this context and, if so, what standards should govern such determinations. In this regard, paragraph (c)(2)(ii) of the proposed rule clarifies that, in responding to a request under the regulation, a plan administrator is required to inform the requester if the plan administrator withholds any information determined to be ''proprietary'' or ''individually identifiable'' within the meaning of the restrictions in paragraph (c)(2) of the proposed regulation.

Along with the proposed regulation under section 101(k), discussed above, this notice also includes amendments to 29 CFR 2520.104b–30, which provides guidelines for assessing a reasonable charge for furnishing plan documents pursuant to section 104(b)(4) of the Act (e.g., latest updated summary plan description, latest annual report, any terminal report, etc.). Language in § 2520.104b–30 could be construed as contrary to specific language in section 101(k) of ERISA, § 2520.101–6, and other PPA provisions amending title I of ERISA that expressly permit plan administrators to impose reasonable charges on requesters for the cost of furnishing the requested information, including handling and postage charges. Accordingly, minor conforming amendments are being proposed to paragraph (a) of § 2520.104b–30 to eliminate any ambiguity that may be caused by current § 2520.104b–30.

C. Regulatory Impact Analysis

Summary

The proposed rule contains guidance necessary to implement the amendments made by new section 101(k) of the Act, as enacted by section 502(a)(1) of the PPA, which requires multiemployer plan administrators to provide, upon written request, copies of certain actuarial and financial reports about the plan to participants, beneficiaries, employee representatives, or any employer that has an obligation to contribute to the plan.

This disclosure requirement of PPA was enacted because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer plan pension system. Providing participants and beneficiaries, employee representatives, and contributing employers with greater access to actuarial and financial information regarding their plans will increase the transparency of the operation of multiemployer pension plans and afford all parties interested in the financial viability of such plans greater opportunity to monitor their funding and financial status and to take appropriate action when necessary.

By clarifying certain terms used in section 101(k) of the Act, this regulation will also permit multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty and less cost. The increase in transparency of plan operations may also contribute to an atmosphere of greater accountability on the part of plan officials. These benefits have not been quantified.

The cost of the multiemployer plan disclosure requirement under section 101(k) of the Act and the rule is expected to total approximately $2.3 million in the year of implementation, $2.0 million in the second year, and $1.4 million in the third year. These costs arise from logging in disclosure requests, copying and mailing the reports, and contracting for redacting individually identifiable and proprietary information from the reports. In addition, multiemployer plans will devote in-house staff time to complying with this regulation. The total hour burden is estimated to be 56,000 hours in 2008, 49,000 in 2009 and 37,000 in 2010. Both the dollar burden and the hour burden are projected to fall over the three-year period as interest in the aging inventory of existing documents subject to this regulation wanes. The dollar equivalent of the three-year hour burden is estimated to be $4.4 million.

Because the costs of the proposed regulation arise from notice provisions in the PPA, the data and methodology used in developing these estimates are more fully described in the Paperwork Reduction Act section of this analysis of regulatory impact.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement

grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Although the Department believes that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order, the action has been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the rule justify its costs.

In assessing the costs and benefits of the rule and associated provisions of the Act, the Department endeavored to consider all of the major activities that will be carried out pursuant to them. For example, multiemployer pension plan administrators will have to make arrangements for copying and mailing the reports and redacting individually identifiable and proprietary information from the reports. Because the regulation does not require the creation of any new documents, the costs of the rule are limited to those arising from logging in requests and from copying, mailing and redacting disclosed reports.

The Department estimates that the total cost [3] for all multiemployer plans to comply with the regulation will average $1,200 per plan year over the 2008–2010 periods. Given that total 2004 assets of multiemployer pension plans averaged about $247 million in defined benefit plans and $50 million in defined contribution plans, this annual cost is approximately 0.0012% of average plan assets in defined benefit plans and 0.0061% of assets in defined contribution plans. The Department believes that the transparency contained in the rule and associated section 101(k) of the Act will provide participants, beneficiaries, employee representatives, and contributing employers with important information regarding the funding and financial status of multiemployer pension plans. These disclosures will allow participants, beneficiaries, employee representatives, and contributing employers to learn more about the financial status of their plans and take action where appropriate. Although the benefits of this increased transparency have not been quantified, the Department has concluded that these benefits of the rule outweigh its modest costs. The Department invites comments on this assessment and its conclusions.

[3] Total cost is the sum of the dollar burden and the dollar equivalent of the hour burden.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the proposed information collection request (ICR) included in the Proposed Regulation on Multiemployer Pension Plan Information Made Available on Request. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed regulation to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The proposed regulation would, upon adoption, implement the disclosure requirements of new section 101(k) of the Act, as added by section 502(a)(1) of the PPA. As described earlier in the preamble, section 101(k)(1) of the Act requires multiemployer plan administrators, upon written request, to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (1) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this proposed rule are found in section 2520.101–6(a) of the proposed rule, which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of actuarial, financial, and funding related documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request. This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers. Pursuant to section 2520.101–6(c)(2) the documents required to be disclosed shall not contain any information that the plan administrator reasonably determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

The plan administrator must inform the requester if any such information is withheld.

Annual Hour Burden

In order to estimate the potential costs of the disclosure provisions of section 101(k) of the Act and this proposed rule, the Department estimated the number of multiemployer defined benefit and defined contribution pension plans. Based on data derived exclusively from the Form 5500 for the 2004 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,533 multiemployer defined benefit plans [4] and 1,372 multiemployer defined contribution plans that would be subject to this disclosure requirement. Because section 101(k) of the Act and the regulation generally do not limit the class of documents that can be requested in any way by date of creation or receipt, the Department has assumed for purposes of this estimate that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports (''actuarial reports''), quarterly, semiannual, or annual financial reports (''financial reports''), and amortization extension requests filed with the IRS (hereafter ''extension requests'').[5]

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and contract with a service professional to redact individually identifiable and proprietary information from the reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 169,000 requests to disclose existing financial reports (an average of 110 per plan), 76,000 requests for existing actuarial reports (an average of 50 per plan), and 340 requests for existing amortization requests (an average of .22 per plan), and defined contribution plans will receive 96,000 requests for existing financial reports (an average of 70 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 341,000 requests for disclosures of existing inventory of reports.

The Department estimates that the total hour burden associated with disclosing existing documents upon request over the 2008–2010 period will be 66,000 hours. This would include 61,000 clerical hours to log requests and to locate, copy, and mail paper disclosures [6] and 5,000 of legal hours (1.8 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests) [7] to redact individually identifiable and proprietary information.[8] The equivalent costs of these hours are $2.1 million.[9]

For purposes of this analysis, the Department assumes that 40% of the existing documents would be requested in the year of implementation, 30% in the second year, and 15% in the third year, with the remaining 15% of disclosures of existing documents occurring after 2010.[10] Based on this allocation, the first year hour burden is estimated to be 56,000 hours ($1.7 million equivalent cost), the second year hour burden would be 49,000 hours ($1.5 million equivalent cost), and the third year burden would be 37,000 hours ($1.1 million equivalent cost).

With respect to newly created reports, the Department estimates that multiemployer defined benefit plans will receive 107,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created amortization requests (an average of one per plan), and defined contribution plans will receive 82,000 requests for newly created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 223,000 requests for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 25,000 hours. This includes 24,000 clerical hours to copy and mail paper disclosures and 1,200 legal hours to redact individually identifiable and proprietary information. The equivalent costs of these hours are $744,000.

Annual Cost Burden

The costs arising from this information collection derive from the direct costs of distributing the reports. As discussed above, the Department believes that a substantial number of the existing documents will be available only in paper form; therefore, costs will be incurred to copy and to distribute the reports by mail.[11] Some plans also will incur costs to hire a service provider to review the reports and redact individually identifiable and proprietary information from them.

The proposed rule allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document. The proposed rule does not allow plans to charge for redaction costs. The extent to which plans will impose such charges has not been estimated, but the Department has estimated the amount these charges would reimburse plans for their direct dollar cost if plans were to consistently charge requesters for all allowable charges. Because copy costs will generally not exceed 25 cents per page, the proceeds from these charges, if imposed, would reimburse plans for all mailing costs, for nearly all copy costs, and for an estimated 60 percent of the total dollar burden expected over the 2008–2010 period.

With respect to the existing inventory of documents for multiemployer defined benefit plans, the Department estimates copying costs of $791,000 for the existing inventory of financial reports,[12]

[4] All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

[5] For purposes of this estimate, the Department assumes that plans will receive no requests for documents in existing inventory for years prior to 2002.

[6] This is the product of the total documents disclosed times the percentage of documents disclosed on paper times 15 minutes (to locate, copy, and mail paper documents).

[7] The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction.

[8] The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. The Department invites comments on this estimate. Documents are assumed to be disclosed on paper unless the requester has access to e-mail and requests a document that already exists in paper form.

[9] Hourly wage estimates were based on data from the Bureau of Labor Statistics Occupational Employment Survey (November 30, 2004) and the 2005 Employment Cost Trends. Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average $25 per hour over the period based on metropolitan wage rates for Executive Secretaries and Administrative Assistants. Total labor cost for legal staff was estimated to average $109 per hour based on metropolitan wage estimates for attorneys.

[10] This assumption is based on the expectation that interest in receiving existing documents will be high in the initial year of implementation and gradually decrease in subsequent years.

[11] See footnote 9 above.

[12] The copying cost estimate is based on a $5.84 average per document cost of disclosure of financial reports (estimated 40 pages per document times $0.15 average copying cost per page), $2.80 for actuarial reports (estimated 50 pages per document times $0.06 average copying cost per page), $0.24 for extension requests (estimated 12 pages per

Continued

$171,000 for the existing inventory of actuarial reports, $41 for the existing inventory of extension requests. For multiemployer defined contribution plans, estimated copying costs for existing financial reports is $455,000. Therefore, the total copying costs for the existing inventory of all reports would be $1.4 million.

The Department estimates mailing costs of $271,000 to deliver the existing inventory of financial reports, $152,000 to deliver the existing actuarial reports, and $129 to deliver existing extension requests.[13] Multiemployer defined contribution plans will incur an estimated $157,000 of mailing costs to deliver existing financial reports. Therefore, the total mailing costs for the existing inventory of all reports is estimated to be $581,000.

The costs to redact individually identifiable and proprietary information from the existing inventory of financial reports are $702,000 and from the existing inventory of actuarial reports are $263,000. The Department estimates that no costs will be incurred for redacting information from the existing inventory of amortization extensions. For multiemployer defined contribution plans, the redaction costs for existing financial reports are $628,000. Therefore, the total redaction costs for the existing inventory of all reports are $1.6 million.

With respect to newly created reports for multiemployer defined benefit plans, the Department estimates that the annual cost for all plans to copy the newly created financial reports would be $212,000, the newly created actuarial reports would be $30,000, and the newly created amortization extension requests would be $21.[14] For multiemployer defined contribution plans, the copy cost for newly created financial reports would be $176,000. Therefore, the total copying costs for all newly created reports would be $416,000.

The costs to mail the newly created financial reports would be $73,000, newly created actuarial reports would be $27,000, and newly created amortization extension requests would be $66. For multiemployer defined contribution plans, the mailing costs for newly created financial reports would be $55,000. Therefore, the total mailing costs for newly created reports would be $155,000.

The estimated costs of contract work[15] to redact individually identifiable and proprietary information for newly created financial reports would be $140,000 and $44,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created amortization extension requests. For multiemployer defined contribution plans, the redaction cost for newly created financial reports is estimated to be $126,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be $310,000.

Type of Review: New collection.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Multiemployer Pension Plan Information Made Available on Request.

OMB Number: 1210–NEW.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 2,905.

Frequency of Response: Occasionally.

Responses: 960,000.

Estimated Total Annual Hour Burden: 56,000 (first year); 49,000 (second year); 37,000 (third year).

Estimated Total Annual Cost Burden: $2.3 million (first year); $2.0 million (second year); $1.4 million (third year).

OMB will consider comments submitted in response to this request in its review of the request for approval of the ICR; these comments will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

The Department has deemed that an employee benefit plan shall be considered a small entity if it has fewer than 100 participants.[16] By this standard, forthcoming data from the EBSA Private Pension Bulletin 2004 show that only 291 multiemployer pension plans or 10% of all multiemployer pension plans are small entities. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of RFA, the Department hereby certifies that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the proposed regulation under section 101(k) of ERISA.

Congressional Review Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order

document times $0.02 average copying cost per page), and $5.84 for defined contribution plan financial reports (estimated 50 pages per document times $0.15 average copying cost per page). The average copying costs per page takes into account the estimated percentage of documents that are in color, and will, therefore, require more expensive color copying. The Department assumes that 70% of financial reports and 20% of actuarial reports are in color, and that 0% of extension requests are in color.

[13] The negligible cost for all plans to mail extension requests results from the interaction of various assumptions regarding these documents—a low request rate, a high rate of electronic disclosure, and a relatively low mailing cost arising from the modest length of these documents.

[14] The negligible cost for all plans to copy amortization requests results from a combination of assumptions about these documents—a low request rate, a high rate of electronic disclosure, and a low cost of copying a modest number of black and white pages.

[15] The Department has assumed that 70% of redaction work will be contracted.

[16] The basis for this definition is found in section 104(a)(2) of the Act, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

12875, the rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposal does not have federalism implications because it has no 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. Section 514 of the Act provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of the Act supersede any and all laws of the States as they relate to any employee benefit plan covered under Act. The requirements of the proposal would not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2520 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–4 also issued under sec. 103 of Pub. L. 108–218. Sec. 2520.101–6 also issued under sec. 502, Pub. L. 109–280, 120 Stat. 780.

§ 2520.101–5 [Reserved]

2. Add and reserve § 2520.101–5 of subpart A.

3. Add § 2520.101–6 to subpart A to read as follows:

§ 2520.101–6 Multiemployer Pension Plan Information Made Available on Request.

(a) *In general.* For purposes of compliance with the requirements of section 101(k) of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001, *et seq.*, the administrator of a multiemployer pension plan shall, in accordance with the requirements of this section, furnish copies of actuarial, financial and funding-related documents described in paragraph (c) of this section to plan participants, beneficiaries, employee representatives and contributing employers, described in paragraph (d) of this section.

(b) *Obligation to furnish.* (1) Subject to paragraphs (b)(3) and (b)(4) of this section, the administrator of a multiemployer pension plan shall, not later than 30 days after receipt of a written request for a document or documents described in paragraph (c) of this section from a plan participant, beneficiary, employee representative or contributing employer described in paragraph (d) of this section, furnish the requested document or documents to the requester.

(2) The plan administrator shall furnish documents pursuant to paragraph (b)(1) of this section in a manner consistent with the requirements of 29 CFR 2520.104b–1, including paragraph (c) of that section relating to the use of electronic media.

(3) Nothing in this section shall require a plan administrator to furnish to any requester a document described in paragraph (c) of this section more than once during any 12-month period.

(4) The plan administrator may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed—

(i) The lesser of: (A) the actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus

(ii) The cost of mailing or delivery of the document.

(c) *Documents to be furnished.* (1) For purposes of paragraph (a) of this section, and subject to paragraph (b) of this section, a plan participant, beneficiary, employee representative or contributing employer described in paragraph (d) of this section, shall be entitled to request and receive a copy of any:

(i) Periodic actuarial report (including any sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days prior to the date of the written request;

(ii) Quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days prior to the date of the written request; and

(iii) Application filed with the Secretary of the Treasury requesting an extension under section 304 of this Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

(2) For purposes of this section, the document(s) required to be disclosed shall not include:

(i) Any information or data which served as the basis for any report or application described in paragraph (c)(1) of this section, although nothing herein shall limit any other right that a person may have to review or obtain such information under the Act; or

(ii) Any information that the plan administrator reasonably determines to be either: (A) individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or (B) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. A plan administrator shall inform the requester if the plan administrator withholds any such information included within a request under paragraph (b) of this section.

(d) *Persons entitled to request documents.* For purposes of this section, a plan participant, beneficiary, employee representative or contributing employer entitled to request and receive documents includes:

(1) Any participant within the meaning of section 3(7) of the Act;

(2) Any beneficiary receiving benefits under the plan;

(3) Any labor organization representing participants under the plan;

(4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act.

4. Amend § 2520.104b-30 to revise paragraph (a) to read as follows:

§ 2520.104b-30 Charges for documents.

(a) *Application.* The plan administrator of an employee benefit plan may impose a reasonable charge to cover the cost of furnishing to participants and beneficiaries upon their written request as required under section 104(b)(4) of the Act, copies of the following information, statements or documents: The latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. Except where explicitly permitted under the Act, no charge may be assessed for furnishing information, statements or documents as required by other provisions of the Act, which include, in part 1 of title I, sections 104(b)(1), (2), (3) and (c) and 105(a) and (c).

* * * * *

Signed at Washington, DC, this 7th day of September, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–18073 Filed 9–13–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD05–07–088]

RIN 1625–AA00

Safety Zone: Holiday Flotilla Fireworks Display, Motts Channel/Banks Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a 1000 foot safety zone around a fireworks display for the North Carolina Holiday Flotilla occurring on November 24, 2007, in the vicinity of Motts Channel/Banks Channel and Wrightsville Beach, NC. This action is intended to restrict vessel traffic on Motts Channel. This safety zone is necessary to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2007.

ADDRESSES: You may mail comments and related material to Commander, Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, NC 28512. Sector North Carolina maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: MSTC Todd C. Mann, Marine Environmental Response Branch, Coast Guard Marine Safety Unit, Wilmington, North Carolina at (910) 772–2216.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–07–088, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

On November 24, 2007, the North Carolina Holiday Flotilla fireworks display will be held adjacent to Motts Channel/Banks Channel, Wrightsville Beach, NC. Spectators will be observing from both the shore and from vessels. Due to the need of protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone on specified waters of Motts Channel. The regulated area will consist of a 1000 foot safety zone around Bird Island position 34–12–42N 077–48–26W south of the Seapath Yacht Club, Wrightsville Beach, NC. The safety zone will be enforced from 6 p.m. to 8 p.m. on November 24, 2007. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This 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 under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of Motts Channel/Banks Channel from 6 p.m. to 8 p.m. on November 24, 2007. The safety zone

will not have a significant impact on a substantial number of small entities, because the zone will only be in place for a few hours and maritime advisories will be issued, so the mariners can adjust their plans accordingly. 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 MSTC Todd C. Mann, Marine Environmental Response Branch, Coast Guard Marine Safety Unit Wilmington, North Carolina at (910) 772–2216.

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make a final decision on whether to categorically exclude this rule from further environmental review.

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 proposes to amend 33 CFR part 165 subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 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. Add temporary § 165.T05–088, to read as follows:

§ 165.T05–088 Safety Zone: Motts Channel/Banks Channel, Wrightsville Beach, North Carolina.

(a) *Location.* The following area is a safety zone: All waters of Motts

Channel/Banks Channel within 1000 feet of Bird Island at Wrightsville Beach, NC, approximate position 34–12–42N 077–48–26W in the Captain of the Port Sector North Carolina zone as defined in 33 CFR 3.25–20.

(b) *Definition: Captain of the Port:* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Sector North Carolina to act on his behalf.

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

(2) The operator of any vessel in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

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

(3) The Captain of the Port, Sector North Carolina can be contacted at telephone number (252) 247–4570 or (252) 247–4571.

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

(d) *Enforcement period:* This regulation will be enforced from 6 p.m. to 8 p.m. on November 24, 2007.

Dated: September 4, 2007.

William D. Lee,

Captain, U.S. Coast Guard, Sector North Carolina.

[FR Doc. E7–18138 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 232, and 238

[Docket No. FRA–2006–26175, Notice No. 2]

RIN 2130–AB84

Electronically Controlled Pneumatic Brake Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearings and technical conference.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 4, 2007 (71 FR 50820), FRA proposed revisions to the regulations governing the power braking systems and equipment used in freight and other non-passenger railroad train operations. The proposed revisions are intended to permit and promote the implementation of electronically controlled pneumatic (ECP) brake systems in a safe and effective manner. In that proposed rule, FRA stated that it would hold an oral public hearing on a date to be announced in a forthcoming notice, at which the Administrator or his delegated representative may preside. This document announces public hearings and a technical roundtable discussion.

DATES: (1) *Public Hearings:* Two public hearings will be held on the dates and at the locations listed below to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM. A technical roundtable will be held in conjunction with the second hearing. The dates of the public hearings are as follows:

Thursday, October 4, 2007, at 9:30 a.m. in Washington, DC.

Friday, October 19, 2007, at 8:30 a.m. in the Chicago, Illinois area.

(2) *Technical Roundtable:* A technical roundtable will be held on Friday, October 19, 2007, directly following the public hearing scheduled for that day. The technical roundtable is intended to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM and to provide interested parties the ability to specifically discuss various technical issues related to the implementation and operation of ECP brake systems.

ADDRESSES: (1) *Public Hearings:* Hearings to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM will be held at these locations:

Washington, DC: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Chicago, IL area: Crowne Plaza Chicago O'Hare, 5440 North River Road, Rosemont, IL 60018.

(2) *Technical Roundtable:* A technical conference will be conducted in the Chicago, Illinois at: Crowne Plaza Chicago O'Hare, 5440 North River Road, Rosemont, IL 60018. See **SUPPLEMENTARY INFORMATION** section for details.

(3) *Docket Clerk:* Written notification should identify the docket number and must be submitted to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., RCC–10, Stop 10, Washington, DC 20590 or faxed to (202) 493–6068.

FOR FURTHER INFORMATION, CONTACT: James Wilson, Office of Safety Assurance and Compliance, Motive Power and Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6259); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6032).

SUPPLEMENTARY INFORMATION: Interested parties are invited to present oral statements and proffer evidence at the hearings. The hearings will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearings will be non-adversarial proceedings; therefore, there will be no cross examination of persons presenting statements or proffering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

The purpose of the hearings is to receive oral comments regarding the specific provisions contained in the proposed rule and to receive evidence and to develop findings to determine whether FRA should invoke its discretionary authority under 49 U.S.C. 20306 to exempt application of section 20303 as it applies to freight trains and freight cars operating with ECP brake systems. Section 20303 requires operators to transport rail vehicles with defective or insecure equipment ''from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made'' to avoid incurring civil penalties related to such movement. FRA would be authorized to grant relief from section 20303 only if it were to make findings required by section 20306. That section is reproduced here for ready reference:

Section 20306. Exemption for Technological Improvements

(a) General.—Subject to subsection (b) of this section, the Secretary of Transportation may exempt from the requirements of this chapter railroad equipment or equipment

that will be operated on rails, when those requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.

(b) Conditions for exemption.—The Secretary may grant an exemption under subsection (a) of this section only on the basis of—

(1) findings based on evidence developed at a hearing; or

(2) an agreement between national railroad labor representatives and the developer of the new equipment or technology.

To permit and encourage implementation of ECP brake system technology without hindering safety, FRA proposes to invoke its discretionary authority under 49 U.S.C. 20306 to exempt ECP brake-equipped trains and equipment from the specific statutory requirements contained in 49 U.S.C. 20303.

The technical roundtable is intended to provide interested parties an informal forum to discuss issues and concerns related to the implementation and operation of trains and equipment utilizing ECP brake system technology. The roundtable discussion may address specific technical issues that might not be addressed in the oral comments presented at the public hearings. This format will provide a more open, freeform exchange of ideas and views related to the technology. The procedures for the technical roundtable will be announced by the FRA representatives conducting the discussions. A transcript of the discussions will be made part of the public docket in this proceeding.

Any person wishing to participate in either the public hearings or the technical conference should notify the Docket Clerk by mail or at the address or fax number provided in the **ADDRESSES** section at least five working days prior to the date of the hearing or technical roundtable discussion and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

Issued in Washington, DC, on September 7, 2007.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. E7–18169 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 72, No. 178
Friday, September 14, 2007

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

Agricultural Marketing Service

[Doc. No. AMS–PY–07–0101]

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of, and revision to a currently approved information collection in support of the Regulations Governing the Voluntary Grading of Shell Eggs.

DATES: Comments received by November 13, 2007 will be considered.

Additional Information or Comments: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to David Bowden, Jr., Chief; Standards, Promotion & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259, (202) 690–3148. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk, Poultry Programs, AMS, USDA, Room 3953–S, 1400 Independence Avenue, SW., Washington, DC 20250–0259 during regular business hours, or can be viewed at: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Voluntary Grading of Shell Eggs—7 CFR part 56.

OMB Number: 0581–0128.

Expiration Date of Approval: May 31, 2008.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department of Agriculture (USDA) to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture to inspect; certify and identify; and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The regulations in 7 CFR part 56 provide a voluntary program for grading shell eggs on the basis of U.S. standards, grades and weight classes. In addition, the shell egg industry and users of the products have requested development and provision of other types of voluntary services under these regulations; e.g., contract and specification acceptance services and certification of quantity. Voluntary grading service is available on a resident basis or on an as-needed bases. The AMA requires Agency costs be assessed and collected from respondents who request voluntary program services. Information provided during the request is used by the Agency to determine cost assessments.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program. The information request requires personal data, such as name, type of business, address and description of service requested.

The information collected is used only by authorized representatives of USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies) to administer and to conduct and carry out requested grading services. The Agency is the primary user of the information. Information is also used by authorized State agencies under a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.238 hours per response.

Respondents: State or local governments, businesses or other for-profits, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 630.

Estimated Total Annual Responses: 23,130.50.

Estimated Number of Responses per Respondent: 36.72.

Estimated Total Annual Burden on Respondents: 5,513.64 hours.

Copies of this information collection may be obtained from David Bowden, Jr., Chief, Standards, Promotion, & Technology Branch, at (202) 690–3148.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: David Bowden, Jr., Chief, Standards, Promotion & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259. All comments received will be available for public inspection during regular business hours at the above address and may be viewed at *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 10, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–18112 Filed 9–13–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Northern Hills Ranger District, South Dakota, West Rim Project Area

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement multiple resource management actions within the West Rim Project Area to implement the amended Black Hills National Forest Land and Resource Management Plan. The West Rim Project Area covers approximately 43,028 acres of National Forest System land and approximately 10,129 acres of interspersed private land southwest of Spearfish, South Dakota. a 1/2 mile buffer around all parcels of private land is identified as Wildland Urban Interface (WUI). Proposed actions include a combination of vegetation and fuels treatments to reduce fire hazard, reduce mountain pine beetle susceptibility, and improve vegetative diversity. The proposed action includes approximately 6,800 acres of commercial thinning, 3,500 acres of overstory removal, 13,700 acres of pre-commercial thinning, 2,300 acres of commercial seed cuts, 470 acres of fuel reduction treatments, and up to 13,800 acres of prescribed burning. Approximately 25 miles of new road construction would be necessary to carry out the proposed vegetation management actions.

DATES: Comments concerning the scope of the analysis must be received by October 15, 2007. The draft environmental impact statement is expected to be available February 2008 and the final environmental impact statement is expected to be completed by July 2008.

ADDRESSES: Send written comments to: Rhonda O'Byrne, District Ranger, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642–4622. E-mail: *comments-rocky-mountain-black-hills-northern-hills@fs.fed.us* with ''West Rim Project'' as the subject.

FOR FURTHER INFORMATION CONTACT: Chris Stores, Assistant District Planner, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642–4622.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of and need for the actions proposed in the West Rim project area is to reduce fire hazard and the risk of mountain pine beetle infestation and to increase vegetative diversity. All actions are intended to move toward or achieve related forest Plan Goals and Objectives, consistent with forest Plan Standards and Guidelines.

Proposed Action

Proposed actions include the following:

Reduce the acres at moderate-to-high fire hazard by thinning stands to decrease crown proximity and by reducing fuel accumulations. Thinning may use commercial or non-commercial methods. Fuel reduction treatments could include lopping, chipping, crushing, piling and burning, construction of fuel breaks, and broadcast prescribed burning.

Reduce acres at high or medium susceptibility to mountain pine beetle by thinning stands and changing stand structure. Commercial and non-commercial (including prescribed burning) methods may be used.

Increase vegetative diversity through understory or overstory thinning, including commercial and non-commercial timber harvest. Remove ponderosa pine from hardwood, meadow, and riparian areas. Manage known location of old growth for old growth characteristics.

Road construction and maintenance activities necessary to access areas proposed for timber harvest. New roads would be closed following harvest, and existing roads that are not in the National Forest System could also be closed in conjunction with this project.

The Forest Service is the sole responsible agency for this project; no cooperators are participating in project planning.

Responsible Official

Rhonda O'Byrne, District Ranger, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783.

Nature of Decision To Be Made

The decision to be made is whether or not to approve the proposed action or alternatives at this time. No Forest Plan amendments are proposed.

Scoping Process

Comments and input regarding the proposed action are being requested from the public and other interested parties in conjunction with this notice of intent. The comment period will be open for thirty days, beginning on the date of publication of this notice of intent. An open house to gather comments from local individuals and groups will be held on September 19, 2007, at the Northern Hills Ranger District office in Spearfish, SD. Also, response to the draft EIS will be sought from the interested public beginning approximately in February 2008.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. It is our desire to involve interested parties and especially adjacent landowners in identifying the issues related to proposed activities. Comments will assist in identification of key issues and opportunities to develop project alternatives and mitigation measures.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days (beginning approximately February 15, 2008) from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action

participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. it is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Dated: August 31, 2007.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.

[FR Doc. 07–4373 Filed 9–13–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site

Authority: Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108–447).

AGENCY: National Forests in Florida, Apalachicola National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Apalachicola National Forest proposes a new fee for operations of OHV vehicles (all terrain vehicles (ATVs), utility vehicles (such as a Kawasaki Mule), dual sport motorcycles, and off road motorcycles) on the motorized trail system. Three types of permits would be available: 1 to 3 days for $10; 7 days for $25; and 365 days for $75. For operators younger than 16, the 1 to 3 day permit would be available for $5 per operator. The funds may be used for: Maintaining trails, staffing trailheads, cleaning restrooms at trailheads, grading mixed use roads, replacing signs, and other activities to manage and maintain the OHV trail system. The Apalachicola National Forest has proposed a motorized trail system of approximately 55 miles for dual sport and off road motorcycles and another 55 miles for all terrain vehicles, utility vehicles, and dual sport and off road motorcycles.

DATES: The proposed fee will be initiated April 1, 2008. Comments, concerns or questions about this new fee must submitted by November 30, 2007.

ADDRESSES: Submit comments, concerns or questions about the new fee associated with the Apalachicola National Forest's ATV trails, motorcycle trails, and mixed use roads to TRAIL FEES, District Ranger, Apalachicola National Forest, 57 Taff Drive, Crawfordville, FL 32327.

FOR FURTHER INFORMATION CONTACT: Cathy Briggs, Recreation Manager, Apalachicola National Forest, 850–926–3561 x6509 or *cbriggs@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Recreation Resource Advisory Committee will review considerations for new fees at least three months prior to the proposed initiation date. OHV use has been ongoing for many years on the Apalachicola National Forest.

Dated: September 5, 2007.

Harold G. Shenk,

Deputy District Ranger, Apalachicola National Forest.

[FR Doc. 07–4557 Filed 9–13–07; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region, Boise, Payette, and Sawtooth National Forests; Amendment to the 2003 Land and Resource Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of proposed nonsignificant amendments to the three Southwest Idaho Ecogroup (SWIE) 2003 Land and Resource Management Plans (Forest Plans). Amendments to the 2003 Forest Plans for the Boise, Payette, and Sawtooth National Forests will add, and/or modify existing, management direction, as needed, to implement a comprehensive, Forest Plan-level, wildlife conservation strategy (WCS). This WCS will identify both short- and long-term management strategies and priorities for maintaining and restoring habitats associated with terrestrial wildlife species. The proposed nonsignificant amendments will provide management direction and guidance that focuses on those habitats, and their associated species, identified in the WCS as being of greatest conservation concern during the current planning period (i.e., next 10–15 years).

DATES: Comments concerning the scope of the analysis must be received within 30 days following the date of publication of this NOI. The Draft EIS is expected to be available in mid- to late-winter 2008 for a 90-day comment period. The single Final EIS and three RODs, one for each Forest Plan, are expected to be completed by late summer 2008.

ADDRESSES: Send written comments to Randall Hayman, Forest Planner, Boise National Forest; 1249 South Vinnell Way, Suite 200; Boise, Idaho 83709; or by fax at 208–373–4111; or you may hand-deliver your comments to the Boise Forest Supervisor's Office, located at 1249 South Vinnell Way, Suite 200, Boise, during normal business hours from 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or Word (.doc) to: *comments-intermtn-boise@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Randall Hayman, Forest Planner, Boise National Forest at the address above.

SUPPLEMENTARY INFORMATION: Separate RODs for revised Forest Plans were issued in July 2003 for each of the SWIE National Forests (Boise, Payette, and Sawtooth). The RODs implemented Alternative 7, as identified in the single FINAL EIS that disclosed the environmental effects of the seven alternative Forest Plan strategies considered for these three National Forests. Implementation of the three revised Forest Plans began in September 2003.

Analyses supporting Forest Plan Revision identified wildlife habitats that had declined from historical conditions and associated these habitats with species of conservation concern (2003 Final EIS, pp. 3–255 to 3–289). Based on an update to the 2003 multi-scale analysis initiated in 2005, the Forest Supervisors for the three Forests are in

the process of identifying priorities for maintaining and restoring habitats during the current 10–15 year planning period, as part of the comprehensive WCS. The WCS will also identify priorities for longer-term maintenance and restoration for other habitats that have experienced varying levels of decline.

The analysis supporting the revised Forest Plans, and subsequent updates to this multi-scale analysis, were developed using the principles and scientific methods generated during the Interior Columbia Basin Ecosystem Management Project (Boise Forest Plan, p. II–41; Payette Forest Plan, p. II–41; Sawtooth Forest Plan, p. II–38). The updated analysis also incorporates new information generated after the Forest Plans were revised in July 2003, including best available science as of this date. New information includes mid-scale assessments such as the 2005 Comprehensive Wildlife Conservation Strategies for the States of Idaho and Utah, respectively, and the 2006 Conservation Plan for the Greater Sage Grouse in Idaho.

Purpose and Need for Action

The SWIE revised Forest Plans identified the need to include management direction to focus restoration activities in habitats for species of concern (Boise and Payette Forest Plans, p. II–10 and, Sawtooth Forest Plan, p. II–9). However, while the 2003 Forest Plans include general direction that addresses this need, they do not include specific direction that spatially prioritizes one habitat area over another at scales smaller than Forest Plan management areas. Recognizing the importance of completing this task, the Responsible Official included, in each of the 2003 Plans, Forest Plan wildlife objective (WIOB03), which calls for prioritizing wildlife habitat to be restored at a mid- or Forest-scale using information from sources such as species habitat models and fine scale analyses.

Therefore, the purpose of this action is twofold: (1) To amend management direction and/or other components of the SWIE Forest Plans to reflect findings and priorities identified in the WCS as needed to guide Forest Plan implementation for the remainder of this planning period; and (2) to update the wildlife assessments pertaining to 36 CFR 219.19 (1982) as needed to reflect findings in updated analyses, as well as outcomes anticipated from implementing the amended Forest Plans.

Proposed Action

The proposed action is to implement nonsignificant Forest Plan amendments that will include new or modified management direction and/or other components of the three Forest Plans, as needed, to reflect findings and priorities identified in the WCS to guide Forest Plan implementation for the remainder of this planning period.

Responsible Officials

The Responsible Officials are the three Forest Supervisors for the Boise, Payette, and Sawtooth National Forests:

Richard A. Smith, Forest Supervisor for the Boise National Forest, USDA—Forest Service; 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709.

Suzanne C. Rainville, Forest Supervisor for the Payette National Forest, USDA—Forest Service; 800 West Lakeside Avenue, McCall, Idaho 83638.

Jane P. Kollmeyer, Forest Supervisor for the Sawtooth National Forest, USDA—Forest Service; 2647 Kimberly Road East, Twin Falls, Idaho 83301.

Nature of Decision To Be Made

The Responsible Officials will review the Final EIS and determine if the 2003 Plan for his/her respective Forest should be amended and/or modified, or if the current Forest Plan should remain unchanged.

Scoping Process

Written comments must be received within 30 days from the day following publication of this NOI in the **Federal Register**. Providing comments within this time period ensures that they will be available to the Forest Service at a time when it can meaningfully consider them during preparation of the specific proposed amendments and Draft EIS.

Additional opportunities for public participation will be provided following completion of specific proposed amendments, prior to release of the Draft EIS. Information and status updates of this amendment process, including specific proposed amendments, will begin to be posted on the Web site, *http://www.fs.fed.us/r4/boise/*, by early winter 2007.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A legal notice will be published in the newspaper of record for each National Forest and a Notice of Availability (NOA) will be published in the **Federal Register** to inform the public when the Draft EIS is available for review and comment. The Draft EIS will be distributed to all parties who respond during the scoping process, or who otherwise notify the agency at some point following publication of this NOI of their interest to continue to receive information pertaining to this proposal.

The comment period on the Draft EIS will end 90 days from the date the Environmental Protection Agency publishes the NOA in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 7, 2007.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 07–4552 Filed 9–13–07; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and a service previously furnished by such agencies.

Comments Must Be Received On or Before: October 14, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments, Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

Services

Service Type/Location: Custodial Services, U.S. Coast Guard Office, 110 Mount Elliot Street, Detroit, MI.
NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
Contracting Activity: U.S. Coast Guard, Cleveland, OH.
Service Type/Location: Mailroom Operations, Hubert H. Humphrey Building (200 Independence Avenue, SW.), Mary E. Switzer Bldg (330 C Street, SW.), Wilbur J. Cohen Bldg (330 Independence Avenue, SW.), Washington, DC.
NPA: Didlake, Inc., Manassas, VA.
Contracting Activity: Department of Health and Human Services—Program Support Center, Rockville, MD.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for deletion from the Procurement List:

Product

Marker, Lumocolor

NSN: 7520–01–507–6969—Markers, Lumocolor, Permanent.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: General Services Administration, Office Supplies & Paper Products, Acquisition Ctr., New York, NY.

Service

Service Type/Location: Janitorial/Custodial, 3273rd U.S. Army Reserve Hospital, 1003 Grove Road, Suites B & C, Greenville, SC.
NPA: Greenville County Disabilities and Special Needs Board, Greenville, SC.
Contracting Activity: Department of the Army, Army Reserve Contracting Center, Birmingham, AL.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–18175 Filed 9–13–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product and services previously furnished by such agencies.

DATES: *Effective Date:* October 14, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On June 22, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 34433) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the

Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Vehicle Washing Service, General Services Administration, Fleet Management Division, Region 2, Puerto Rico & Virgin Islands.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: General Services Administration, Property Management Center—Manhattan, New York.

Deletions

On July 13 and July 20, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 38561; 39786) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services deleted from the Procurement List.

End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

Product

Tube, Mailing and Filing

NSN: 8110–00–969–5406—Tube, Mailing and Filing.
NPA: MacDonald Training Center, Inc., Tampa, FL.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Janitorial/Custodial, U.S. Federal Building, 111 West Huron St., Buffalo, NY.
NPA: Phoenix Frontier, Inc., Buffalo, NY.
Contracting Activity: General Services Administration, Public Buildings Service, New York, NY.
Service Type/Location: Commissary Shelf Stocking, Custodial & Warehousing, Marine Corps Base, Twenty-Nine Palms, CA.
NPA: PRIDE Industries, Inc., Roseville, CA.
Contracting Activity: Defense Commissary Agency, Fort Lee, VA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–18176 Filed 9–13–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Performance Review Board Membership

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Preston Jay Waite, Shirin A. Ahmed, Teresa Angueira, William G. Bostic, Jr., Stephanie Brown, Nancy M. Gordon, Arnold A. Jackson, Theodore A. Johnson, Ruth Ann Killion, Robert LaMacchia, and Michael J. Longini.

Thomas L. Mesenbourg, Jr., Brian Monaghan, C. Harvey Monk, Andrew H. Moxam, Walter C. Odom, Jr., Richard W. Swartz, Mark Wallace, Daniel Winberg, Tommy Wright, and William Bell.

Robert E. Fay III, David F. Findley, Paul Friday, J. Steven Landfeld, Rosemary D. Marcuss, Dennis J. Fixler, Brent R. Moulton, Sumiye O. Okubo, Joel Platt, James K. White, Dr. Jennifer Madans, and Katherine Wallman.

FOR FURTHER INFORMATION CONTACT: Crystal Roy, 301–763–3727.

Dated: September 4, 2007.

James K. White,

Associate Under Secretary for Management, Chair, Performance Review Board.

[FR Doc. 07–4556 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket A(27f)-44–07

Foreign–Trade Zone 149--Freeport, TX, Request for Minor Modification--Subzone 149C, ConocoPhillips Petroleum Company, Sweeny, TX, (Crude Oil Refinery Complex)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Port of Freeport, grantee of FTZ 149, requesting authority on behalf of the ConocoPhillips Company (ConocoPhillips), pursuant to section 400.27(f) of the Board's regulations, for a minor modification to the list of products that can be produced from non–privileged (NPF) inputs referenced in Restriction #2 of FTZ Board Order 920 (62 FR 51830, 10/3/97), Board Order 1116 (65 FR 52696, 8/30/00) and Board Order 1488 (71 FR 67329, 11/21/06), authorizing Subzone 149C at ConocoPhillips' oil refinery complex in Sweeny, Texas. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400).

The company is requesting that an additional refinery product - cyclohexane (HTSUS 2902.11.0000, duty–free) - be added to the list of petrochemical feedstocks and refinery by–products that can be produced from NPF status inputs (e.g., crude oil) at the refinery. The list is referenced as Appendix ''C'' of the Examiner's Report and in Board Orders 920, 1116 and 1488, Restriction #2.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 15, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 29, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at the following location:
Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230.

For further information, contact Elizabeth Whiteman at *Elizabeth__Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: September 5, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–18160 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–908

Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China

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

EFFECTIVE DATE: September 14, 2007.

SUMMARY: We preliminarily determine that sodium hexametaphosphate (''SHMP'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at less than fair value (''LTFV'') are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Kristina Horgan, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1442 or (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On February 8, 2007, the Department of Commerce (''Department'') received a petition on imports of SHMP from the PRC filed in proper form by ICL Performance Products, LP and Innophos, Inc. (''Petitioners'') on behalf of the domestic industry producing SHMP. This investigation was initiated on February 28, 2007. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 72 FR 9926 (March 6, 2007) (''Initiation Notice''); *see also Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 11325 (March 13, 2007). Additionally, in the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in non–market economy (''NME'') investigations. The process requires exporters and producers to submit a separate–rate status application. *See Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''*Policy Bulletin 05.1*'') available at http://ia.ita.doc.gov. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

On April 3, 2007, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of SHMP. The ITC's determination was published in the **Federal Register** on April 9, 2007. *See* Investigation No. 731–TA–1110 (Preliminary), *Sodium Hexametaphosphate (SHMP) From China*, 72 FR 17581 (April 9, 2007).

Scope Comments

The Department also set aside a 20–day period from the publication of the initiation for all interested parties to raise issues regarding product coverage. The Department did not receive any comments from interested parties regarding product coverage during the 20–day period and subsequently, did not change the scope in the *Initiation Notice*.

Scope of Investigation

The merchandise subject to this investigation is sodium hexametaphosphate (''SHMP''). SHMP is a water–soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO3 units. SHMP has a P2O5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC–N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3823.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service (''CAS'') has assigned the name ''Polyphosphoric Acid, Sodium Salt'' to SHMP. The CAS registry number is 68915–31–1. However, SHMP is commonly identified by CAS No. 10124–56–8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length *i.e.*, whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form.

However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

Quantity and Value

On March 6, 2007, the Department requested quantity and value (''Q&V'') information from a total of 38 companies identified by Petitioners as potential producers or exporters of SHMP from the PRC. Also, on March 6, 2007, the Department sent a letter requesting Q&V information to the China Bureau of Fair Trade for Imports & Exports (''BOFT'') of the Ministry of Commerce (''MOFCOM'') requesting that BOFT transmit the letter to all companies who manufacture and export subject merchandise to the United States, or produce the subject merchandise for the companies who were engaged in exporting the subject merchandise to the United States during the POI. For a complete list of all parties from which the Department requested Q&V information, see Memorandum to James C. Doyle, Director, Office 9, AD/CVD Operations, through Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst,

Office 9, AD/CVD Operations, regarding ''Selection of Respondents for the Antidumping Investigation of Sodium Hexametaphosphate from the People's Republic of China'' (April 17, 2007) (''*Respondent Selection Memorandum*''). The Department received timely Q&V responses from five interested parties. The Department did not receive any type of communication from BOFT regarding its request for Q&V information. *See id.*, at 1.

On April 17, 2007, the Department selected Hubei Xingfa Chemicals Group (''Hubei Xingfa'') and Mianyang Aostar Phosphorous Chemical Industry Co., Ltd. (''Mianyang Aostar'') as mandatory respondents in this investigation. *See id.*, at 3–4.

Surrogate Country

On May 10, 2007, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Letter to All Interested Parties, from Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, regarding ''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China (''PRC''),'' dated May 10, 2007, attaching Memorandum to Christopher D. Riker, Program Manager, Office 9, AD/CVD Operations, from Ron Lorentzen, Director, Office of Policy, regarding ''Investigation of Sodium Hexametaphosphate from the People's Republic of China (PRC): Request for List of Surrogate Countries,'' dated May 9, 2007.

On May 10, 2007, the Department requested comments on surrogate country selection from the interested parties in this investigation. Petitioners submitted surrogate country comments on June 4, 2007. Hubei Xingfa submitted surrogate country comments on June 4, 2007. Petitioners submitted rebuttal surrogate country comments on June 14, 2007. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below, and the Memorandum to the File, through James C. Doyle, Director, Office 9, AD/CVD Operations, from Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, regarding ''Antidumping Duty Investigation of Sodium Hexametaphophate from the People's Republic of China: Selection of a Surrogate Country,'' dated September 6, 2007 (''*Surrogate Country Memorandum*'').

Separate Rates Applications

Between April 3, 2007, and May 4, 2007, we received timely separate–rate applications from three non–mandatory respondent companies: Jiangyin Chengxing International Trading Co., Ltd. (''Chengxing''), Yibin Tianyuan Group Co., Ltd. (''Tianyuan''), and Sichuan Mianzhu Norwest Phosphate Chemical Company Limited (''Norwest'').

Questionnaires

On March 30, 2007, the Department requested comments from all interested parties on product characteristics to be used in the designation of control numbers (''CONNUMs'') to be assigned to the subject merchandise. The Department received comments from Petitioners and Hubei Xingfa.

On April 18, 2007, the Department issued its sections A, C, D, and E,[1] questionnaire to Hubei Xingfa and Mianyang Aostar, which included product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration.

On May 9, 2007, Hubei Xingfa submitted its response to section A of the Department's questionnaire, and on June 1, 2007, Hubei Xingfa submitted its response to sections C and D of the Department's questionnaire. On May 9, 2007, the Department placed on the record a letter submitted by Mianyang Aostar, indicating that it was withdrawing from the investigation. *See Mianyang Aostar Withdrawal Memo*.[2] The Department issued supplemental questionnaires to Hubei Xingfa between June and August 2007, and received responses between June and August 2007. On June 12, and June 20, 2007, Petitioners submitted comments on Hubei Xingfa's questionnaires responses.

On July 20, 2007, the Department issued a supplemental questionnaire to separate rate respondent, Chengxing, which was submitted on July 30, 2007.

In addition, on July 23, 2007, the Department issued a supplemental questionnaire to separate rate respondent, Tianyuan, which was submitted on August 6, 2007.

Surrogate Value Comments

On June 20, 2007, Petitioners and Hubei Xingfa submitted comments on surrogate information with which to value the factors of production in this proceeding. On July 2, 2007, Petitioners also filed rebuttal comments on surrogate information with which to value the factors of production in this proceeding. On August 14, 2007, Petitioners and Hubei Xingfa submitted additional comments on surrogate information with which to value factors of production.

Postponement of Preliminary Determination

On June 25, 2007, Petitioners requested that the Department postpone the preliminary determination pursuant to section 733(c)(1)(B)(i) of the Act. We did so on July 2, 2007. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 37728 (July 11, 2007).

Period of Investigation

The period of investigation (''POI'') is July 1, 2006, through December 31, 2006. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (February 8, 2007). *See* 19 CFR 351.204(b)(1).

Non–Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non–market economy. *See Initiation Notice*, 72 FR at 9927. The Department considers the PRC to be a NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Final Results of 2001–2002 Administrative Review: TRBs from the People's Republic of China*, 68 FR 70488 (December 18, 2003). No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we have treated the PRC as

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

[2] On May 3, 2007, Mianyang Aostar submitted an improperly filed letter to the Department indicating it was withdrawing from the investigation. *See* Memorandum to the File, from Erin Begnal, Senior International Trade Analyst, Office 9, AD/CVD Operations, regarding ''Antidumping Duty Investigation of Sodium Hexametaphosphate (''SHMP'') from the People's Republic of China: Withdrawal of Mianyang Aostar Phosphorous Chemical Industry Co., Ltd.'' (May 9, 2007) (''*Mianyang Aostar Withdrawal Memo*'').

an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the normal value section below.

As detailed in the *Surrogate Country Memorandum*, the Department has preliminarily selected India as the surrogate country on the basis that: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value Hubei Xingfa's factors of production. *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst, Office 9, AD/CVD Operations, regarding ''Sodium Hexametaphophate from the People's Republic of China: Surrogate Values for the Preliminary Determination'' (September 6, 2007) (''*Factor Value Memorandum*'').

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

Affiliation

Based on the evidence presented in Hubei Xingfa's questionnaire responses, we preliminarily find that Hubei Xingfa is affiliated with Baokang Chuyuan Chemical Industry Co., Ltd. (''Baokang Chuyuan''), which also produces subject merchandise, and certain suppliers of its material inputs, pursuant to sections 771(33)(E) and (G) of the Act. In addition, based on the evidence presented in Hubei Xingfa's questionnaire responses, we preliminarily find that Hubei Xingfa and Baokang Chuyuan should be collapsed for the purposes of this investigation. This finding is based on the determination that Hubei Xingfa and Baokang Chuyuan are affiliated, that Hubei Xingfa and Baokang Chuyuan are both producers of identical products and no retooling would be necessary in order to restructure manufacturing priorities, and there is significant potential for manipulation of price or production between the parties. *See* 19 C.F.R. Sec. 351.401(f)(1) and (2). For further discussion, *see* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin C. Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Affiliation and Collapsing of Hubei Xingfa Chemicals Group, Ltd.'' dated September 6, 2007.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies Hubei Xingfa and the separate rate applicants, Chengxing and Norwest, (hereinafter referred to as the Separate Rate Companies) have provided company–specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate–rate test is not concerned, in general, with macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588.

(May 6, 1991) (''Sparklers''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Hubei Xingfa and the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. *See* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding

''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Separate Rates Memorandum'' (September 6, 2007) (''*Separate Rates Memorandum*'').

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for Hubei Xingfa and the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: 1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management.

With respect to Tianyuan, we determine that it failed to provide evidence regarding its corporate structure, specifically the nature of its parent company and whether or not its parent company was subject to control by the government. The separate rate application requires that the applicant provide specific documentation regarding its corporate history and corporate structure. Tianyuan did not provide complete information in its application nor in its supplemental response in regard to a specific question from the Department asking for this information. *See Separate Rates Memo*. Therefore, we determine that Tingyuan has failed to establish its eligibility for a separate rate and it is deemed to be part of the PRC–wide Entity.

The evidence placed on the record of this investigation by Hubei Xingfa, Chengxing, and Norwest demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted a separate company–specific rate to Hubei Xingfa. Additionally, we have granted the Separate Rate Companies a weighted–average margin for the purposes of this preliminary determination. *See Separate Rates Memorandum*.

The PRC–Wide Entity

The Department has data that indicates there were more exporters of SHMP from the PRC than those indicated in the response to our request for Q&V information during the POI. *See Respondent Selection Memorandum*. We issued our request for Q&V information to 38 potential Chinese exporters of the subject merchandise, in addition to the Bureau of Foreign Trade/ Ministry of Commerce of the PRC (''BOFT/MOFCOM'').[3] *See id.*,at 1–2. While information on the record of this investigation indicates that there are numerous producers/exporters of SHMP in the PRC, we received only five timely–filed Q&V responses. Further, based on our knowledge of the volume of imports of subject merchandise from the PRC, the companies which responded to the Q&V questionnaire do not account for all imports into the United States. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Further, the Government of the PRC did not respond to the Department's questionnaire. Therefore, the Department determines preliminarily that there were PRC exporters of the subject merchandise during the POI from PRC producers/ exporters that did not respond to the Department's request for information. We have treated these PRC producers/ exporters as part of the PRC–wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that, if an interested party (A) Withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC–wide entity was non–responsive. Certain companies did not respond to our request for Q&V information and did not respond to the Department's questionnaire (including the mandatory respondent, Mianyang Aostar). As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available is appropriate to determine the PRC–wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) *(''SAA''); see also Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC–wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, the statute indicates that the Department may rely upon information

[3] For a list of companies to which the Department sent its request for Q&V information, *see Respondent Selection Memorandum* at 1-2.

derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. *See SAA* at 870. It is the Department's practice to select, as AFA, the higher of the (a) Highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at ''Facts Available.'' In the instant investigation, as AFA, we have assigned to the PRC–wide entity the calculated margin for Hubei Xingfa, the highest rate calculated of any respondent in the investigation. Section 776(c) of the Act requires that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.[4] As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act.

Margin for the Separate Rate Companies

The Department received timely and complete separate rates applications from the Separate Rates Companies, who are all exporters of SHMP from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above in the ''Separate Rates'' section and in the *Separate Rates Memorandum*. Consistent with the Department's practice, as the separate rate, we have established a weighted–average margin for the Separate Rates Companies based on the rate we calculated for Hubei Xingfa, which was not zero, *de minimis*, or based entirely on AFA. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations states that, ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) (''*Allied Tube*''). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In order to simplify the determination of date of sale for both the respondent and the Department, in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. For instance, in *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

After examining the questionnaire responses and the sales documentation that Hubei Xingfa placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Hubei Xingfa because the terms of sales are set at the invoice date.

Fair Value Comparisons

To determine whether sales of SHMP to the United States by Hubei Xingfa were made at less than fair value, we compared the export price (''EP'') to normal value (''NV''), as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice. We compared NV to weighted–average EPs in accordance with section 777A(d)(1) of the Act.

U.S. Price–Export Price

For Hubei Xingfa, we based U.S. price on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign movement expenses, foreign brokerage and handling expenses, and international freight expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Where foreign movement or international ocean freight was provided by PRC service providers or paid for in Renminbi (''RMB''), we valued these services using surrogate values (*see* ''Factors of Production'' section below for further discussion).

For a complete discussion of the calculations of the U.S. price for Hubei Xingfa, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Hubei Xingfa,'' dated September 6, 2007 (''*Hubei Xingfa Analysis Memorandum*'').

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production (''FOP'') methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non–market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Hubei Xingfa for the POI.[5] To calculate NV, we multiplied

[4] Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870.

[1] The Department did not value the factors of production for the production of phosphate rock, silica quartzite, or crude coal, consistent with the Department's practice in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 3.

the reported per–unit factor–consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all surrogate values used for respondents can be found in the Memorandum to the File, Through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, From Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding, ''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Selection of Factor Values,'' dated September 6, 2007 (''*Factor Value Memorandum*'') and Memorandum to the File, Through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, From Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding, ''Antidumping Duty Investigation of Sodium Hexametaphosphate from the People's Republic of China: Analysis Memorandum for Hubei Xingfa Chemicals Group Co., Ltd.,'' dated September 6, 2007 (''*Hubei Xingfa Analysis Memorandum*''). Additionally, for detailed descriptions of all actual values used for market–economy inputs, where applicable, *see Hubei Xingfa Analysis Memorandum.*

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics in order to calculate surrogate values for Hubei Xingfa's material inputs. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), results unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that the Indian import statistics represent import data that is contemporaneous with the POI, product–specific, and tax–exclusive. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002) and accompanying Issues and Decision Memorandum at Comment 4; *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (''CTVs from the PRC''). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

For Hubei Xingfa, certain inputs into the production of the merchandise under investigation were purchased from market economy suppliers and paid for in market economy currencies. We valued Hubei Xingfa's inputs using the market economy prices paid for the inputs where the total volume of the input purchased from all market economy sources during the POI exceeded 33 percent of the total volume of the input purchased from all sources during that period. Alternatively, when the volume of Hubei Xingfa's purchases of an input from market economy suppliers during the POI was below 33 percent of the company's total volume of purchases of the input during the POI, we weight–averaged the weighted–average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, as appropriate.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Hubei Xingfa used to produce the subject merchandise during the POI, except where listed below. To value electricity the Department used rates from Key World Energy Statistics 2003, published by the International Energy Agency. Because these data were not contemporaneous to the POI, we adjusted for inflation using WPI. *See Factor Value Memorandum.*

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression–based wage rate, which relies on 2004 data. This wage rate can currently be found on the Departmen's website on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, *http://ia.ita.doc.gov/wages/index.html.* The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by GE and Chenming. *See Factor Value Memorandum.*

Because water is essential to the production process of the subject merchandise, the Department considers water to be a direct material input, and

not overhead. Hubei Xingfa stated in its questionnaire responses that it used water in the production of SHMP, but since it took the water from the river free of charge, it did not record its consumption of water. Therefore, we are using the water consumption rate from the petition for the production of SHMP only, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) and, accompanying Issue and Decision Memorandum at Comment 11. Although Hubei Xingfa has reported that it obtains water free of charge from the river, we find that whether the producer pays for water is irrelevant in determining whether it should be considered a direct material input. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 69 FR58392 (September 30, 2004) and accompanying Issues and Decision memorandum at Comment 1.

Further, there is no evidence on the record that the Indian producer of comparable merchandise from which we are obtaining an overhead financial ratio accounts for water as an overhead expense. The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 of the water rates were for the ''inside industrial areas'' usage category and 193 of the water rates were for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Value Memorandum*. After the preliminary determination, we will allow Hubei Xingfa an opportunity to report water consumption, but may have to resort to using an inference that is adverse to Hubei Xingfa if we are unable to obtain the information.

We used Indian transport information to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POI. The Department obtained a price quote on the first day of each month of the POI from each point of origin to each destination and averaged the data accordingly. *See Factor Value Memorandum*. Consistent with the calculation of inland truck freight, the Department used the same freight distances used in the calculation of inland truck freight, as reported by www.infreight.com to derive a value in Rupees per kilogram per kilometer. To value PRC inland freight by barge we used Indian Inland Waterways rates from July, 1997, as used in the 2000–2001 antidumping duty administrative review of helical spring lock washers from the PRC. *See Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 67 FR 8520 (February 25, 2002) and accompanying Issues and Decision memorandum at Comment 5. After inflating the value, the rate we derived from this source is in rupees per kilogram. *See Factor Value Memorandum*.

To value brokerage and handling (''B&H''), the Department used a simple average of the publicly summarized version of the average value for B&H expenses reported in the U.S. sales listings in: (1) Essar Steel Ltd.'s February 28, 2005, submission in the antidumping duty review of Certain Hot–Rolled Carbon Steel Flat Products from India (*See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review* 71 FR 2018, 2022 (January 12, 2006)); (2) Agro Dutch Industries Ltd.'s March 2, 2006, submission in the antidumping duty review of Certain Preserved Mushrooms From India (*See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 72 FR 5268 (February 5, 2007)); and, (3) Kejirwal Paper Ltd.'s January 9, 2006, submission in the antidumping duty investigation of Lined Paper from India (*See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006)). The Department first derived an average per–unit amount from each source, and then adjusted each average rate for inflation. Finally, the Department averaged the three per–unit amounts to derive an overall average rate for the POI. See Factor Value Memorandum.

Hubei Xingfa reported that it sourced ocean freight from market–economy countries and paid for it in U.S. dollars. For ocean freight, we are using Hubei Xingfa's reported market–economy ocean freight expenses. The Department valued marine insurance, where necessary, based on a publicly available price quote from a marine insurance provider at http://www.rjgconsultants.com/insurance.html, as used in the 2004–2005 administrative review of brake rotors from the PRC. See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR66304 (November 14, 2006). The rates quoted are based on 110% of US $100.00 value on all destinations from China. After inflating the value, the rate we derived is in rupees per kilogram.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all information relied upon in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice* 72 FR 9926 at 9929. This practice is described in Policy Bulletin 05.1, available at *http://ia.ita.doc.gov/.*

Preliminary Determination

The weighted–average dumping margins are as follows:

SODIUM HEXAMETAPHOSPHATE FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Hubei Xingfa Chemicals Group Co., Ltd.	183.15
Jiangyin Chengxing International Trading Co., Ltd.	183.15
Sichuan Mianzhu Norwest Phosphate Chemical Company Limited	183.15
PRC–Wide Rate (including Yibin Tianyuan Group Co., Ltd. and Mianyang Aostar Phosphorous Chemical Industry Co., Ltd.)	183.15

Disclosure

We will disclose the calculations performed within five days of the date

of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of SHMP from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Hubei Xingfa, the Separate Rate Companies and the PRC–wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of SHMP, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a) of the Act. This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 6, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–18167 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

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

EFFECTIVE DATE: September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–3146.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2007 through June 30, 2007.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Subsidy Programs On Cheese Subject To An In–Quota Rate Of Duty

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.32	$ 0.32
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
.....	*Consumer Subsidy*	*$ 0.00*	*$ 0.00*
.....	Total	$ 0.00	$ 0.00

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom.

[FR Doc. E7–18157 Filed 9–13–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend the Export Trade Certificate of Review issued to U.S. Shippers Association.

SUMMARY: Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–13A18.''

The U.S. Shippers Association's original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on April 6, 2006 (71 FR 18721, April 12, 2006). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association (''USSA''), 3715 East Valley Drive, Missouri City, Texas 77459.

Contact: John S. Chinn, Project Director, Telephone: (734) 927–4328.

Application No.: 85–13A18.

Date Deemed Submitted: September 4, 2007.

Proposed Amendment: USSA seeks to amend its Certificate to: Add each of the following companies and persons as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

(a.) Taminco, Inc.; Taminco Higher Amines, Inc.; and Taminco Methylamines, Inc., each located in Allentown, PA, and

(b.) Salvatore Di Paola and Carrie M. Bowden, both of Missouri City, TX.

Dated: September 10, 2007.

Jeffrey C. Anspacher,

Director Export Trading Company Affairs.

[FR Doc. E7–18114 Filed 9–13–07; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC53

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in October, November, and December 2007. Fishermen and shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. The Atlantic shark identification workshops are mandatory for all federally permitted Atlantic shark dealers. The protected species safe handling, release, and identification workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2008 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshop will be held October 4, 16, 25, 30, November 8, 29, and December 13, 2007.

The Protected Species Safe Handling, Release, and Identification Workshop will be held October 23, 25, November 7, 20, and December 6, 11, 2007.

See SUPPLEMENTARY INFORMATION for further details.

ADDRESSES: The Atlantic Shark Identification Workshop will be held in Panama City, FL; South Daytona, FL; Pawleys Island, SC; South Daytona, FL; Madeira Beach, FL; Elizabeth, NJ; and Miami, FL.

The Protected Species Safe Handling, Release, and Identification Workshop will be held in Kitty Hawk, NC; Warwick, RI; Kenner, LA; Indian Rocks

Beach, FL; Boca Raton, FL; and Manahawkin, NJ.

See SUPPLEMENTARY INFORMATION for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to a Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location has been submitted with the permit renewal application.

Workshop Dates, Times, and Locations

1. October 4, 2007, from 9 a.m. - 3 p.m. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

2. October 16, 2007, from 9 a.m. - 3 p.m. Piggotte Community Center, 504 Big Tree Road, South Daytona, FL 32119.

3. October 25, 2007, from 9:30 a.m. - 3 p.m. Georgetown County Public Library Waccamaw Neck Branch, 24 Commerce Drive, Pawleys Island, SC 29585.

4. October 30, 2007, from 9 a.m. - 3 p.m. Piggotte Community Center, 504 Big Tree Road, South Daytona, FL 32119.

5. November 8, 2007, from 9 a.m. - 3 p.m. City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.

6. November 29, 2007, from 9 a.m. - 3 p.m. Elizabeth Public Library, 11 South Broad Street, Elizabeth, NJ 07202.

7. December 13, 2007, from 10 a.m. - 3 p.m. Miami-Dade Public Library S. Dade Regional Branch, 10750 SW 211th Street, Miami, FL 33189.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by e-mail at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshop

Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners whose permits expire in late 2007 must attend one of the workshops offered in October, November, or December 2007. Additionally, new shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification workshop. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times.

Workshop Dates, Times, and Locations

1. October 23, 2007, from 9 a.m. - 5 p.m. Hilton Garden Inn Outer Banks, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.

2. October 25, 2007, from 9 a.m. - 5 p.m. Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886.

3. November 7, 2007, from 9 a.m. - 5 p.m. Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.

4. November 20, 2007, from 9 a.m. - 5 p.m. Holiday Inn Harborside and Gulfview Beach Resort, 401 2nd Street, Indian Rocks Beach, FL 33795.

5. December 6, 2007, from 9 a.m. - 5 p.m. Embassy Suites, 661 NW 53rd Street, Boca Raton, FL 33487.

6. December 11, 2007, from 9 a.m. - 5 p.m. Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Aquatic Release Conservation ((877) 411–4272), 1870 Mason Ave., Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The protected species safe handling, release, and identification workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry-sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid NOAA workshop certificate may result in a permit denial.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 10, 2007.

Emily H. Menashes

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

[FR Doc. E7–18183 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the Agenda below.

DATES: The announced meeting is scheduled for two days: Saturday, September 29 and Sunday, September 30, 2007.

ADDRESSES: The meeting will be held in the La Jolla Meeting Room at the Bahia Hotel, 998 West Mission Bay Drive, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, 301–713–1088.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established by section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting can be found at *http://www.seagrant.noaa.gov/leadership/review panel.html.*

Dated: September 5, 2007.

Mark E. Brown,

Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. E7–18084 Filed 9–13–07; 8:45 am]

BILLING CODE 3510–KA–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Friday, September 28, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4594 Filed 9–12–07; 2:02 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, September 19, 2007, 8:45 a.m.–10:15 a.m.

PLACE: Corporation for National and Community Service, 8th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.
II. CEO Report.
III. Committee Reports.
IV. Honoring Departing Board Members.
V. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m., Monday, September 17, 2007.

CONTACT PERSON FOR MORE INFORMATION: Rachel Needle, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10205, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6742. Fax (202) 606–3460. TDD: (202) 606–3472. *E-mail: rneedle@cns.gov.*

Dated: September 11, 2007.

Wilsie Y. Minor,

Deputy General Counsel.

FR Doc. 07–4579 Filed 9–11–07; 4:45 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: October 16, 2007.

Location: Marriott Crystal City at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Time: 0730–1700 hours, October 16, 2007.

Proposed Agenda: Review and discuss the Army's Cultural and

Language Initiatives for the Army Officer Education System, focusing on cultural and language commissioning requirements for Army ROTC. Other topics will include studies on future demographic populations and the challenges facing Reserve Officers' Training Corps Cadets due to the lack of full tuition and room and board scholarships.

FOR FURTHER INFORMATION CONTACT: Major Tracy Porter, U.S. Army Cadet Command (ATCC–TR), Fort Monroe, VA 23651 at (757) 788–4646.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may attend, appear before, or file statements with the committee. If a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Reserve Officers' Training Corps Subcommittee until its next meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4555 Filed 09–13–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Onondaga Lake Watershed Management Plan, Feasibility Study, City of Syracuse, Onondaga County, Central New York State, and Onondaga Nation

AGENCY: Department of the Army; Corps of Engineers, DoD.

ACTION: Notice; withdrawal.

SUMMARY: A Notice of Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for the Onondaga Lake Watershed Management Plan (OLWMP), Feasibility Study, City of Syracuse, Onondaga County, Central New York State, and Onondaga Nation was published in the **Federal Register** on April 1, 2005 (70 FR 16807). Subsequent to the Notice of Intent, the project scope and funding was significantly reduced and modified and a decision made to terminate the EIS process. An Onondaga Lake Watershed Progress Assessment and Actions Strategies report is being prepared over the next two years and will be available to agencies, interests, and the public in 2009.

ADDRESSES: Correspondence should be addressed to: Mr. Tod Smith, U.S. Army Corps of Engineers, Buffalo District, Environmental Analyses Section, 1776 Niagara Street, Buffalo, NY 14207–3199.

FOR FURTHER INFORMATION CONTACT: Mr. Tod Smith, telephone at 716–879–4175, e-mail at *tod.d.smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Dated: September 4, 2007.

John S. Hurley,

Lieutenant Colonel, Corps of Engineers, District Commander.

[FR Doc. 07–4554 Filed 9–13–07; 8:45 am]

BILLING CODE 3710–GP–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8468–1]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Request for Nominations of Candidates for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Staff Office is soliciting applications of environmental education professionals for consideration on the National Environmental Education Advisory Council (NEEAC). There are currently five vacancies on the Advisory Council that must be filled: Two Business and Industry (2008–2011); one State Department of Natural Resources (2008–2011); one Primary and Secondary Education (must be a classroom teacher) (2008–2011); one Senior American (2008–2011). Additional avenues and resources may be utilized in the solicitation of applications.

DATES: Applications should be submitted by November 2, 2007 per instructions below.

ADDRESSES: Submit non-electronic application materials to Ginger Potter, Designated Federal Officer, National Environmental Education Advisory Council, U.S. Environmental Protection Agency, Office of Children's Health Protection and Environmental Education (MC:1704A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Ph: 202–564–0453, FAX: 202–564–2754, e-mail: *potter.ginger@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

The National Environmental Education Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following sectors: primary and secondary education (one of whom shall be a classroom teacher)—two members; colleges and universities—two members; business and industry-two members; non profit organizations involved in environmental education—two members; state departments of education and natural resources—one member each; senior Americans-one member. Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected

to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

Expertise Sought

The NEEAC staff office seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

(a) Integrating environmental education into state and local education reform and improvement; (b) state, local and tribal level capacity building; (c) cross-sector partnerships; (d) leveraging resources for environmental education; (e) design and implementation of environmental education research; (f) evaluation methodology; professional development for teachers and other education professionals; and (g) targeting under-represented audiences, including low-income, multi-cultural, senior citizens and other adults.

The NEEAC staff office is also looking for individuals who demonstrate the ability to make the time commitment, strong leadership skills, strong analytical skills, strong communication and writing skills, the ability to stand apart and evaluate programs in an unbiased manner, team players, have the conviction to follow-through and to meet deadlines, and the ability to review items on short notice.

How To Submit Applications

Any interested and qualified individuals may be considered for appointment on the National Environmental Education Advisory Council. Applications should be submitted in electronic format to the Designated Federal Officer *potter.ginger@epa.gov* and contain the following: Contact information including name, address, phone and fax numbers and an email address; a curriculum vita or resume; the specifc area of expertise in environmental education and the sector/slot the applicant is applying for; recent service on other national advisory committees or national professional organizations and; a one-page commentary on the applicant's philosophy regarding the need for, development, implementation and/or management of environmental education nationally. Additionally, a supporting letter of endorsement is required. This letter may also be submitted electronically as described above.

Persons having questions about the application procedure or who are unable to submit applications by electronic means, should contact Ginger Potter, DFO, at the contact information provided above in this notice. Non-electronic submissions must contain the same information as the electronic. The NEEAC Staff Office will acknowledge receipt of the application. The NEEAC Staff Office will develop a short list of for more detailed consideration. Short list candidates will be required to fill out the Confidential Disclosure Form for Special Government Employees Serving Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on a Federal advisory committee) and private interests and activities and the appearance of a lack of impartiality as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Dated: September 10, 2007.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E7–18152 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6691–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 6, 2007 (92 FR 17156).

Draft EISs

EIS No. 20070185, ERP No. D–FHW–E40813–GA, Northwest I–75/I–575 Corridor Project, Transportation Improvements, Funding, Cobb and Cherokee Counties, GA.

Summary: EPA expressed environmental concerns about the consideration of alternatives, lack of analysis for mobile source air toxics, noise impacts, significant impacts to low-income and minority communities and water quality impacts. EPA recommends several mitigation and enhancement measures that could be implemented during and after construction to assist in minimizing impacts to the environment. Rating EC2.

EIS No. 20070212, ERP No. D–TVA–E39069–AL, Bear Creek Dam Leakage Resolution Project, To Modify Dam and Maintain Summer Pool Level of 576 Feet, Bear Creek Dam, Franklin County, AL.

Summary: EPA expressed environmental concerns about wetlands losses through changes in reservoir pool and downstream flows. EPA recommends monitoring and suggest that a Bear Creek Watershed Team be formed to help control reservoir water quality. Rating EC2.

EIS No. 20070221, ERP No. D–AFS–J65483–MT, Butte Resource Management Plan, Implementation, Beaverhead, Broadwater, Deerlodge, Gallatin, Jefferson, Lewis and Clark, Silver Bow and Park Counties, MT.

Summary: EPA expressed environmental concerns about impacts to ecosystem processes, water and habitat quality. EPA requested additional information to fully assess and mitigate all potential impacts of management. Rating EC2.

EIS No. 20070270, ERP No. D–NRC–D09802–MD, License Renewal of the National Bureau of Standards Reactor (NBSR), Renew the Operating License for an Additional 20 Years, National Institute of Standards and Technology (NIST), NUREG–1873, Montgomery County, MD.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20070298, ERP No. D–AFS–J65487–UT, Millville Peak/Logan Peak Road Relocation Project, Provide a Safe, Reliable, Ground Access Route, Logan Ranger District, Wasatch-Cache National Forest, Cache County, UT.

Summary: EPA expressed environmental concerns about the loss of acreage and associated roadless values associated with constructing five miles of new road. EPA requested additional mitigation measures to address the safety issue posed by the high voltage power cable that is becoming increasingly exposed and additional documentation of ''irreparable resource damage'' to the existing roads as the basis for allowing road construction in roadless areas. Rating EC2.

EIS No. 20070305, ERP No. D–BPA–J08028–MT, Libby (FEC) to Troy

Section of BPA's Libby to Bonner Ferry 115-kilovolt Transmission Line Project, Rebuilding Transmission Line between Libby and Troy, Lincoln County, MT.

Summary: EPA expressed environmental concerns about impacts to water quality, wetlands and the avian community. EPA requested additional information to fully assess and mitigate all potential impacts of the proposed actions. Rating EC2.

EIS No. 20070308, ERP No. D–AFS–J65489–MT, Marten Creek Project, Proposed Timber Harvest, Prescribed Fire Burning, Watershed Restoration, and Associated Activities, Cabinet Ranger District, Kootenai National Forest, Sanders County, MT.

Summary: EPA expressed environmental concerns about impacts to water quality and habitat quality, and recommended additional information to assess and mitigate impacts of the proposed management actions. Rating EC2.

EIS No. 20070267, ERP No. DA–COE–E39051–FL, Lake Okeechobee Regulation Schedule Study, New Updated Information, Evaluation of Three New Alternatives on Operational Changes to the Current Water Control Plan, Lake Okeechobee and the Everglades Agricultural Area, Lake Okeechobee, Glades, Okeechobee Hendry, Palm Beach and Martin Counties, FL.

Summary: EPA continues to have environmental concerns about water flow impacts on the lower river and estuaries from lake flow releases. Rating EC1.

EIS No. 20070276, ERP No. DS–COE–E32061–MS, Pascagoula Harbor Navigation Channel Project, To Construct Congressionally Authorized Widening and Deepening Improvements, to update the FEIS–1985, Jackson County, MS.

Summary: EPA expressed environmental concerns about the potential impacts and requested additional information. EPA's comments included a request that every effort be made to minimize impacts to submerged aquatic vegetation and that the Corps explore opportunities for beneficial uses of the dredged material. EPA also requested that a detailed sediment evaluation and testing report be submitted to ensure that the disposal material meets the Ocean Dumping Criteria under the Marine Research and Sanctuaries Protection Act's ocean dumping criteria. Rating EC2.

Final EISs

EIS No. 20070263, ERP No. F–AFS–J65376–SD, Mitchell Project Area, To Implement Multiple Resource Management Actions, Mystic Ranger District, Black Hills National Forest, Pennington County, SD.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070309, ERP No. F–FRC–L05239–00, Spokane River and Post Falls Hydroelectric Project, Applications for two New Licenses for Existing 14.75 (mw) Post Falls No. 12606 and 122.9 (mw) Spokane River No. 2545, Kootenai and Benewah Counties, ID and Spokane, Lincoln and Stevens Counties, WA.

Summary: EPA continues to have environmental concerns about the project's potential impacts to water quality. EPA recommended that the Record Of Decision for the project include updated information about Clean Water Act Section 401 water quality certification process, as well as assurances that the project plans would be adjusted to meet water quality standards in Idaho and Washington during project implementation.

EIS No. 20070319, ERP No. F–USN–E11061–FL, Boca Chica Field, Restoration of Clear Zones and Stormwater Drainage Systems, Implementation, Naval Air Station (NAS) Key West, Monroe County, FL.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070320, ERP No. F–WPA–K05063–AZ, San Luis Rio Colorado Project, Proposes to Construct a 26-Mile Long 230 Kilovolt Double-Circuit Transmission Line from the International Border with Mexico to Western and Arizona Public Service Substations near Yuma County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070321, ERP No. F–NOA–E91018–00, Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan, To Address Stock Rebuilding and Overfishing of Red Snapper, Gulf of Mexico.

Summary: EPA has no objection to the proposed action.

Dated: September 11, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–18182 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6690–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 09/03/2007 Through 09/07/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070379, Final EIS, AFS, AK, Baht Timber Sale Project, Proposes to Harvest Timber and Temporary Road Construction on Zarembo Island, Wrangell Ranger District, Tongass National Forest, AK. Wait Period Ends: 10/15/2007. Contact: Frank Roberts 907–874–7556.

EIS No. 20070380, Final EIS, AFS, NV, White Pine & Grant-Quinn Oil and Gas Leasing Project, Exploration and Development, Humboldt-Toiyabe National Forest, Ely Ranger District, White Pine, Nye and Lincoln Counties, NV. Wait Period Ends: 10/15/2007. Contact: Pat Irwin 775–289–3031.

EIS No. 20070381, Final EIS, AFS, AK, Kenai Winter Access Project, Develop a Winter Access Management Plan for 2006/2007 Winter Season, Implementation, Seward Ranger District, Chugach National Forest, Located on the Kenai Peninsula in Southcentral, AK. Wait Period Ends: 10/15/2007. Contact: Sharon Randell 907–743–9497.

EIS No. 20070382, Final EIS, AFS, SD, Citadel Project Area, Proposes to Implement Multiple Resource Management Actions, Northern Hills Ranger District, Black Hills National Forest, Lawrence County, SD. Wait Period Ends: 10/15/2007. Contact: Chris Stores 605–642–4622.

EIS No. 20070383, Second Draft Supplement, BLM, UT, Price Field Resource Management Plan, Supplemental Information for Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics. Implementation, Carbon and Emery Counties, UT. Comment Period Ends: 12/12/2007. Contact: Floyd Johnson 435–636–3600.

EIS No. 20070384, Final Supplement, FHW, GA, US 411 Connector, From US411/GA–20 Interchange with US41 to US 411 Interchange with I–75, Updated Information, Funding and US Army COE Section 404 Permit, Bartow County, GA. Wait Period Ends: 10/15/2007. Contact: Jennifer Giersch 404–373–1680. EIS No.

20070385, Draft EIS, FHW, 00, Peace Bridge Expansion Project, Capacity Improvement to the Peace Bridge, Plazas and Connecting Roadways, U.S. Coast Guard Bridge Permit, U.S. Army COE section 10 and 404 Permits. City of Buffalo, Erie County, NY and Town of Fort Erie, Ontario, Canada, Comment Period Ends: 10/29/2007. Contact: Amy Jackson-Grove 518–431–4131.

EIS No. 20070386, Draft EIS, NRC, GA, Vogtle Electric Generating Plant Site, Issuance of an Early Site Permit (ESP) for Construction and Operation of a New Nuclear Power Generating Facility, NUREG–1872, Burke County, GA, Comment Period Ends: 11/28/2007. Contact: Mark D. Notich 301–415–3053.

EIS No. 20070387, Final EIS, AFS, CA, Little Doe and Low Gulch Timber Sale Project, Proposes to Harvest Commercial Timber, Six Rivers National Forest, Mad River Ranger District, Trinity County, CA. Wait Period Ends: 10/15/2007. Contact: Ruben Escatell 707–574–6233.

Amended Notices

EIS No. 20070278, Draft EIS, FHW, CA, Tier 1—Placer Parkway Corridor Preservation Project, Select and Preserve a Corridor for the Future Construction from CA–70/99 to CA 65, Placer and Sutter Counties, CA, Comment Period Ends: 09/25/2007. Contact: Cesar Perez 916–498–5065. Revision of FR Notice Published 07/06/2007. Extending Comment Period from 09/10/2007 to 09/25/2007.

Dated: September 11, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–18188 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8468–6]

State Innovation Grant Program, Preliminary Notice and Request for Input on the Development of a Solicitation for Proposals for 2008 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency), National Center for Environmental Innovation (NCEI) is giving preliminary notice of its intention to solicit pre-proposals for a 2008 grant program to support innovation by state environmental agencies—the ''State Innovation Grant Program.'' The Agency is also seeking input from state environmental regulatory agencies on the topic areas for the solicitation. In addition, EPA is asking each state environmental regulatory agency to designate a point of contact (in addition to the Commissioner or Cabinet Secretary level) who will be the point of contact for further communication about the upcoming solicitation. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year's competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year's competition. EPA anticipates publication of a Solicitation Announcement of Federal Funding Opportunity on the Federal government's grants opportunities Web site (*http://www.grants.gov*) to announce the availability of the next solicitation within 45 days.

DATES: State environmental regulatory agencies will have 30 days from the date of this pre-announcement notice in the **Federal Register** publication until October 15, 2007 to respond with: (1) Suggestions for specific topics that should be included under the general subject area of ''Innovation in Environmental Permitting Programs'' (e.g., topics with 1–2 paragraphs description) for the next solicitation; and (2) point of contact information for the person within the state environmental regulatory agency (in addition to Commissioner or Cabinet Secretaries) who will be designated to receive future notices about the State Innovation Grant competition. We will automatically transmit notice of availability of the solicitation to people in state agencies identified for previous solicitations.

ADDRESSES: We encourage e-mail responses. Information should be submitted in writing via: e-mail to: *innovation_state_grants@epa.gov*; regular mail (see below); or fax to ''State Innovation Grant Program'' at (202) 566–2220. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at (202) 566–2186. For regular mail send to Sherri Walker, U.S. Environmental Protection Agency (1807T), State Innovation Grant Program; National Center for Environmental Innovation; Office of Policy, Economics, and Innovation; 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments sent by regular or overnight mail must be received prior to close of business on October 15, 2007. Please be advised that mail sent via regular postal service may be delayed due to additional security screening requirements. For overnight delivery, send to Sherri Walker, U.S. Environmental Protection Agency (1807T), State Innovation Grant Program; 1301 Constitution Avenue, NW., EPA West, Room 4214 D, Washington, DC 20004.

EPA will acknowledge all responses it receives to this notice. If you have not received an acknowledgment from EPA within three (3) days of the end of the notice period, please send an e-mail to: *innovation_state_grants@epa.gov* or call Sherri Walker at (202) 566–2186. Failure to do so may result in your information or comments not being received by the deadline. EPA will respond to all questions in writing, and all questions and responses will be posted on the EPA State Innovation Grant Web site at *http://www.epa.gov/innovation/stategrants.* State agencies are advised to monitor this Web site for information posted in response to questions received prior to and during the competition period.

SUPPLEMENTARY INFORMATION:

Background

In April 2002, EPA issued its plan for future innovation efforts, published as *Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA* (EPA 100–R–02–002); (*http://www.epa.gov/innovation/pdf/strategy.pdf*). EPA's Innovation Strategy presents a framework for environmental innovation consisting of four major elements:

1. Strengthening EPA's innovation partnership with states and tribes;

2. Focusing on priority environmental issues;

3. Diversifying environmental protection tools and approaches; and

4. Fostering more ''innovation-friendly'' systems and organizational cultures.

The State Innovation Grant Program strengthens EPA's partnership with the states by supporting state innovation compatible with EPA's *Innovation Strategy.* EPA wants to encourage states to build on previous experience (theirs and others) to undertake strategic innovation projects that promote larger-scale models for ''next generation'' environmental protection that promise better environmental outcomes and other beneficial results. EPA is interested in funding projects that: (i)

Go beyond a single facility experiment and provide change that is ''systems-oriented;'' (ii) provide better results from a program, process, or sector-wide innovation; and (iii) promote integrated (multi-media) environmental management with a high potential for transfer to other states, U.S. territories, and tribes.

Since 2002, EPA has sponsored five State Innovation Grant Program competitions that asked for State project pre-proposals that support innovation generally related to environmental permitting programs. This has included alternatives to permitting and the establishment of incentives to go beyond compliance with permit requirements. To date, projects have clustered primarily around three strategic topic areas: Environmental Results Programs (ERP), Environmental Management Systems (EMS), and the National Environmental Performance Track (PT) Program and similar state performance-based environmental leadership programs. Thirty-five awards to States have been made from the five prior competitions. These projects awarded over 6.5 million dollars in assistance to States. Some of the projects fit into more than one category (e.g., combination projects of ERP with EMS, or ERP with PT). Among the grant projects, including those with pending awards: eighteen (18) were provided for development of environmental results programs, eight (8) were related to environmental management systems and permitting, eight (8) were to enhance performance-based environmental leadership programs, two (2) were for watershed-based permitting, and one (1) was for an information technology innovation for the application of geographic information systems (GIS) and a web-based portal to a permitting process. For information on prior State Innovation Grant Program solicitations and awards, please see the EPA State Innovation Grants Web site at *http://www.epa.gov/innovation/stategrants.*

Eligible Agencies to Compete for the State Innovation Grant: Historically, we have limited the competition to state agencies with the primary delegations from EPA for permitting programs. We are aware that some state agencies re-delegate their authorities for permitting programs to regional, county, or municipal agencies. This year, EPA is considering enlarging the competitive range of the solicitation to include those to regional, county, or municipal agencies with delegated authority, but a tantamount factor for our consideration of this proposed eligibility scenario in order to ensure the broader application of the innovation being tested by the local agency will be that the local agency include the principal state environmental regulatory agency as an active member of the project team. Agencies are encouraged to collaboratively partner with other governmental agencies or non-governmental organizations within the State (or outside of their state) that have complementary environmental mandates or symbiotic interests (e.g., energy, agriculture, natural resources management, transportation, public health). EPA will accept only one proposal from an individual state. States are also encouraged to partner with other states and American Indian tribes to address cross-boundary issues, to encourage collaborative environmental partnering within industrial sectors or in certain topical areas (e.g., agriculture), and to create networks for peer-mentoring. We anticipate, that as in previous years, a multi-state or state-tribal proposal will be accepted in addition to an individual state proposal, but a state may appear in no more than one multi-state or state-tribal proposal in addition to its individual proposal. EPA regrets that because of the limitation in available funding it is not yet able to open this competition to American Indian tribal environmental agencies but we strongly encourage tribal agencies to join with adjacent states in project proposals. EPA is interested in hearing from regional, county, or municipal agencies about their interest, capacity, and the likelihood of commitment from the principal statewide regulatory entity to assist a potential project.

Proposed General Topic Areas for Solicitation: To increase the likelihood of strategic impact with what we anticipate to be limited funds, EPA proposes to continue with the general theme of ''innovation in permitting,'' and additionally to continue with the focus on the three strategic topic areas similar to the last competition: (1) Projects that support the development of state Environmental Results Programs (ERP); (2) projects which involve the application of Environmental Management Systems (EMS) including those that explore the relationship of EMS to permitting or otherwise promote the use of EMS to improve environmental performance beyond permit requirements (see *EPA's Strategy for Determining the Role of EMS in Regulatory Programs* at *http://www.epa.gov/ems* or *http://www.epa.gov/ems/docs/EMS_and_the_Reg_Structure_41204F pdf*)(3) projects that support state performance-based environmental leadership programs or state support for implementation of the National Environmental Performance Track Program, particularly including the development and implementation of incentives. EPA's focus on a small number of topics within this general subject area effectively concentrates the limited resources available for greater strategic impact.

Projects will be much less likely to be funded through the State Innovation Grant Program if agency resources pertinent to the topic are already available through another EPA program.

Request for Input on Solicitation Topics and Priorities: EPA encourages communication from States and other parties about these three thematic areas mentioned here and other areas potentially ripe for innovation. EPA is asking for state environmental regulatory agencies and other interested parties to provide brief (about 1 paragraph) suggestions about additional innovation topics within the subject of innovation in permitting for possible inclusion in the upcoming solicitation. In addition to the three topic areas ERP, EMS, and PT, EPA will continue to encourage project proposals that address the four major elements (i.e., strengthening innovation partnerships; focusing on priority environmental issues; diversifying environmental protection tools and approaches; and fostering ''innovation-friendly'' systems and organizational cultures) and use tools (i.e., incentives, information resources, results-based goals and measures, etc.) highlighted in the Innovation Strategy. EPA may contemplate a very limited number of projects otherwise related to the general theme of innovation in permitting, in particular as they may address EPA regional and state environmental permitting priorities. To date, the State Innovation Grant Program has supported ERPs for: auto body/ auto repair/auto salvage sectors in six (6) state projects, underground storage tanks (UST) in three (3) states, dry cleaning in two (2) states, stormwater management in two (2) states, printing sector in one (1) state, animal feedlot operations in one (1) state, underground injection wells management in one (1) state, and oil and gas production in one (1) state. We are interested in continuing the EMS theme, but may consider some change to this theme. Also, we may be interested in projects that promote a developmental component or type of ''on-ramp'' for potential environmental leaders that require upfront compliance assistance. We may also be interested in

exploring PT projects with an air permit component.

State Innovation Grants will not be applied to the development or demonstration of new environmental technologies. These assistance agreements will not be awarded for the development of information systems or data or projects that have as a primary focus the upgrading of information technology systems, unless there is a clear link to innovation in specific permitting programs. Projects would be much less likely to be funded through this State Innovation Grant if agency resources are already available through another agency program. Project selections and awards will be subject to funding availability. State environmental regulatory agency and other respondents should send their suggestions to EPA by mail, e-mail, or fax as described in the **ADDRESSES** section above.

Request for Input on Diffuse Delegations and Designation of a Primary Point of Contact: One of the principal goals of the State Innovation Grant program is the testing of an integrated (multi-media) innovation with the potential for replication or broader application in other sectors, permitting programs, agencies, states, or tribes. Because of the limitation of funds we have historically limited the competition to state agencies with a primary delegation from EPA for permitting programs. We have concerns that opening the competition to regulatory entities at lower levels (e.g. air control boards, water quality management districts, counties or municipalities) may limit the range of results and the potential for transferability of innovative approaches. We recognize, however, that in some instances states have re-delegated programs to regional or local agencies and that those agencies may manage substantial permitting programs. EPA is seeking comment from states that may have re-delegated several authorities to other governing regional or municipal agencies or boards rather than in one centralized state environmental regulatory agency and from the boards and districts on how we might accommodate those delegations in this program and take advantage of the expertise in those programs while maintaining the strategically important goal of testing innovation for broad application and transferability. EPA asks that each state environmental regulatory agency designate a primary point-of-contact who we will add to the EPA notification list for further announcements about the State Innovation Grant Program. For point of contact information, please provide: name, title, department and agency, street or post office address, city, state, zip code, telephone, fax number, and e-mail address. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year's competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year's competition. We are asking that any new name be submitted with the approval of the highest levels of management within an Agency (Commissioner, Director, Secretary, or their deputies) within 30 days after publication of this notice in the **Federal Register**. Please submit this information to EPA by mail, fax, or e-mail prior to October 15, 2007 in the following manner:

By mail to: State Innovation Grant Program, National Center for Environmental Innovation, U.S. Environmental Protection Agency (1807T), 1200 Pennsylvania Avenue, NW., Washington DC 20460.

By fax to: State Innovation Grant Program, (202) 566–2220.

By e-mail to: *Innovation_State_Grants@EPA.gov.*

We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address of fax number, or you may call Sherri Walker at (202) 566–2186. For point-of-contact information, please provide: Name, title, department and agency, mailing address (street or P.O. Box), city, state, zip code, telephone, fax number, and e-mail address. EPA will acknowledge all responses it receives to this notice.

Opportunity for Dialogue: Between now and the initiation of the competition with the release of the solicitation, communication with potential applicants may include helping potential applicants determine whether the applicant itself is eligible or if the scope of an applicant's potential project is suitable for funding, and responding to general requests for clarification of the notice. To ensure an equal opportunity for all potential applicants, responses to questions that come to us during the period between this pre-announcement and the release of the solicitation along with helpful resource materials will be posted on the State Innovation Grant Web site at *http://www.epa.gov/innovation/stategrants.* States are also invited to communicate with NCEI about ideas for future competition themes by contacting the EPA Headquarters contact listed below. The contacts for the EPA Regions and the EPA HQ National Center for Environmental Innovation are as follows:

Anne Leiby or Josh Secunda, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1076 or (617) 918–1736, *leiby.anne@epa.gov* or *secunda.josh@epa.gov.* States: CT, MA, ME, NH, RI, VT.

Michael Dunn, U.S. EPA Region 3, 1650 Arch Street (3EA40), Philadelphia, PA 19103, (215) 814–2712, *dunn.michael@epa.gov.* States: DC, DE, MD, PA, VA, WV.

Marilou Martin, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–9660, *martin.marilou@epa.gov.* States: IL, IN, MI, MN, OH, WI.

Wendy Lubbe, U.S. EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7551, *lubbe.wendy@epa.gov.* States: IA, KS, MO, NE.

Loretta Barsamian, U.S. EPA Region 9, 75 Hawthorne Street (SPE–1), San Francisco, CA 94105, (415) 947–4268, *barsamian.loretta@epa.gov.* States and Territories: AS, AZ, CA, GU, HI, NV.

Jennifer Thatcher, U.S. EPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007–1866, (212) 637–3593, *thatcher.jennifer@epa.gov.* States & Territories: NJ, NY, PR, VI.

LaToya Miller, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–9885, *miller.latoya@epa.gov.* States: AL, FL, GA, KY, MS, NC, SC, TN.

Craig Weeks, U.S. EPA Region 6, Fountain Place, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7505, *weeks.craig@epa.gov.* States: AR, LA, NM, OK, TX.

Whitney Trulove-Cranor, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6099, *trulove-cranor.whitney@epa.gov.* States: CO, MT, ND, SD, UT, WY.

Bill Glasser, U.S. EPA Region 10, 1200 Sixth Avenue (ENF–T), Seattle, WA 98101, (206) 553–7215, *glasser.william@epa.gov.* States: AK, ID, OR, WA.

Headquarters Office: Sherri Walker, U.S. EPA (MC 1807T), Office of the Administrator, National Center for Environmental Innovation, State Innovation Grants Program, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–2186, (202) 566–2220 fax.

For courier delivery only: Sherri Walker, U.S. EPA, EPA West Building, Room 4214D, 1301 Constitution Avenue, NW., Washington, DC 20005.

Opportunity for Pre-Competition Briefings and Addressing Questions: In

addition, prior to this year's solicitation, we are planning to host a series of briefings and opportunities for question and answer (Q&A) sessions via teleconference calls, one with each EPA Region and all of their States. These conference calls will enable us to offer a two-hour streamlined proposal development briefing to all States prior to our solicitation, and will allow us to answer any questions that the States have prior to the competition, in keeping with Federal requirements that we afford assistance fairly in a competition process. Specific conference call logistics and grant resource information will be provided to each Region and the States as well as being posted on our Web site at *http://www.epa.gov/innovation/stategrants.* Pre-competition briefing summaries, and all other all resource materials will be posted on the Web site at *http://www.epa.gov/innovation/stategrants.* Through this effort, we are hoping to encourage individual States (and/or State-led teams) to submit well-developed pre-proposals that effectively describe in particular how their project will achieve measurable environmental results.

Dated: September 10, 2007.

David Widawsky,

Associate Office Director, Office of Environmental Policy Innovation.

[FR Doc. E7–18164 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2003–0006; FRL–8468–2]

Recovered Materials Advisory Notice V

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Final Document.

SUMMARY: The Environmental Protection Agency is providing notice of the availability of the final Recovered Materials Advisory Notice V (RMAN V) and supporting materials. The final RMAN V contains EPA's recommendations for purchasing one new item and one revised item designated in the final Comprehensive Procurement Guideline (CPG) V, published elsewhere in this **Federal Register**. This action harnesses government purchasing power to stimulate the use of recovered materials in the manufacture of products and expand markets for those recovered materials. EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA). The items for which EPA is making recommendations are: compost made from recovered organic materials and fertilizers made from recovered organic materials.

DATES: These recommendations apply to the one revised item (i.e., compost made from recovered organic materials) and one new item (i.e., fertilizers made from recovered organic materials) whose designations are effective September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Marlene RedDoor, Office of Solid Waste, Municipal and Industrial Solid Waste Division (5306P), Environmental Protection Agency, 1200 Pennsylvania Avenue; 703–308–7276; fax number: 703–308–8686; e-mail address: *Regelski-RedDoor.Marlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Final RMAN V provides recommendations to procuring agencies for the purchasing of items designated in the CPG V final rule. Final CPG V may affect procuring agencies under RCRA section 6002 that purchase the following items: compost made from recovered organic materials and fertilizers made from recovered organic materials, as well as services, such as landscaping or facilities maintenance that include the supply or use of compost or fertilizers. Section 6002 defines procuring agencies to include the following: (1) Any federal agency; (2) any state or local agency using appropriated federal funds for a procurement; or (3) any contractors of these agencies who are procuring these items for work they perform under the contract. See RCRA section 1004(17). The requirements of section 6002 apply to these procuring agencies only when the agencies procure designated items whose price exceeds $10,000 or when the quantity of the item purchased in the previous year exceeded $10,000. A list of entities that the final CPG V may cover is provided in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government.	Federal departments or agencies that procure $10,000 or more of a designated item in a given year
State Government.	A state agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year
Local Government.	A local agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year
Contractor	A contractor working on a project funded by appropriated federal funds that purchases $10,000 or more of a designated item in a given year

This table is not intended to be exhaustive. To determine whether the final CPG V applies to your procurement practices, you should carefully examine the applicability criteria in 40 CFR 247.12. If you have questions about whether the final CPG V applies to a particular entity, contact Marlene RedDoor at 703–308–7276.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2003–0006. Information on the designated items is also available from the CPG V Docket, ID No. EPA–HQ–RCRA–2003–0005. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OSWER Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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 OSWER Docket is (202) 566–0270.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

Preamble Outline

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I. What is the statutory authority for this action?

As explained above, EPA (''the Agency'') has promulgated an amendment to the Comprehensive Procurement Guideline (CPG) under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962. This amendment is also consistent with Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' (72 FR 3919, January 26, 2007), which revoked Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' (63 FR 49643, September 14, 1998). Per section 2(d)(i) of Executive Order 13423, the head of each Federal agency shall require in the agency's acquisition of goods and services the use of, among other things, recycled content products.

II. Why is EPA taking this action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation. Table II below summarizes designations of CPG I–IV and references the **Federal Register** publications.

TABLE II.—CPG I–IV DESIGNATIONS TABLE

Designation	Date published	**Federal Register** reference	Numer of items designated
CPG I	May 1, 1995	60 FR 21370	19 new, 5 previous in 8 product categories.
RMAN I	May 1, 1995	60 FR 21386	
Paper Product RMAN	May 29, 1996	61 FR 26985	
CPG II	November 13, 1997	62 FR 60962	12 new items.
RMAN II	November 13, 1997	62 FR 60975	
Paper Product RMAN	June 8, 1998	63 FR 31214	
CPG III	January 19, 2000	65 FR 3070	18 new items.
RMAN III	January 19, 2000	65 FR 3082	
CPG IV	April 20, 2004	69 FR 24028	7 new, 3 revised.
RMAN IV	April 30, 2004	69 FR 24039	

On December 10, 2003, EPA proposed a fourth update to the CPG, the proposed CPG V (68 FR 68813), with a companion draft RMAN V (68 FR 68919) which are finalized by this action.

In the CPG V final rule, EPA is consolidating all compost designations into one item designation: compost made from recovered organic materials. In addition, EPA is establishing a new item designation: Fertilizers made from recovered organic materials. These items are being designated under the Landscaping Products category. Recovered organic materials include, but are not limited to, yard waste, food waste, manure, and biosolids. In the final RMAN V, EPA is publishing recommendations for fertilizers made from recovered organic materials and revised recommendations for the compost designation. (For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.)

III. What are the definitions of terms used in this action?

In the final CPG V and in 40 CFR 247.3, EPA is revising the previous definition of compost from CPG III (65 FR 3070) and adding a definition for ''fertilizer made from recovered organic materials.'' [1] EPA generally bases its definitions on industry definitions. Because there are a number of industry definitions for ''compost'' and ''fertilizer,'' EPA developed its own to prevent confusion to procuring agencies. EPA based its fertilizer definition in part on a USDA definition of ''fertilizer'' (see *http://www.ams.usda.gov/NOP/NOP/standards/DefineReg.html*).

Because the description of the items designated in CPG V uses the term ''recovered materials,'' the Agency is providing a definition for that term in this notice. The Agency previously provided this definition in CPG I, and it is also provided at 40 CFR 247.3.

> Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

IV. What did commenters say about the recommendations in the draft RMAN V?

EPA received a total of 395 comments on the proposed CPG V and the draft RMAN V. In this section, EPA discusses the major comments relevant to the recommendations in the draft RMAN V.

[1] In proposed CPG V, the Agency proposed that the definition be entitled ''organic fertilizer.'' However, in final CPG V, EPA is entitling the definition ''fertilizer made from recovered organic materials'' so that the definition title and the designation description are more consistent.

Because of their relevancy to both the final CPG V and the final RMAN V, certain topics below refer to responses found in the preamble to the final CPG V, which is published elsewhere in this **Federal Register**. You can find a more thorough summary of comments and EPA's responses in the ''Background Document for the Final Comprehensive Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V.''

A. Request for Comments

This section summarizes and responds to the comments received in response to the Agency's specific requests for comments in the draft RMAN V.

1. Types of Recovered Materials Identified in the Item Recommendations, and Other Recommendations, Including Specifications for Purchasing the Designated Items

Comments: EPA received a number of comments on the types of recovered materials identified in the item designations, and other recommendations. EPA did not receive any comments that address specifications for purchasing the items designated in this action. Several comments supported allowing biosolids and/or manure to be used for compost and/or fertilizer. Some of these comments stated that the inclusion of biosolids in the compost and fertilizer designations will increase market demand for these recovered material products, and will also provide further support for the long-standing practice of biosolids land application.

However, a number of commenters opposed revising the compost designation to include sewage sludge or generally opposed using biosolids, manure, and/or sewage sludge in compost or fertilizer. A few other commenters suggested that EPA add certain materials to the scope of ''recovered organic materials'' in the compost and fertilizer item designations and RMAN recommendations. A few commenters suggested that Exceptional Quality (EQ) biosolids products be included in what the commenters termed the ''approved product list,'' along with soil blends of EQ biosolids and other materials such as sawdust, sand, and yard trimmings. Another commenter suggested that EPA ''include 'cotton gin by-products' and cottonseed products as recovered plant organic materials that can be composted to produce 'organic fertilizer.' ''

Several other commenters made recommendations. One commenter suggested that an extra safety measure would be to only permit the use of the sewage-derived products on trees and non-vegetable crops. Yet another commenter encouraged EPA to retain the 247.15(b) designation of compost language ''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *'' and add ''and other uses'' at the end of the sentence. This commenter also suggested that, because of concerns regarding pathogens, biosolids and manure must be processed and handled in accordance with the kinds of strict protocols put forth in 40 CFR Part 503, and that this should be further emphasized. One commenter said EPA should consider ''amending the definition of 'compost' to include, for biosolids composts, that the composting process must meet the time-temperature relationships in 40 CFR part 503, and for non-biosolids composts, that the compost must have been manufactured in accordance with applicable state regulations.''

Response: EPA agrees that the changes to include compost or fertilizer with biosolids or manure content as designated landscaping products will achieve an important goal of the CPG program—to increase market demand for items made from recovered materials. For responses to comments opposing the use of biosolids and/or manure in compost or fertilizer, please refer to sections VI.B.4, 5, and 7 in the preamble to the final CPG V, which is published elsewhere in this **Federal Register**.

EQ biosolids, cotton gin by-products, sawdust, and yard trimmings are already included in the scope of the fertilizer and amended compost designations and recommendations because these are recovered organic materials.

EPA rejected the suggestion that it recommend limiting the use of sewage-derived landscaping to trees and non-vegetable crops for the reasons explained in sections VI.B.4 and 6 in the preamble to the final CPG V, published elsewhere in this **Federal Register**.

EPA decided not to retain certain descriptive language in the 247.15(b) compost designation (''for use in landscaping, seeding of grass or other plants on roadsides and embankments * * *''). Similarly, EPA did not add the phrase ''and other uses'' at the end of the designation. (See section VI.B.6., in the preamble to the final CPG V, published elsewhere in this **Federal Register**, for the reasons that EPA did not retain this language.) However, EPA has retained this language (but did not add ''other uses'') in the Preference Program section of the final RMAN V for compost. To emphasize the processing and handling protocols in Part 503, EPA references Part 503 in the final RMAN V for both compost and fertilizers.

Finally, EPA did not revise the definition in the CPG V final rule to include more specific language about state regulations or the time-temperature relationships in 40 CFR part 503. However, in the Specifications section of the final RMAN V for compost, the Agency references 40 CFR part 503 and recommends that procuring agencies check for applicable federal, state, and local government regulations on the use of compost. For more on the time-temperature requirements in Part 503, see pp. 28, 38, et al, of the EPA document entitled *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge.* This document can be found at *http://www.epa.gov/ORD/NRMRL/Pubs/1992/625R92013.pdf.*

2. Limitations on the recovered organic materials contained in the fertilizers proposed by EPA

Comments: One commenter agrees with the minimum recovered organic material content for fertilizers recommended by USDA, which is 80%. The commenter added that the 80% minimum would allow them to work in conjunction with commercial fertilizers to meet the specific needs of the government nutrient specifications.

Response: In the Draft RMAN V **Federal Register** notice, EPA explained that the items being proposed are generally made exclusively of recovered materials. In addition, in the background document for proposed CPG V, EPA stated that most fertilizers made with recovered organic materials contain up to 100 percent recovered materials. This being the case, EPA does not believe it is necessary or appropriate to recommend a minimum level or any particular recovered materials content range for fertilizers made from recovered organic materials.

For other comments and responses regarding limitations on the recovered organic materials contained in the fertilizers proposed by EPA, please refer to section V.A.4 in the preamble to the final CPG V, which is published elsewhere in this **Federal Register**.

3. Other specifications the Agency should recommend that pertain to fertilizers made with recovered organic materials

The Agency did not receive any comments on other specifications pertaining to fertilizers.

B. Issue-Specific Comments

1. Use of compost or fertilizer made from sewage sludge/biosolids on or near food and other types of crops

The use of biosolids compost and fertilizers on or near food crops was addressed by several commenters and relates to EPA's recommendations in RMAN V. For a summary of comments and responses on this issue, please refer to section VI.B.4 in the preamble to the final CPG V, which is published elsewhere in this **Federal Register**.

2. Specific applications

Appropriate applications for compost and fertilizers made from recovered organic materials were addressed by several commenters and relate to EPA's recommendations in RMAN V. For a summary of comments and responses on this issue, please refer to section VI.B.6 in the preamble to the final CPG V, which is published elsewhere in this **Federal Register**.

3. Amount of fertilizers procured by federal agencies

Comments: EPA received a few comments suggesting that EPA gather data on the amount of fertilizers used by each federal agency. One commenter suggested that EPA gather information on the amount of compost procured by the government, the size of the market for various compost products made from recovered materials, and the sources and the supply of compost products. Another commenter suggested such a base line could be used to monitor the amount of biobased materials that are recycled as a result of the CPG V regulation.

Response: The Agency agrees that baseline data would be useful. Current Federal procurement data systems, however, provide no or limited information on the quantity of individual items purchased by Federal agencies. Many of the EPA-designated items are purchased with government credit cards or are supplied or used in the performance of support services at Federal facilities. Although agencies are required to report annually to the Office of Federal Procurement Policy and the Office of the Federal Environmental Executive (OFEE) about their implementation of RCRA section 6002, agencies do not report and are not required to report data on each EPA-designated item because the data systems do not capture this information. Instead, agencies report on the number of contracting actions in which EPA-designated items will be supplied or used, qualitative information on eight indicator items, and qualitative information of program implementation. The eight indicator items do not include compost because of the difficulty in obtaining quantitative information about purchases of this item. EPA hopes to be able to work with the agencies to develop data on services contracts that include the supply or use of compost and fertilizer.

4. Disclosure of materials used in compost

Comments: EPA received a few comments suggesting that the agency should require disclosure by compost producers of all materials used in the manufacture of any compost sold to the federal government.

Response: EPA has no authority under RCRA 6002 to establish such a requirement. However, in the case of government procurement, individual procuring agencies, if authorized, may specify that the compost they purchase includes such a disclosure. Private parties may include such a disclosure as a necessary component of their solicitation. In the final RMAN V, EPA recommends that procuring agencies refer to the United States Composting Council's (USCC's) Test Methods for the Examination of Composting and Compost (TMECC), which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. Additionally, EPA is also recommending that procuring agencies refer to the USCC's Seal of Testing Assurance (STA) labeling program, which is a compost testing and information disclosure program that uses the TMECC. Participating compost producers regularly sample and test their products using STA Program approved labs, all of which must use the same standardized testing methodologies. Participants must make test results available to customers and certify that they are in compliance with all applicable local, state, and federal regulations with respect to their compost products. The USCC then certifies the participants' compost as ''STA certified compost'' and allows the use of the STA logo on the product packaging and literature. Procuring agencies may wish to consider specifying STA certified compost, especially for applications that require consistent quality. The USCC has developed sample specification and contract language, available at *http://www.compostingcouncil.org/pdf/Specifying_STA_Prog.pdf*. More information on TMECC and STA can be found at *www.compostingcouncil.org*.

5. Procurement Training; Sample Solicitation, Contract, or EMS Language; Reporting Procedures

Comments: EPA received a few comments that requested one or more of the following: procurement training, sample solicitation and contract language, technical guidance, annual review and reporting procedures, and EMS provisions. Specifically, a few commenters suggested that EPA establish training programs for procuring agencies, one focusing on the objectives of E.O. 13101 and the other focusing on the CPG program specifically. Another commenter explained that his agency typically purchases compost and organic fertilizers as part of support services or performance type contracts, not as a product. The commenter asked that EPA provide sample solicitation or contract language that can be inserted into these contracts, and make it available online. This commenter also suggested that, prior to designating future CPG products, EPA establish training programs, solicitation and contract language, technical guidance, annual review and reporting procedures, and sample environmental management system provisions. Another commenter made similar requests and recommended that EPA add the web URL for information referenced in the RMAN, such as the U.S. Department of Transportation's specifications and EPA's sewage sludge regulations.

Response: OFEE has workgroups consisting of federal procuring agencies which focus on a number of issues, such as record keeping, reporting, and EMS. The purpose of these workgroups is to share information and develop consensus programs. EPA will continue to work on these issues through its participation in the OFEE workgroups, where agencies can share model language solicitation and contract language. When the example model language for a solicitation or contract is available, EPA will post it on the CPG web pages or link to locations that give examples. Training tools and other green purchasing guidance are available on the OFEE Web site at *http://www.ofee.gov*. Guidance specific to Part 503 and biosolids issues is available at: *http://www.epa.gov/owm/mtb/biosolids/*. Finally, regarding the suggestion to include web URLs for information referenced in the RMAN, EPA included them for all specifications in the final RMAN V.

Further information for specifications may be found in the Federal Green Construction Guide for Specifiers, including information on compost and is available on the Whole Building Design Guide Web site, at *http://www.wbdg.org/design/greenspec_msl.php?s=329000*.

V. How does the Final RMAN V differ from the Draft RMAN V?

EPA made several changes to the draft RMAN V in the final RMAN V. First, in the Specifications section of the draft RMAN for compost and fertilizers, EPA referred to ''individual state regulations'' on the use of compost and fertilizers made with recovered organic materials, respectively. In the final RMAN V, EPA has expanded the reference to include other applicable federal and local government regulations as well.

Second, in the Specifications section of the RMAN for compost and fertilizers, EPA revised the description of the Part 503 requirements in order to provide clarification. For example, in the draft RMAN, EPA referred to 40 CFR part 503 as the ''Biosolids Rule.'' However, the actual title of Part 503 is ''The Standards for the Use or Disposal of Sewage Sludge,'' and not the ''Biosolids Rule.'' In order to avoid confusion, the term ''Biosolids Rule'' has been removed from the final RMAN V for compost and fertilizers.

Third, in the final RMAN for compost and fertilizers, EPA added a reference to USDA's National Organic Program (NOP) regulations, which prohibit the use of biosolids in organic production. EPA received many comments that cited the NOP regulations, and EPA cites the NOP regulations in the final RMAN in response to those comments. Likewise, in the final RMAN for compost, EPA added a reference to the Organic Materials Review Institute (OMRI) guidelines and lists of materials allowed and prohibited in organic production.

As mentioned in IV.B.5 above, in response to a public comment suggesting that EPA include web URLs for information referenced in the RMAN, EPA included them for all specifications in the final RMAN V.

Also, as mentioned in section IV.B.4 above, in the final RMAN for compost, EPA added a reference to the USCC's STA program. This reference was added in response to comments concerning the issue of disclosure by compost producers of all materials used in the manufacture of compost. In addition, in the final RMAN for compost, EPA clarified the citation for the U.S. Department of Transportation's specifications. In the final RMAN for compost, EPA also revised the ''Note'' in order to provide clarification.

Finally, the draft RMAN V for fertilizers was entitled ''Section F–6. Organic Fertilizers.'' However, in the proposed CPG V, the proposed designation was phrased ''fertilizers made from recovered organic materials.'' EPA is revising the final RMAN title to read ''Section F–6. Fertilizers Made From Recovered Organic Materials.'' EPA is making this change so that the RMAN title matches the wording of the fertilizer item designation finalized by this action in 40 CFR Part 247.

VI. Supporting Information and Accessing Internet

Supporting materials for this final CPG V and RMAN V are available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *www.regulations.gov*. Supporting materials can be accessed on the Internet at *www.regulations.gov*. Among the supporting materials available in the OSWER Docket and on the Internet are the following:

''Background Document for the Final Comprehensive Guideline (CPG) V and Final Recovered Materials Advisory Notice (RMAN) V,'' U.S. Environmental Protection Agency, Office of Solid Waste, August, 2007.

''Economic Impact Analysis for Final Comprehensive Procurement Guideline V,'' U.S. Environmental Protection Agency, Office of Solid Waste, July 2007.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

Recovered Materials Advisory Notice V

The following represents EPA's recommendations to procuring agencies for purchasing the items designated in the Comprehensive Procurement Guideline (CPG) V in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA) and E.O. 13423. These recommendations are intended to be used in conjunction with the RMANs issued on May 1, 1995 (60 FR 21386), November 13, 1997 (62 FR 60975), January 19, 2000 (65 FR 3082), April 30, 2004 (69 FR 24039), and the Paper Products RMANs issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). Refer to May 1, 1995, November 13, 1997, January 19, 2000, and April 30, 2004 RMANs for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items. In the case of compost, the recommendations published revise the previous recommendations issued in RMAN III. The RMANs are available on EPA's CPG Web site at *http://www.epa.gov/cpg*.

Contents

I. General Recommendations
II. Specific Recommendations for Procurement of Designated Items
Part F. Landscaping Products
Section F–2. (Revised) Compost Made from Recovered Organic Materials.
Section F–6. Fertilizers Made from Recovered Organic Materials.

I. General Recommendations

General recommendations for definitions, specifications, and affirmative procurement programs may be found in the May 1, 1995 RMAN (60 FR 21386). Procuring agencies should avoid specifications that may result in unintentional barriers to purchasing designated items, such as packaging, color, or cosmetic requirements that have no bearing on the item's functionality or performance, but that might prevent its purchase with the highest percentage of recovered materials practicable.

II. Specific Recommendations for Procurement of Designated Items

Recommendations for purchasing previously designated items may be found in RMAN I (May 1, 1995); RMAN II (November 13, 1997); RMAN III (January 19, 2000); RMAN IV (April 30, 2004); and the Paper Products RMANs (May 29, 1996, and June 8, 1998). Revised recommendations for compost are included in this notice.

Part F—Landscaping Products

Section F–2. (Revised) Compost Made From Recovered Organic Materials

Note: EPA previously designated yard trimmings compost in CPG I and food waste compost in CPG III. CPG V revises the designation by amending the definition of ''compost'' and changing the description of the designation to ''compost made from recovered organic materials.'' These materials can include yard trimmings, food waste, manure, biosolids, or other recovered organic materials that can be composted. The effect of those changes is to add compost made from manure or biosolids or both to the compost designation. The following are EPA's revised recommendations for purchasing compost. EPA's final recommendations for purchasing composts made from recovered organic materials should be substituted for the recommendations found in Section F–2 of RMAN III.

Preference Program: EPA recommends that procuring agencies purchase or use mature compost made from recovered organic materials in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation. Mature compost is defined as a thermophilic converted product with high humus content, which can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

EPA further recommends that those procuring agencies that have an adequate volume of organic materials, as well as sufficient space for composting, should implement a composting system to produce compost from these materials to meet their landscaping and other needs.

Specifications: EPA recommends that procuring agencies refer to the following specifications when purchasing compost made from recovered organic materials. The U.S. Composting Council's (USCC's) Test Methods for the Examination of Composting and Compost (TMECC) and Seal of Testing Assurance (STA) program, which are found at *http://www.compostingcouncil.org.* The TMECC are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. The STA program is a compost testing and information disclosure program that uses the TMECC. Participating compost producers regularly sample and test their products using STA Program approved labs, all of which must use the same standardized testing methodologies. Participants must make test results available to customers and certify that they are in compliance with all applicable local, state, and federal regulations with respect to their compost products. The USCC then certifies the participants' compost as ''STA certified compost'' and allows the use of the STA logo on product packaging and literature. Procuring agencies can consider specifying STA certified compost, especially for applications that require consistent quality.

Section 713.05(f) of the U.S. Department of Transportation's 1996 ''Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP–96'' specifies compost as one of the materials suitable for use in roadside revegetation projects associated with road construction. (See p. 719 in *http://www.efl.fhwa.dot.gov/design/manual/Fp96.pdf.*)

EPA's ''Standards for the Use or Disposal of Sewage Sludge,'' at 40 CFR part 503, limit the pollutants and pathogens in biosolids. If biosolids are included as part of the compost, the processing and product are subject to Part 503. (*http://www.epa.gov/owm/mtb/biosolids/*) Procuring agencies should also look at other applicable federal, state, and local government regulations on the use of compost made from recovered organic materials.

The U.S. Department of Agriculture (USDA) National Organic Program (NOP) regulations established national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The NOP regulations require that agricultural products labeled as organic originate from farms or handling operations certified by a State or private entity that has been accredited by USDA. Among other things, the regulations prohibit the use of sewage sludge (biosolids) in organic production. (*http://www.ams.usda.gov/nop/NOP/NOPhome.html*)

Example language for solicitations and contracts can be found in the Federal Green Construction Guide for Specifiers, which is available on the Whole Building Design Guide Web site, at *http://www.wbdg.org/design/greenspec_msl.php?s=329000.*

The Organic Materials Review Institute (OMRI), at h*ttp://www.omri.org*, has developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping, soil amendments, erosion control, or soil reclamation that would preclude or discourage the use of compost made from recovered organic materials.

Section F–6. Fertilizers Made From Recovered Organic Materials

Note: Although fertilizer has some qualities similar to compost, for the purposes of the CPG, compost is a separate designation.

Preference Program: EPA recommends that procuring agencies purchase or use fertilizer made from recovered organic materials in such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

Specifications: EPA recommends that procuring agencies refer to the following specifications when purchasing fertilizers made from recovered organic materials. Biosolids can be used in the production of fertilizers made from recovered organic materials and must meet the requirements specified in 40 CFR part 503 before they may be beneficially used. The Part 503 land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels and are protective of public health and the environment. (*http://www.epa.gov/owm/mtb/biosolids/*) Procuring agencies should also check for other applicable federal, state, and local government regulations on the use of fertilizers made from recovered organic materials.

The U.S. Department of Agriculture (USDA) National Organic Program (NOP) regulations established national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The NOP regulations require that agricultural products labeled as organic originate from farms or handling operations certified by a State or private entity that has been accredited by USDA. Among other things, the regulations prohibit the use of sewage sludge (biosolids) in organic production. (*http://www.ams.usda.gov/nop/NOP/NOPhome.html*)

The Organic Materials Review Institute (OMRI), at *http://www.omri.org,* has developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance that would preclude or discourage the use of fertilizers made from recovered organic materials.

[FR Doc. E7–18149 Filed 9–13–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, September 20, 2007 at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–4599 Filed 9–12–07; 3:38 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 11, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. First Corbin Bancorp, Inc., Corbin, Kentucky; to merge with Eagle Fidelity, Inc., and thereby indirectly acquire Eagle Bank, both of Williamstown, Kentucky.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Community Bancorp, Inc., Saint Charles, Michigan; to merge with MSB Holding, Inc., and thereby indirectly acquire Montrose State Bank, both of Montrose, Michigan.

Board of Governors of the Federal Reserve System, September 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18144 Filed 9–13–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10054]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Recognition of payment for new technology services for New Technology ambulatory payment classification (APC) groups under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Part 419; *Use:* CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that CMS continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to CMS' attention specific services that they wish us to evaluate for New Technology APC payment. The information that CMS seeks to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies. Interested parties such as hospitals, device manufacturers, pharmaceutical companies, and physicians use this information to apply for New Technology APC payments for certain services covered in the Outpatient Prospective Payment System. *Form Numbers:* CMS–10054 (OMB#: 0938–0860); *Frequency:* Reporting—Once; *Affected Public:* Business or other for-profits; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 180.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on November 13, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 5, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–18116 Filed 9–13–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10236 and CMS–10079]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Disclosure of Financial Relationships Report (''DFRR''); *Form Number:* CMS–10236 (OMB#: 0938–New); *Use:* Section 1877(f) of the Social Security Act requires that each entity providing covered items or services for which payment may be made shall provide the Secretary with information concerning the entity's ownership, investment, and compensation arrangements, in such form, manner, and at such times as the Secretary shall specify. DFRR is a new collection instrument that will be used by CMS to obtain information necessary to analyze each hospital's compliance with section 1877 of the Social Security Act (''the physician self-referral law''), and implementing regulations (42 Code of Federal Regulations, Subpart J). Based upon public comments and CMS review, a number of changes were made to the DFRR. The most significant change to the DFRR involves the addition of worksheets to capture information concerning indirect ownership. Refer to the ''Summary of Changes to the Disclosure of Financial Relationships Report (DFRR)'' document to view a list of changes. *Frequency:* Reporting—Once; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 3,000.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Wage Index Occupational Mix Survey and Supporting Regulations in 42 CFR, section 412.64; *Use:* Section 304(c) of Public Law 106–554 mandates an occupational mix adjustment to the wage index, requiring the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program. The 2007/2008 revised survey will provide for the collection of hospital-specific wages and hours data for a 1-year prospective reporting period (July 1, 2007 through June 30, 2008), additional clarifications to the survey instructions, the elimination of the RN subcategories, some refinements to the definitions for the occupational categories, and the inclusion of additional cost centers that typically provide nursing services. Additional revisions include expanding the current cost center list to include cost center 57—Renal Dialysis. For more details, please refer to the ''Medicare Wage Index Occupational Mix Survey—Summary of Changes'' document.

The 2007/2008 Medicare occupational mix survey will be applied beginning with the FY 2010 wage index. Each of the approximately 3,600 inpatient prospective payment system providers participating in the Medicare program will be required to complete the revised Medicare Wage Index Occupational Mix Survey. The revised survey will be forwarded to hospitals through CMS's fiscal intermediaries and will be made available on CMS's Web site. *Form Number:* CMS–10079 (OMB#: 0938–0907); *Frequency:* Reporting: Yearly, biennially and occasionally; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,600; *Total Annual Responses:* 3,600; *Total Annual Hours:* 1,728,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: September 6, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–18117 Filed 9–13–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0336]

Guidance for Industry and Food and Drug Administration Staff; Commercially Distributed Analyte Specific Reagents: Frequently Asked Questions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions.'' FDA is issuing this guidance to clarify the regulations regarding commercially distributed ASRs and the role and responsibilities of ASR manufacturers. The draft of this guidance was issued September 7, 2006.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

Manufacturers should ensure their Class II or Class III in vitro diagnostic devices, that are currently inappropriately labeled and marketed as ASRs, comply with the law by September 15, 2008.

ADDRESSES: Submit written requests for single copies of the guidance document

entitled ''Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0694.

For further information concerning the guidance as it related to devices regulated by CBER: Martin Ruta, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3518.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is providing this guidance in order to minimize confusion regarding particular marketing practices pertaining to ASRs. The guidance is not intended to cover the role of clinical laboratories in the development of laboratory developed tests. As noted in this guidance document, ASRs are building blocks of laboratory developed tests. With this final guidance document, FDA seeks to advise ASR manufacturers that it views certain practices as being inconsistent with the marketing of an ASR, as defined under § 864.4020 (21 CFR 864.4020). Some manufacturers have believed that when they combine a Class I ASR, which is exempt from premarket notification requirements under section 510(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(l)), with other products, or with instructions for use in a specific test, the product may still be regarded as an ASR that retains class I exempt status because the product contains an ASR. However, as explained in this guidance, when an ASR is marketed in combination with other products, with instructions for use, or with specific claims, FDA views the product as no longer being an ASR within the meaning of § 864.4020. Instead, FDA views products marketed in this way as another type of in vitro diagnostic device (IVD) or device component not covered by the ASR regulations and, therefore, not necessarily exempt from premarket notification.

The draft of this guidance was published in the **Federal Register** of September 7, 2006 (71 FR 52799). FDA received and considered more than 30 sets of comments on the draft guidance document. After taking the comments into consideration, FDA has revised the draft document to provide clarifications as needed. This includes clarifying that FDA views ASRs as being intended to detect a single ligand or target. This guidance further clarifies that oligonucleotide primer pairs and polyclonal antibodies can meet the definition of an ASR when properly marketed because they are for the identification of a single target or ligand (e.g., used to detect a single protein, a single nucleotide change, a single epitope). In addition, FDA has clarified that where manufacturers provide laboratories with information describing the use of their product in a specific test, the manufacturer's product would fall outside the definition of an ASR.

In order to assist manufacturers of Class II or III IVDs that are currently being inappropriately labeled and marketed as ASRs to come into regulatory compliance, FDA intends to exercise enforcement discretion with respect to premarket approval and clearance requirements for 12 months (see **DATES**). Manufacturers should ensure their products comply with the law by (see **DATES**).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on commercially distributed ASRs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Commercially Distributed Analyte Specific Reagents (ASRs): Frequently Asked Questions,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1590 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the CBER Internet site at *http://www.fda.gov/cber/guidelines.htm* or on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 809.10 and 809.30 (§ 809.30) have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR 807.22 and 807.31(e) are approved under OMB control number 0910–0387; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR

814.20 have been approved under OMB control number 0910–0231.

In addition, the labeling for Class I, exempt ASRs must bear the statement, ''Analyte Specific Reagent. Analytical and performance characteristics are not established.'' Class II or III ASRs must bear the statement, ''Analyte Specific Reagent. Except as a component of the approved/cleared test (name of approved/cleared test), analytical and performance characteristics are not established'' (§ 809.30(d)(2) and (d)(3)). The disclaimer and these statements do not constitute ''collections of information'' under the PRA. Rather, they are ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18108 Filed 9–13–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–13]

Announcement of Funding Awards for Fiscal Year 2007; Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2007 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Community Development Act of 1974 as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under the Revised Continuing Appropriations Resolution, 2007 and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.514.

On March 13, 2007, (FR Vol. 72, No. 48, 11477), HUD published a Notice of Funding Availability approximately $5.9 million in Fiscal Year 2007, plus $111,226 in unobligated funds for the HSIAC Program.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2007 Hispanic-Serving Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region VI

1. San Antonio College, Dr. Helen Vera, San Antonio College, 1300 San Pedro Ave., San Antonio, TX 78212–4299. Grant: $597,530.

2. Midland College, Mr. Alfredo Chaparro, Midland College, 3600 North Garfield, Midland, TX 79705. Grant: $600,000.

Region VIII

3. Otero Junior College, Mr. Gary Ashida, Otero Junior College, 1802 Colorado Ave., La Junta, CO 81050. Grant: $599,176.

4. SBCCOES dba Trinidad State Junior College, Ms. Kerry Gabrielson, SBCCOES dba Trinidad State Junior College, 600 Prospect Street, Trinidad, CO 81082. Grant: $599,067.

Region IX

5. Los Angeles Trade-Technical College, Dr. Denise Fairchild, Los Angeles Trade-Technical College, 400 West Washington Blvd., Los Angeles, CA 90015–4181. Grant: $599,979.

6. Los Angeles Valley College, Dr. Deborah diCesare, Los Angeles Valley College, 5800 Fulton Ave., Valley Glen, CA 91401–4096. Grant: $600,000.

7. California State University-Long Beach Foundation, Ms. Denise Bell, California State University-Long Beach Foundation, 6300 State University Drive, Suite 332, Long Beach, CA 90815. Grant: $599,885.

8. Foundation of California State University Monterey Bay, Ms. Patricia Casey, Foundation of California State University Monterey Bay, 100 Campus Center, Bldg. 97, Seaside, CA 93955. Grant: $599,880.

9. Central Arizona-Pinal County Community College District, Mr. Al Larson, Central Arizona-Pinal County Community College District, 8470 North Overfield Road, Coolidge, AZ 85228. Grant: $599,985.

Region X

10. Heritage University, Mr. Rick Gagnier, Heritage University, 3240 Fort Road, Toppenish, WA 98948. Grant: $600,000.

Dated: September 7, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–18119 Filed 9–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–37]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective Date: September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 6, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–17910 Filed 9–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5113-N–02]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2007–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2007–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder's Information Package (BIP) was made available to qualified bidders on August 16, 2007. Bids for the loans must be submitted on the bid date, which is currently scheduled for September 19, 2007. HUD anticipates that awards will be made on or before September 21, 2007. Closings are expected to take place on or before September 28, 2007.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* The executed documents must be mailed Corporate Finance Services, LLC, 7831 Woodmont Ave, No. 287, Bethesda, MD 20814, Attention: Alfreda Ward, Fax (703) 847–2783.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

HUD announces its intention to sell in MHLS 2007–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States pursuant to section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, 12 U.S.C. 1715z–11a(a).

The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2007–1.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2007–1. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. In the event the bidder's aggregate bid is less than $100,000, the minimum deposit shall be not less than fifty percent (50%) of the bidder's aggregate bid. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur on or before September 28, 2007.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2007–1. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2007–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2007–1:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2007–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2007–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2007–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before March 31, 2007, audited financial statements for 1999 through 2006 for a project securing a Mortgage Loan; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before September 12, 2007.

In addition, any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to August 31, 2007, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to August 31, 2007. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2007–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2007–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2007–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated there under.

Scope of Notice

This notice applies to MHLS 2007–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: September 7, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–18115 Filed 9–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–11]

Privacy Act of 1974; Proposed New Routine Use—HUD's Remedial Efforts in the Event of a Breach

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new routine use.

SUMMARY: HUD proposes to add a new routine use to all records within its Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This new routine use will permit the disclosure of records, where records are relevant and reasonably necessary to respond, prevent, minimize, or remedy harm that may result from the breach of Personally Identifiable Information (PII).

DATES: *Effective date:* This proposal shall be effective without further notice on October 15, 2007 unless comments are received on or before that date that would result in a contrary determination.

Comments due by: October 15, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this new routine use to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. 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: Departmental Privacy Act Officer, telephone number (202) 708–2374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16, ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' The memorandum includes a recommendation for agencies to adopt a new routine use specifically applying to the disclosure of such information in the course of responding to a breach. This new routine use is in response to that recommendation and is intended to facilitate a timely and effective response, allowing the disclosure of pertinent information to those individuals affected, as well as to persons and entities in a position to

play a central role, either by assisting in the notification to affected individuals or by direct involvement with preventing, minimizing or remedying harms from the breach. In accordance with the Privacy Act, 5 U.S.C. 552a this document provides public notice that HUD is proposing to adopt a ''routine use'' that is consistent with the purpose for which information is collected and subject to that Act, see 5 U.S.C. 552a(b)(3); also see 5 U.S.C. 552a(a)(7). HUD believes that the routine use is consistent with the collection of information pertaining to such individuals to disclose Privacy Act records, when, in doing so, it will help protect the interest of individuals, whose information is at risk. Additionally, it improves the Department's ability to take appropriate steps necessary to facilitate a timely and effective response.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on a new routine use disclosure, and require published notice of the existence and characters of the systems of records.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, 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 June 25, 1993 (58 FR 36075, July 2, 1993). The existence and characters of HUD's completed Privacy Act systems of records can be viewed on the agency's Web site at: *http://www.hud.gov/offices/cio/privacy/pia/fednotice.cfm* and currently consist of the following:

HUD/DEPT–1—Accidents, Employees and/or Government Vehicles.
HUD/DEPT–2—Accounting Records.
HUD/DEPT–4—Fee Inspectors and Appraisers
HUD/DEPT–5—Architects and Engineers.
HUD/DEPT–10—Single Family Construction Complaints Files.
HUD/DEPT–15—Equal Opportunity Housing Complaints.
HUD/DEPT–20—Single Family Homeownership Assistance Application and Recertification
HUD/DEPT–22—Housing Counseling.
HUD/DEPT–23—Single-Family Research Files.
HUD/DEPT–24—Investigation Files.
HUD/DEPT–25—Legal Actions Files.
HUD/DEPT–28—Property Improvement and Manufactured (Mobile) Home Loans—Default.
HUD/DEPT–29—Rehabilitation Grants and Loans Files.
HUD/DEPT–32—Mortgages—Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program.
HUD/DEPT–34—Pay and Leave Records of Employees.
HUD/DEPT–37—Personnel Travel System.
HUD/DEPT–42—Rent Subsidy Program Files.
HUD/DEPT–43—HUD/DEPT–43 Property Disposition Files (A43; A43C; A80S).
HUD/DEPT–44—Relocation Assistance Files
HUD/DEPT–46—Single Family Case Files
HUD/DEPT–51—Standards of Conduct Files
HUD/DEPT–52—Privacy Act Requesters
HUD/DEPT–53—Consumer Complaint Handling System
HUD/DEPT–54—Parking Permit Application Files
HUD/DEPT–56—Telephone Numbers of HUD Officials
HUD/DEPT–62—Claims Collection Records
HUD/DEPT–63—Secretary's Correspondence Control System
HUD/DEPT–64—Congregate Housing Services Program Data Files
HUD/DEPT–65—IDEAS Program Case Files
HUD/DEPT–66—Grievance Records
HUD/DEPT–67—Employee Counseling and Occupational Health Records
HUD/DEPT–68—HUD Government Motor Vehicle Operators Records
HUD/DEPT–69—Intergovernmental Personnel Act Assignment Records
HUD/DEPT–71—Identity Management System (IDMS) formerly Employee Identification File
HUD/DEPT–72—Congressional Correspondence Files (Communication Control System)
HUD/DEPT–73—Government Property on Personal Charge Files
HUD/DEPT–74—Executive Emergency Cascade Alerting System
HUD/DEPT–75—Priority Consideration/Special Reassignment Files
HUD/DEPT–76—HUD Employee Locator File
HUD/DEPT–77—Audit Planning and Operations System (APOS)
HUD/DEPT–80—Long Distance Telephone Call Detail System.
HUD/DEPT–81—Ethics Filings
HUD/DEPT–82—ADP Security Clearance Information System
HUD/CPD—Rehabilitation Loans-Delinquent/Default
HUD/EC–01—Compliance Case Tracking System
HUD/EC–02—Departmental Tracking System (DTS), V02A
HUD/H–3—Single Family Housing Monitoring System (F–39)
HUD/H–5—Single Family Computerized Homes Underwriting Management System(CHUMS)
HUD/H–6—Single Family Section 518 Files (Constructed Complaints)
HUD/H–7—Previous Participation Review System (PPRS F19) and Active Partners Performance System (APPS–F24P) Previous Participation Files
HUD/H–8—Property Rental Files
HUD/H–9—Property Management Records
HUD/H–11—Tenant Housing Assistance and Contract Verification Data
HUD/H–12—Housing Compliance Files
HUD/H–14—Interstate Land Sales Registration Files
HUD/HS–10—Single Family Insurance System and Home Equity Conversion Mortgage System
HUD/HS–15—Single Family Data Warehouse System (D64A)
HUD/HS–16—Single Family Neighborhood Watch Early Warning System
HUD/HS–50—FHA Lender Approval Files
HUD/OIG–1—Investigative Files of the Office of Inspector General
HUD/OIG–2—Hotline Complaint Files of the Office of Inspector General
HUD/OIG–3—Name Indices System of the Office of Inspector General.
HUD/OIG–4—Independent Auditor Monitoring Files of the Office of Inspector General.
HUD/OIG–5—AutoAudit of the Office of Inspector General.
HUD/OIG–6—AutoInvestigation of the Office of Inspector General.
HUD/PD&R–6—Real Estate Settlement Cost Research Files.
HUD/PD&R–7—Section 8 Program Research Data Files.
HUD/PD&R–8—Income Certification Evaluation Data Files.
HUD/PD&R–9—HUD USER File for Research Products, Services and Publications
OFHEO–01—Financial Management System
FHEO–02—Pay and Leave System
OFHEO–03—Employee Identification Card System
OFHEO–04—Property Inventory System
OFHEO–05—Senior Staff Biography System
HUD/PIH–4—Public and Indian Housing Information Center (PIC)
HUD/REAC–1—Tenant Eligibility Verification Files
HUD/REAC–2—Independent Public Accountant Quality Assurance Files

HUD/REAC–3—Quality Assurance/ Quality Control Administrative

HUD/ADM–02—Transit Subsidy System, HUD's Direct Distribution Center System, One Touch Student Response System, Training Information System (TRAI), Training Announcement, Nomination, and Confirmation System (TANCS) Single Family Acquired Asset Management System

HUD/CFO/01—HUD Central Accounting and Program System (HUPCAPS)

HUD/CFO–02—Audit Resolution and Corrective Action Tracking System (ARCATS)

Accordingly, this notice establishes a new routine use for all records within HUD's systems of records subject to the Privacy Act of 1974, as amended. The text of this routine use is taken from the routine use that has already been adopted by several agencies; including the Department of Justice for the same purpose described in this notice.

1. General Statement of Routine Uses

To appropriate agencies, entities, and persons when:

(1) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

(2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the HUD or another agency or entity) that rely upon the compromised information; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Authority: 5 U.S.C. 552a.

Dated: September 7, 2007.

Bajinder Paul,

Acting Chief Information Officer.

[FR Doc. E7–18118 Filed 9–13–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

30-Day Notice of Submission of Information Collection for Approval from Office of Management and Budget

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Office of Federal Housing Enterprise Oversight (OFHEO) hereby gives notice that it is seeking approval for the information collection titled ''OFHEO Application for Employment'' from the Office of Management and Budget (OMB). Notice of this proposed information collection was previously published in the **Federal Register** on March 23, 2007, Volume 72, Number 56, pages 13814–13815, allowing for a 60 day public comment period. No comments were received.

The purpose of this notice is to allow an additional 30 days for public comment until October 15, 2007. This process is conducted in accordance with 5 CFR 1320.10, and 5 CFR 1320.5(a)(1)(iv).

Written comments or suggestions regarding the information collection described in this notice must be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Federal Housing Enterprise Oversight. Written comments and suggestions are solicited to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OFHEO, including whether the information will have practical utility;

(2) Evaluate the accuracy of OFHEO'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, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Title of collection:* OFHEO Application for Employment.

(2) *Summary of collection information:* The Application for Employment is an on-line job application form. The application form may be made available in paper copy by request.

(3) *Need and proposed use:* Collection of the information is necessary to gather data concerning potential new hires for OFHEO and the information will be used to evaluate the qualifications of applicants for a variety of positions.

(4) *Description of the likely respondents, including the estimated number of likely respondents and proposed frequency of response to the collection of information:* Persons responding to the information collection are U.S. citizens applying for employment with OFHEO. The estimated number of respondents is approximately 3,100 per year.

(5) *Estimate of the total annual reporting and record keeping burden that will result from the collection:* The estimated number of respondents is approximately 3,100 per year. Each application takes approximately two hours to complete, for a total of 6,200 estimated annual burden hours.

For further information, or to obtain a copy of the proposed information collection, please contact Mark Laponsky, Executive Director, telephone (202) 414–3832 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Dated: August 27, 2007.

James B. Lockhart III,

Director.

[FR Doc. E7–18162 Filed 9–13–07; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Wheeler National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the

Wheeler National Wildlife Refuge Complex, with refuges in Jackson, Lauderdale, Limestone, Madison, and Morgan Counties, Alabama, is available for distribution. The CCP was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge complex will be managed for the next 15 years.

ADDRESSES: A copy of the CCP/FONSI may be obtained by writing to: C. Dwight Cooley, Project Leader, Wheeler National Wildlife Refuge Complex, 2700 Refuge Headquarters Road, Decatur, AL 35603; Telephone: 256/353–7243; Fax 256/353–9728. The CCP/FONSI may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: With this notice, we finalize the CCP process for the Wheeler National Wildlife Refuge Complex, begun as announced in the **Federal Register** on July 21, 2005 (70 FR 42084). For more about the process, see that notice. We released the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) to the public, requesting comments in a notice of availability in the **Federal Register** on April 5, 2007 (72 FR 16811).

The Draft CCP/EA identified and evaluated four alternatives for managing the refuge complex over the next 15 years. Under Alternative A, the ''no-action'' alternative, present management would have continued. Current approaches to managing migratory birds, threatened and endangered species, other wildlife and habitats, and allowing for public use would have remained unchanged. Under Alternative B, management would have focused on maximizing opportunities for public visitation, increasing both facilities and activities. Under Alternative C, the refuge complex would have emphasized its biological program by applying maximum efforts to enhance habitat conditions and increase wildlife populations, particularly migratory birds. The visitor services program would have remained as it is at present. We chose Alternative D as the preferred alternative. This determination was made based on the best professional judgment of the planning team and the comments received on the Draft CCP/EA. Under this alternative, the refuge complex will strive to optimize both its biological program and its visitor services program.

Over the 15-year life of the plan, the complex staff will increase emphasis on environmental education and interpretation to lead to a better understanding of the importance of wildlife and habitat resources, especially invasive species, endangered species, and migratory birds. Research studies on the refuge will be fostered and partnerships developed with universities and other agencies, providing needed resources and experiment sites, while meeting the needs of each refuge's wildlife and habitat management programs. New surveys on birds, reptiles, and amphibians will be initiated to develop baseline information.

The Wheeler National Wildlife Refuge Complex is currently comprised of seven national wildlife refuges, spreading across 12,500 square miles of northern Alabama. In addition, the Wheeler Complex administers five Farm Service Agency conservation easement tracts. The Final CCP/FONSI covers four of the seven refuges: Wheeler Refuge in Limestone, Madison and Morgan Counties; Key Cave Refuge in Lauderdale County; Sauta Cave Refuge in Jackson County (formerly known as Blowing Wind Cave); and Fern Cave Refuge in Jackson County. The other three refuges (Cahaba River, Mountain Longleaf, and Watercress Darter) will be addressed at a later date in separate plans.

Wheeler National Wildlife Refuge, consisting of 37,000 acres and located among the cities of Athens, Decatur, and Huntsville, was established in 1938 by Executive Order 7926 as a refuge and breeding ground for migratory birds and other wildlife. Additional purposes were added later under the authorities of the Migratory Bird Conservation Act of 1929 and the Refuge Recreation Act of 1962. Sauta Cave National Wildlife Refuge, known as Blowing Wind Cave National Wildlife Refuge until 1999, is located near Scottsboro. It is a 264-acre refuge purchased in 1978 to provide protection for the federally endangered gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) and their critical habitat. Fern Cave National Wildlife Refuge, located near Paint Rock, was purchased in 1981 to provide protection for the federally endangered gray and Indiana bats. It consists of 199 acres of forested hillside underlain by a massive cave with many stalactite- and stalagmite-filled rooms. Key Cave National Wildlife Refuge, located about 5 miles southwest of Florence, was established in 1997 to provide protection for the endangered Alabama cavefish (*Speoplatyrhinus poulsoni*).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 24, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–18145 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for Washington Department of Natural Resources' Commercial Geoduck Fishery

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: We, the Fish and Wildlife Service (Service), advise the public that the Washington Department of Natural Resources (WDNR) has applied for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested 50-year permit would authorize the incidental take of covered species associated with WDNR's management of the State's Commercial Geoduck Fishery. We are requesting comments on the permit application and on whether the proposed Habitat Conservation Plan (HCP) qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft environmental action statement (EAS), which is also available for public review.

DATES: Written comments must be received by 5 p.m. on October 15, 2007.

ADDRESSES: Address comments to Ken Berg, Manager, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503. You may also send comments by facsimile to (206) 753–9405 or by electronic mail to *geoduckhcp@fws.gov*. For further information and instruction on the reviewing and commenting process, see Public Availability of Comments section below.

FOR FURTHER INFORMATION CONTACT: Jo Ellen Henry, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES**), or telephone (360) 753–7766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

If you would like copies of the application, proposed HCP, or EAS, contact us by telephone (see **FOR**

FURTHER INFORMATION CONTACT) or by letter (see **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at the Western Washington Fish and Wildlife Office (see **ADDRESSES**) and the Western Washington Fish & Wildlife Service internet site: *http://www.fws.gov/westwafwo/consplan/docs.html*.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq*.) and Federal regulations prohibit the ''take'' of a fish or wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under section 3 of the Act as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct'' (16 U.S.C. 1538). We may, under limited circumstances, issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. The applicant is seeking a permit for the incidental take of species that are listed as either threatened or endangered under the Act, and certain species should they become listed during the 50-year term of the permit. The species under consideration for coverage include bald eagle (*Haliaeetus leucocephalus*), California brown pelican (*Pelecanus occidentalis*), marbled murrelet (*Brachyramphus marmoratus*), tufted puffin (*Fratercula cirrhata*), bull trout (*Salvelinus confluentus*), and coastal cutthroat trout (*O. clarki clarki*).

Proposed covered activities under the HCP include the subtidal harvest of wild stock geoduck clams (*Panopea abrupta*) on State-owned aquatic lands for commercial, research and health sampling purposes.

The majority of subtidal lands in the State, and the resources embedded in them, are owned by Washington State and managed by the WDNR. The geoduck clam is among the most commercially valuable of these resources.

The wild geoduck fishery in the state is jointly managed by WDNR, Washington Department of Fish and Wildlife (WDFW), and the Puget Sound Treaty Indian Tribes (tribes). The State and the tribes each have a right to 50 percent of the allowable geoduck catch. The State and the tribes are jointly responsible for estimating geoduck population size, determining sustainable yield, and protecting the health of the geoduck stock and the habitat they depend upon. WDNR offers the State's half of the geoduck harvest at auctions for the right of private companies and individuals to harvest specific quantities of geoducks in specific areas. As the State's managers of the geoduck resource, WDNR and WDFW enforce civil and criminal Washington State laws, regulations and contract conditions that apply to the State's fishery.

Washington's commercial geoduck fishery is divided into six geoduck management regions. Commercial harvest occurs within one management region at a time, and usually on one tract at a time. There are currently 400 commercial geoduck tracts comprising approximately 30,000 acres of subtidal bedlands. Ten to 14 harvest quotas are offered at each WDNR geoduck harvest auction, resulting in 30 to 40 individual harvest agreements annually. Typically, one or two tracts are open for harvest at any given time. The tract boundaries are defined by a water depth of –18 feet mean lower low water (MLLW) to the outer edge of the harvest area (depth of –70 feet MLLW). Most of the subtidal tracts range in size from 18 acres to 459 acres. A small number of tracts are larger. Harvest limits are based on the annual harvest level (Total Allowable Catch (TAC)). The TAC for a management region is the total weight of geoduck that may be harvested during the year in each management region. The number is calculated annually and is the product of the regional commercial biomass estimate multiplied by the equilibrium harvest rate.

The proposed minimization and mitigation measures include, but are not limited to: Limiting the number of acres open to harvest in each management region per year; permitting harvest only from tracts designated through contract by WDNR; clearly marking tracts with easily identifiable stakes and/or buoys, and recording latitude and longitude positions on all markers; limiting surface noise levels; applying harvest boundaries and buffers to protect eelgrass beds, forage fish spawning areas and other sensitive nearshore habitats and providing direct oversight of the fishery by maintaining compliance staff aboard vessels on harvest tracts each day that commercial geoduck harvest occurs.

Approval of the HCP may qualify for a categorical exclusion under NEPA, as provided by the Departmental Manual (516 DM2 Appendix 1 and 516 DM 6 Appendix 1), and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (Service, November 1996). We determine whether an HCP is low effect based upon whether the HCP has minor or negligible effects on federally listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and impacts that together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would, not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If we find the HCP to qualify as a low-effect HCP, further NEPA documentation would not be required.

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. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the applicant for take of the proposed covered species, incidental to otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

We provide this notice under section 10(c) of the Act and NEPA implementing regulations (40 CFR 1506.6).

Dated: September 7, 2007.

Ken S. Berg,

Manager, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, Lacey, Washington.

[FR Doc. E7–18128 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

2007 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the

dates and location of the 2007 Federal Duck Stamp contest, and the species eligible to be subjects for this year's designs. We invite the public to enter and to attend. The 2007 contest will select the image that will grace the 75th Federal Migratory Bird Hunting and Conservation Stamp.

DATES: The public may first view the 2007 Federal Duck Stamp Contest entries on Tuesday, September 25, 2007 from 10 a.m. to 4 p.m.

1. Judging will be held on Friday, October 12, 2007 beginning at 1 p.m. and on Saturday, October 13, 2007 beginning at 9 a.m., at the Sanibel, FL location.

ADDRESSES: Requests for complete copies of the contest rules, reproduction rights agreement, and display and participation agreement by calling 1–703–358–2000, or by writing to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1622. You may also download the information from the Federal Duck Stamp Web site at *http://duckstamps.fws.gov*.

The contest will be held in Sanibel, Florida at the Big Arts Center, 900 Dunlop Road, Sanibel, FL 33957. Phone (239)395–0900.

FOR FURTHER INFORMATION CONTACT: Laurie Shaffer, Federal Duck Stamp Office, (703) 358–2002, or by e-mail *Laurie_Shaffer@fws.gov* or fax at (703) 358–2009.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed and President Franklin Roosevelt signed the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the U.S. Fish and Wildlife Service to buy or lease waterfowl sanctuaries. Regulations governing the contest appear at 50 CFR part 91.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.8 million stamps are sold each year, and as of 2005, Federal Duck Stamps have generated more than $700 million for the preservation of more than 5.2 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

The Contest

The first Federal Duck Stamp was designed at President Franklin Roosevelt's request by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries in the only art competition of its kind sponsored by the U.S. Government. To select each year's design, a panel of noted art, waterfowl, and philatelic authorities are appointed by the Secretary of the Interior. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

The public may view the 2007 Federal Duck Stamp entries on Tuesday, September 25, 2007 and through the days of judging. This year's judging will be held on Friday, October 12 and Saturday, October 13, 2007.

Eligible Species

The following species are eligible for the 2007 contest: Mallard, American Green-winged Teal, Northern Pintail, Canvasback and Harlequin Duck. Entries featuring a species other than the above listed species will be disqualified.

Dated: September 5, 2007.

H. Dale Hall,

Director.

[FR Doc. E7–18139 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW154432]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the North Maysdorf Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Thursday, October 18, 2007. Sealed bids must be submitted on or before 4 p.m., on Wednesday, October 17, 2007.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Cordero Mining Company, Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located in central Campbell County, approximately 2 miles east of State Highway 59, 4 miles south of Bishop Road, and is adjacent to the southern lease boundary of the Belle Ayr Mine and the northwest lease boundary of the Cordero Rojo Mine:

T. 47 N., R. 71 W., 6th P.M., Wyoming,
Section 7: Lots 5, 12, 13, 20;
Section 8: Lots 3 through 6, 11 through 13.
Containing 445.89 acres more or less.

The tract is adjacent to Federal coal leases to the north and east held by the Belle Ayr and Cordero Rojo Mines, respectively. It is adjacent to additional unleased Federal coal to the west and south. It is also adjacent to about 40 acres of private coal controlled by the Cordero Rojo Mine. All of the acreage offered has been determined to be suitable for mining. Features such as pipelines can be moved to permit coal recovery. In addition, oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of any future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining

or re-established after mining is completed. The surface estate of the tract is owned by Cordero Mining Company, Caballo Rojo, Inc. and Foundation Wyoming Land Company.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. On the LBA tract, the Wyodak seam is generally a single seam averaging approximately 70 feet thick. The overburden depths range from 170–360 feet thick on the LBA.

The tract contains an estimated 54,657,000 tons of mineable coal. This estimate of mineable reserves includes the main Wyodak seam but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent private coal although these reserves are expected to be recovered in conjunction with the LBA. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.7:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam mining.

The Maysdorf North LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8586 BTU/lb with about 0.27% sulfur. These quality averages place the coal reserves near the middle of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Wednesday, October 17, 2007, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW154432, are available for inspection at the BLM Wyoming State Office.

Dated: July 10, 2007.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E7–18086 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–110–1492 ES; AZA–30975]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined by the Bureau of Land Management (BLM) and found suitable for classification for lease or conveyance to Littlefield Unified School District #9 and under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 *et seq.*, and under Sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315(f), and Executive Order No. 6910.

Gila and Salt River Meridian

T. 39 N., R. 16 W.,
Sec. 10, SW¼SW¼NW¼NE¼,
W½SW¼NE¼SW¼NE¼,
W½SW¼NE¼,
W½W½SE¼SW¼NE¼,
E½NE¼SE¼NW¼,
E½NW¼NE¼SE¼NW¼, and
E½E½SE¼SE¼NW¼.
The area described contains 35 acres, more or less, in Mohave County.

The Littlefield Unified School District #9 has not applied for more than the 6,400 acre limitation for recreation uses in a year.

The Littlefield Unified School District #9 has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). The Littlefield Unified School District #9 proposes to use the land as a site for public school building(s). The first phase of development would be to relocate one or more portable classrooms from the old elementary school campus in Littlefield. Later phases would include constructing permanent facilities for upper-level grades K–12.

DATES: Submit comments on or before October 29, 2007.

ADDRESSES: Detailed information including but not limited to, a proposed development plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Arizona Strip Field Office, 345 E. Riverside Dr., St. George, Utah 84790.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Team Lead, 435–688–3271.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Lease or conveyance of the lands for recreational or public purposes use is in conformance with the BLM Arizona Strip District Resource Management Plan and Final Environmental Impact Statement, dated January 1992, as amended, and would be in the public interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. The notice will be published in the newspaper of local circulation for three consecutive weeks. The regulations do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease or conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals, including all necessary access and exit.

4. All valid existing rights, documented on the official public land records at the time of lease or patent issuance.

5. *CERCLA Term:* ''Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (43 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more,

nor had any hazardous substances been disposed of or released on the subject property.''

6. *Indemnification Term:* ''All lessees, purchasers, or patentees, by accepting a lease or patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State and local environmental and regulatory provisions, throughout the life of the facility, including any closure or post-closure requirements that may be imposed with respect to any physical plant or facility upon the real property under any Federal, State or local environmental laws or regulatory provisions. This covenant shall be construed as running with the above described parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

7. Terms and conditions identified through the site-specific environmental analysis.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development of public school building(s). Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and Plan of Development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for public school building(s). Any adverse comments will be reviewed by the BLM State Director. In the absence of any adverse comments, the classification will become effective on November 13, 2007. The lands will not be offered for conveyance until after the classification becomes effective.

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.

(Authority: 43 CFR 2741.5)

Becky J. Hammond,

Field Manager.

[FR Doc. E7–18190 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1610–DP–011J]

Notice of Availability of the Price Field Office Supplemental Draft Resource Management Plan and Environmental Impact Statement for Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared the Price Field Office Supplemental Draft Resource Management Plan and Environmental Impact Statement (Supplemental DRMP/EIS) to augment the analysis of managing non-Wilderness Study Area (WSA) lands with wilderness characteristics. This Notice announces the availability of the document and the beginning of a 90-day comment period.

DATES: To ensure that public comments will be considered, the BLM must receive written comments on the Supplemental DRMP/EIS within 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

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

- Mail: Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501.
- E-mail: *UT_Pr_Comments@blm.gov.*
- Fax: (435) 636–3657.

FOR FURTHER INFORMATION CONTACT: Floyd Johnson, Assistant Field Manager, Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501; telephone (435) 636–3600; e-mail: *floyd_johnson@blm.gov.* Or, the public may go to *http://www.blm.gov/rmp/ut/price* for additional information.

SUPPLEMENTARY INFORMATION: The Price Field Office planning area encompasses public lands managed by the BLM in Carbon and Emery Counties, Utah. This includes approximately 2.5 million acres of BLM-administered surface lands and 2.8 million acres of federal mineral estate underlying federal, State, and private lands. The Price Field Office Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS), prepared to guide management of these lands, was released for public review on July 16, 2004. (The DRMP/EIS is available on the internet at: *http://www.blm.gov/rmp/ut/price/*).

There are multiple areas (totaling 933,440 acres) outside of existing WSAs, which have wilderness characteristics. The BLM's land use planning handbook (Manual Handbook H–1601–1) provides guidance for consideration of non-WSA lands with wilderness characteristics in land use planning. The handbook

provides that the BLM may consider these lands and resource values in planning, and prescribes measures to manage for their wilderness characteristics. These characteristics include the appearance of naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation.

The DRMP/EIS analyzed five alternatives for management of public lands in the Price Field Office, and disclosed the impacts of implementing each alternative. The Price Field Office Supplemental DRMP/EIS will prescribe specific actions to manage for the wilderness characteristics of non-WSA lands with wilderness characteristics in a new alternative to ensure that: (1) Adequate consideration is given to wilderness characteristics; (2) an adequate range of alternatives is considered for these lands; and (3) an adequate analysis is prepared from which to base future land use decisions. Comments, including names and addresses of respondents, will be available for public review at the Price Field Office. 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.

Copies of the Supplemental DRMP/EIS are available in the Price Field Office and on the Internet at the address provided above.

Jeff Rawson,

Associate State Director.

[FR Doc. E7–18098 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–DP–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0114

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority to collect information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act (GPRA). The Office of Management and Budget (OMB) previously approved the collection and assigned it clearance number 1029–0114.

DATES: Comments on the proposed information collection must be received by November 13, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW. Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. 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 number for this collection of information is 1029–0114 and is on the forms along with the expiration date. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–0114.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 750.

Total Annual Burden Hours: 63.

Dated: September 10, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–4553 Filed 9–13–07; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Improvements to the Donna-Brownsville Levee System, in the Lower Rio Grande Flood Control Project, Hidalgo and Cameron Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508), and the United States Section, International Boundary and Water Commission's (USIBWC) Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice

of availability of the Final EA and FONSI for Improvements to the Donna-Brownsville Levee System, in the Lower Rio Grande Flood Control Project, located in Hidalgo and Cameron Counties, Texas. The Final EA addresses comments and recommendations provided by the U.S. Fish and Wildlife Service (USFWS), Natural Resources Conservation Service, Texas Historical Commission, and Texas Commission on Environmental Quality, during the Draft EA review period ending July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4767; e-mail: *danielborunda@ibwc.state.gov.* Copies of the document have been provided to potentially affected parties, as identified during the Draft EA review process. Single hard copies of the Final EA may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov.*

DATES: The Final EA and Final FONSI will be available September 14, 2007.

SUPPLEMENTARY INFORMATION: The USIBWC is authorized to construct, operate, and maintain any project or works by the United States of America on the Lower Rio Grande Flood Control Project (LRGFCP), as authorized by the Act of the 74th Congress, Sess. I Ch. 561 (H.R. 6453), approved August 19, 1935 (49 Stat. 660), and codified at 22 U.S.C. 277, 277a, 277b, 277c, and Acts amendatory thereof and supplementary thereto. The LRGFCP was constructed to protect urban, suburban, and highly developed irrigated farmland along the Rio Grande delta in the United States and Mexico.

The USIBWC, in cooperation with the USFWS, prepared this Final EA for the proposed action of raising the Donna-Brownsville Levee System located in Hidalgo and Cameron Counties, Texas to improve flood control. This levee system is part of the LRGFCP that extends approximately 180 miles from the Town of Peñitas in south Texas to the Gulf of Mexico. The Donna-Brownsville Levee extends 65 miles along the Rio Grande, downstream from the Donna Pump Station in Hidalgo County to an area east of Brownsville, approximately 28 miles upstream of the Gulf of Mexico, in Cameron County.

The Proposed Action would increase the flood containment capacity of the Donna-Brownsville Levee System by raising elevation of a number of levee segments to meet a 3-foot freeboard design criterion for flood protection. Height increases up to 2 feet are typically needed to reach the design freeboard value. The increase in levee height will result in an expansion to the levee footprint by lateral extension of the structure. Structural improvements may be required for some levee segments where seepage is a potential problem.

Dated: September 10, 2007.

Susan Daniel,

General Counsel.

[FR Doc. E7–18140 Filed 9–13–07; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–929–931 (Review)]

Silicomanganese From India, Kazakhstan, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On July 6, 2007, the Commission determined that the domestic interested party group response to its notice of institution (72 FR 15726, April 2, 2007) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews. Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[1] [2]

Staff report. A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 29, 2007, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before November 1, 2007 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 1, 2007. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new

[1] Commissioner Deanna Tanner Okun voted to conduct full reviews of all orders due to changes in the conditions of competition in the U.S. market for silicomanganese.

[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[3] The Commission has found the responses submitted by Eramet Marietta, Inc. and Felman Production, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 10, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–18111 Filed 9–13–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–415 and 731–TA–933 and 934 (Review)]

Polyethylene Terephthalate Film From India and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty order on polyethylene terephthalate (''PET'') film from India and the antidumping duty orders on PET film from India and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on polyethylene terephthalate (''PET'') film from India and the antidumping duty orders on PET film from India and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 4, 2007, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (72 FR 30627, June 1, 2007) was adequate and that the respondent interested party group response with respect to India was adequate and decided to conduct full reviews with respect to the antidumping and countervailing duty orders concerning PET film from India. The Commission found that the respondent interested party group response with respect to Taiwan was inadequate. However, the Commission determined to conduct a full review concerning the antidumping duty order on PET film from Taiwan to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders concerning PET film from India. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 10, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–18110 Filed 9–13–07; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–18, 50–70, 50–73, 50–183; License Nos.: DPR–1, TR–1, R–33, and DR–10]

In the Matter of General Electric Company (Vallecitos Boiling Water Reactor, General Electric Test Reactor, Nuclear Test Reactor, and ESADA Vallecitos Experimental Superheat Reactor); Order Approving Transfer of Licenses and Conforming Amendments

I

The General Electric Company (GE) is the holder of License No. DPR–1 for the Vallecitos Boiling Water Reactor (VBWR), License No. TR–1 for the General Electric Test Reactor (GETR), and License No. DR–10 for the ESADA Vallecitos Experimental Superheat Reactor (EVESR), which authorize possession but not operation of these facilities. GE is also the holder of License No. R–33 for the Nuclear Test Reactor (NTR), which authorizes possession, use and operation of the facility. The VBWR, the GETR and the EVESR are permanently shut down with possession-only licenses, and are maintained in safe storage with their nuclear fuel removed from the site. The NTR is a research reactor that operates at power levels not in excess of 100 kilowatts (thermal) under the authority of an operating license. The facilities are located at GE's Vallecitos site in Sunol, California.

II

By letter dated January 19, 2007, and supplemented on January 25, 2007, February 23, 2007, March 2, 2007, March 26, 2007, May 16, 2007, May 18, 2007, June 4, 2007, July 6, 2007, and August 9, 2007, (collectively, the Application), GE requested approval by the U.S. Nuclear Regulatory

Commission (NRC) to the direct license transfers that would be necessary in connection with GE's proposed transfers to GE-Hitachi Nuclear Energy Americas, LLC (GE-Hitachi) of its 100 percent interests in the VBWR, the EVESR, the GETR, and the NTR.

GE also requested approval of conforming amendments to the respective licenses to reflect the proposed transfers of ownership of the facilities from GE to GE-Hitachi. No physical changes to the facilities or operational changes were proposed in the Application. After completion of the proposed transfers, GE-Hitachi would be the owner of the VBWR, the EVESR, and the GETR, and owner and operator of the NTR.

Approval of the transfer of the licenses and the conforming amendments was requested pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, (the Act), 10 CFR 50.80 and 10 CFR 50.90. A notice of consideration of approval and opportunity for a hearing or to submit written comments for the requested direct transfers was published in the **Federal Register** on March 28, 2007 (72 FR 14621–14622). No request for hearing or comment were received on the Application.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the Application and other information before the Commission, and relying upon the representations and agreements contained in the Application, the NRC staff has determined that GE-Hitachi is qualified to hold the licenses to the extent now held by GE regarding its ownership interests and operating authority as proposed in the Application, and the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the Application for the proposed amendments to the licenses complies with the standards and requirements of the Act, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the Application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public, and that such activities will be conducted in accordance with the Commission's regulations; the issuance of the proposed amendments to the licenses will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments to the licenses will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by NRC's Safety Evaluation dated September 6, 2007.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses, as described herein, to GE-Hitachi is approved, subject to the following conditions:

1. GE-Hitachi Nuclear Energy Americas, LLC, as stated in the Application, will abide by all commitments and representations previously made by GE with respect to the licenses. These include, but are not limited to, maintaining decommissioning records, implementing decontamination activities, and eventually decommissioning the facilities.

2. The Manager of the Vallecitos Nuclear Center, the Vice-President, Reactor Facility Safety and Security of GE-Hitachi Nuclear Energy Americas, LLC, and the Manager of GE-Hitachi Nuclear Energy Americas, LLC, shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure and shall ensure, that the business and activities of GE-Hitachi Nuclear Energy Americas, LLC, with respect to the licenses for the subject facilities, are at all times conducted in a manner consistent with the protection of the public health and safety and the common defense and security.

3. The commitments/representations made in the Application, regarding reporting relationships and authority over safety and security issues and compliance with NRC requirements shall be adhered to and may not be modified without the prior written consent from the Director, Office of Nuclear Reactor Regulation, the Director, Office of Federal and State Materials and Environmental Management Programs, or their designee(s).

4. GE-Hitachi Nuclear Energy Americas, LLC, shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation and the Director, Office of Federal and State Materials and Environmental Management Programs within 30 days of filing with the U.S. Securities Exchange Commission (SEC), any schedule 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that discloses beneficial ownership of a registered class of General Electric stock.

5. Prior to completion of the transfer of the licenses, GE-Hitachi Nuclear Energy Americas, LLC, shall provide the Nuclear Regulatory Commission staff satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

6. Prior to completion of the transfer of the licenses, GE-Hitachi Nuclear Energy Americas, LLC, shall provide the Nuclear Regulatory Commission staff satisfactory documentary evidence of a parent company guarantee or another method authorized by and meeting the requirements of 10 CFR 50.75 for decommissioning funding assurance for the licenses in an amount no less than $8,016,000 for the VBWR, $14,077,000 for the GETR, $3,411,000 for the NTR, and $10,516,000 for the EVESR.

It is further ordered that, consistent with 10 CFR 2.1315(b), amendments to the licenses that make changes as indicated in Enclosure 2 to the cover letter, which forwards this Order, to conform the licenses to reflect the subject transfer of the licenses, are approved. The amendments to the licenses shall be issued and made effective at the time the proposed transfers are completed.

It is further ordered that GE shall inform the Directors of the Office of Nuclear Reactor Regulation and the Office of Federal and State Materials and Environmental Management Programs in writing of the date of closing of the transfer of the subject interests in the VBWR, the EVESR, the GETR, and the NTR at least (five) 5 business days prior to transfer to GE-Hitachi. Should the transfer of the licenses not be completed within one year of this Order's date of issuance, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the Application and the Safety Evaluation, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North,

Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 6th day of September 2007.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–18147 Filed 9–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; License Nos. NPF–87 and NPF–89]

In the Matter of: Txu Generation Company LP (Comanche Peak Steam Electric Station, Units 1 and 2); Order Approving Indirect Transfer of Facility Operating Licenses and Conforming Amendments

I

TXU Generation Company LP is the holder of Facility Operating Licenses numbered NPF–87 and NPF–89, which authorize operation of Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES). The facilities are located at the licensee's site in Somervell County, Texas. The Operating Licenses authorize TXU Generation Company LP to possess, use and operate CPSES.

II

By application dated April 18, 2007, as supplemented by letter dated July 20, 2007, TXU Generation Company LP (TXU Power), acting on behalf of Texas Energy Future Holdings Limited Partnership (Texas Energy LP) and itself, requested that the U.S. Nuclear Regulatory Commission (NRC), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the proposed indirect transfer of control of TXU Power's licenses to possess, use, and operate CPSES. TXU Corp., which indirectly owns 100 percent of TXU Power, and Texas Energy LP have entered into an agreement for Texas Energy LP to acquire all of the outstanding equity of TXU Corp. As part of the transaction, a new company, Luminant Holdco, will be established as an intermediate parent of TXU Power and indirect subsidiary of TXU Corp. At the time of the acquisition, TXU Power will be converted from a limited partnership to a limited liability company, but will continue in existence through the conversion and will continue to hold the licenses. Thus, there will be no direct transfer of the licenses. The application also states that TXU Power, *i.e.*, TXU Generation Company LP, will be renamed as Luminant Generation Company LLC. Therefore, pursuant to 10 CFR 50.90, TXU Power also requested approval of conforming license amendments to the CPSES, Unit 1 Operating License (NPF–87) and CPSES, Unit 2 Operating License (NPF–89) to reflect the name change from TXU Generation Company LP to Luminant Generation Company LLC.

Under the name of Luminant Generation Company LLC, TXU Power will continue to own and operate CPSES. Through the acquisition of TXU Corp. by Texas Energy LP, TXU Power will become part of an enterprise controlled and held by private equity investors.

Notice of the requests for approval and an opportunity for a hearing was published in the **Federal Register** on June 13, 2007 (72 FR 32685). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of TXU Power as described herein will not affect the qualifications of TXU Power as holder of the CPSES licenses, and that the indirect transfer of control of the licenses, to the extent effected by the proposed transaction described in the application, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC pursuant thereto, subject to the conditions described herein.

The findings set forth above are supported by a safety evaluation dated September 10, 2007.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the indirect license transfers related to the proposed acquisition is approved, subject to the following conditions:

(1) TXU Power shall enter into the $250 million support agreement with Luminant Investment Company LLC, as described in the application, no later than the time the proposed transactions and indirect license transfers occur. TXU Power, whether or not converted to a limited liability company and/or renamed, shall take no action to cause Luminant Investment Company LLC, or its successors and assigns, to void, cancel, or modify the support agreement or cause it to fail to perform, or impair its performance under the support agreement, without the prior written consent of the NRC. The support agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the support agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfers. TXU Power, whether or not converted to a limited liability company and/or renamed, shall inform the NRC in writing anytime it draws upon the support agreement.

(2) Following the subject indirect transfer of control of the licenses, all of the officers of the general partner or controlling member of the licensee of CPSES shall be U.S. citizens. This condition may be amended upon application by the licensee and approval by the Director of the Office of Nuclear Reactor Regulation.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the change in the name of the licensee occurring in connection with the proposed acquisition of TXU Corp., and to reflect certain conditions of this order, are approved. The amendments shall be issued and made effective at the time the proposed acquisition and name change are completed.

It is further ordered that TXU Power shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the acquisition of TXU Corp., establishment of

Luminant Holdco, and change in name of TXU Power no later than 5 business days prior to such actions. Should the indirect transfer of control of TXU Power not be completed by July 10, 2008, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated April 18, 2007, and supplemental letter dated July 20, 2007, and the safety evaluation dated 2007, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 10th day of September, 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–18142 Filed 9–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

Exelon Generation Company, LLC, Braidwood Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, section 46, and Appendix K to section 50, for Facility Operating License Nos. NPF–72 and NPF–77, issued to Exelon Generation Company, LLC (the licensee), for operation of the Braidwood Station (Braidwood), Units 1 and 2 located in Will County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the use of AREVA NP Inc. (AREVA) modified Advanced Mark-BW fuel assemblies.

The proposed action is in accordance with the licensee's application dated September 26, 2006, as supplemented by letter dated August 8, 2007.

The Need for the Proposed Action

The proposed action would allow up to eight AREVA modified Advanced Mark-BW fuel assemblies to be placed in nonlimiting Braidwood, Unit 1 core locations. Pursuant to 10 CFR 50.12, ''Specific Exemptions,'' the licensee has requested an exemption to 10 CFR 50.46, ''acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' that requires, among other items, that ''each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding, must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section.'' Appendix K to 10 CFR Part 50, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The regulation at 10 CFR 50.46 and 10 CFR Part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. The licensee will irradiate eight assemblies using fuel rods clad with AREVA's M5 alloy in Braidwood, Unit 1. Since the material specifications of the M5 alloy differ from the specification for zircaloy or ZIRLO, a plant-specific exemption is required to support the use of the eight assemblies.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that application of 10 CFR 50.46, and Appendix K to 10 CFR 50, is not necessary for the licensee to achieve its underlying purposes.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Braidwoood NUREG–1026, dated June 1984.

Agencies and Persons Consulted

In accordance with its stated policy, on August 29, 2007, the NRC staff consulted with the Illinois State official, Mr. Frank Niziolek of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 26, 2006, as supplemented by letter dated August 8, 2007. Documents may be examined, and/or copied for a fee, at the NRC's

Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of September, 2007.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,

Project Manager, Plant Licensing Branch III–2. Division of Operating Reactor Licensing. Office of Nuclear Reactor Regulation.

[FR Doc. E7–18141 Filed 9–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011]

Southern Nuclear Operating Company; Notice of Availability of the Draft Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle ESP Site and Associated Public Meeting

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published NUREG–1872, ''Draft Environmental Impact Statement (DEIS) for an Early Site Permit (ESP) at the Vogtle ESP Site.'' The site is located on the southwest side of the Savannah River in eastern Burke County, Georgia. The application for the ESP was submitted by letter dated August 15, 2006, pursuant to 10 CFR Part 52. The application included a site redress plan in accordance with 10 CFR 52.17(c) and 52.25. If the site redress plan is incorporated in an approved ESP, then the applicant may carry out certain site preparation work and preliminary construction activities. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on August 29, 2006, (71 FR 51222). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on September 26, 2006, (71 FR 56187). A notice of intent to prepare an environmental impact statement and to conduct the scoping process was published in the **Federal Register** on October 5, 2006, (71 FR 58882).

The purpose of this notice is to inform the public that NUREG–1872, ''Draft Environmental Impact Statement (DEIS) for an Early Site Permit (ESP) at the Vogtle ESP Site,'' is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *http://www.nrc.gov.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). The ADAMS accession number for Volume I of the DEIS is ML072410045 and Volume II of the DEIS is ML072410049. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Burke County Library, 130 Highway 24 South, Waynesboro, Georgia, has agreed to make the DEIS available for public inspection.

The NRC staff will hold a public meeting to present an overview of the DEIS and to accept public comments on the document. The public meeting will be held at the Augusta Technical College, Waynesboro Campus Auditorium, 216 Hwy 24 South, Waynesboro, Georgia, on Thursday, October 4, 2007. The meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the DEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions two hours before the start of the meeting at the Augusta Technical College, Waynesboro Campus Auditorium. No formal comments on the DEIS will be accepted by the NRC staff during the informal discussions. However, the staff will make available a court reporter from 5 p.m. until 7 p.m. in the Waynesboro Campus Auditorium to accept oral comments on the DEIS for inclusion into the official meeting minutes.

Otherwise, to be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may register to attend or present oral comments at the meeting by contacting Ms. Cristina Guerrero, by telephone at 1–800–368–5642, extension 2981, or by Internet to the NRC at *VOGTLE_EIS@nrc.gov*, no later than September 28, 2007. Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Ms. Guerrero will need to be contacted no later than September 28, 2007, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the DEIS for the Vogtle ESP to the Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** Notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., during Federal workdays. To be considered written comments should be postmarked by November 28, 2007. Electronic comments may be sent by the Internet to the NRC at *VOGTLE_EIS@nrc.gov*. Electronic submissions should be sent no later than November 28, 2007. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

FOR FURTHER INFORMATION CONTACT: Cristina Guerrero, Division of Site and Environmental Reviews, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Ms. Guerrero may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of September, 2007.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, Division of Site and Environmental Reviews Office of New Reactors.

[FR Doc. E7–18143 Filed 9–13–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Darren B. Ash, Deputy Executive Director for Information Services and Chief Information Officer;

R. Wiliam Borchardt, Director, Office of New Reactors;

Samuel J. Collins, Regional Administrator, Region I;

Karen D. Cyr, General Counsel;

Timothy F. Hagan, Director, Office of Administration;

Bruce S. Mallet, Deputy Executive Director for Reactor and Preparedness Programs (Designate), Office of the Executive Director for Operations;

William M. McCabe, Chief Financial Officer;

Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs;

Luis A. Reyes, Executive Director for Operations;

Martin J. Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel;

Brian W. Sheron, Director, Office of Nuclear Regulatory Research;

Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response.

All appointments are made pursuant to section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date:* September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–2076.

Dated at Rockville, Maryland, this 4th day of September, 2007.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. E7–18151 Filed 9–13–07; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Request for Comments

AGENCY: Overseas Private Investment Corporation (OPIC).

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate, practical utility and clarity of the information to be collected; and on ways to estimate, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0001, under review is summarized below.

DATES: Comments must be received within 30 calendar-days of publication of this Notice. The 60 day notice was published in the **Federal Register** on June 28, 2007.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC–50.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 333 per year.

Federal Cost: $1,000.00.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC Form 50 is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC political risk insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: September 11, 2007.

John Crowley, III,

Senior Administrative Counsel, Department of Legal Affairs.

[FR Doc. 07–4560 Filed 9–13–07; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 2007. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 2007.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit

Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the ''applicable percentage'' of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year'').

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the ''applicable percentage'' to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 2007 is 6.33 percent (i.e., 100 percent of the 6.33 percent composite corporate bond rate for August 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between October 2006 and September 2007.

For premium payment years beginning in	The required interest rate is
October 2006	5.06
November 2006	5.05
December 2006	4.90
January 2007	5.75
February 2007	5.89
March 2007	5.85
April 2007	5.84
May 2007	5.98
June 2007	6.01
July 2007	6.32
August 2007	6.33
September 2007	6.33

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in October 2007 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 11th day of September 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7–18158 Filed 9–13–07; 8:45 pm]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Federal Register Citation of Previous Announcement; 72 FR 51281, September 6, 2007

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

The Commission has scheduled a closed meeting for Wednesday, September 12, 2007 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, exemption 5 U.S.C. 552b(c)(3), (5), (7), (9)(ii) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Wednesday, September 12, 2007 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

September 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18214 Filed 9–13–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Terax Energy, Inc.; Order of Suspension of Trading

September 12, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Terax Energy, Inc. (''Terax,'' trading symbol TEXG.OB), because of questions regarding the accuracy of assertions by Terax and by others, in reports filed with the Commission and in press releases to investors concerning, among other things: (1) The status of Terax's oil and gas operations, (2) Terax's purported financing agreements, (3) Terax's supposed acquisition of a controlling interest in a foreign oil and gas firm, (4) the existence, terms and status of a purported share exchange agreement between Terax and Westar Oil, Inc., and (5) the identity of the persons in control of the operations and management of Terax.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, September 12, 2007 through 11:59 p.m. EDT, on September 26, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 07–4584 Filed 9–12–07; 12:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56377; File No. SR–Amex–2007–84]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Commentary .02 to Amex Rule 950–ANTE(d)

September 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2007, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared substantially by the Exchange. On September 7, 2007, the Exchange filed Amendment No. 1 to the proposal.[3] The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A),[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 950–ANTE(d) to permit the member firm guarantee to be set at either 20% or 40% and to permit the guarantee to apply to certain specified solicited orders.

The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical, non-substantive corrections to the filing.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Facilitation Procedures Committee (''Committee''), appointed by the Board, on a class-by-class basis, to apply the member firm guarantee currently available for facilitation crosses, to solicited orders which improve the quoted market. The Exchange proposes either a 20% or a 40% guarantee, to be determined by the Committee. The current member firm guarantee provides that a member firm is entitled to a participation guarantee of 40% if the order is traded at a price that matches or improves the market. The Amex submits that the proposal is similar to amendments adopted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[6]

A solicited order is an order solicited by a member firm (floor broker) to trade with another order. The Amex submits that orders which improve the quoted market that are solicited in order to facilitate a public customer order should receive a similar guaranteed participation as a member firm facilitating its customer's order if so determined by the Facilitation Procedures Committee.

Pursuant to Commentary .02(a)–(c) to Rule 950–ANTE(d), a floor broker holding an order for its public customer and a facilitation order is permitted to cross the orders if (i) floor broker discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving other options, underlying securities, or related securities; (ii) the floor broker requests bids and offers for the option series subject to facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and (iii) after providing an opportunity for such bids and offers to be made, the floor broker on behalf of the public customer whose order is subject to facilitation, either bids at or above the highest bid or at or below the lowest offer in the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the floor broker may cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing such orders, stating the quantity and price(s).

Notwithstanding the provisions provided for in Commentary .02(a)–(c) of 950–ANTE(d), in cases where a member firm is seeking to facilitate its own public customer's order, Commentary .02(d)(1) to Rule 950–ANTE(d) currently provides that member firms are entitled to participate in the firm's proprietary account as the contra-side of that order to the extent of 40% of the remaining contracts, after public customer orders on the specialist's book or customer orders represented by a floor broker in the crowd have been filled, provided the order trades at a price that matches or improves the market. This member firm guarantee provides, under certain conditions, the ability to cross 40% of the customer order on behalf of a member organization before the specialist and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is currently permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The proposed amendments to Commentary .02(d) to Rule 950–ANTE would allow the Committee to (i) determine if solicited orders which improve the quoted market may be crossed in the same manner as facilitation cross transactions, including that the floor broker complies with the disclosure and quote request process described above and (ii) to establish smaller eligible order sizes (*i.e.*, less than 400 contracts but not less than 50 contracts), a determination that is currently made by the Exchange.

Current Commentary .02(d)(1) to Rule 950–ANTE(d) permits a member seeking to facilitate its own public customer's

[6] *See* Securities Exchange Act Release No. 53543 (March 23, 2006), 71 FR 15780 (March 29, 2006) (SR–CBOE–2006–21).

option order to participate as the contra-side of that order to the extent of 40% of the remaining contracts provided certain criteria are satisfied. In February 2005, the Exchange received Commission approval to implement a member firm guarantee of 40% for facilitation crosses for orders traded at the market or better than the market.[7] The proposed changes would provide the Exchange with discretion by permitting participation to the extent of either 20% or 40% as determined on a class-by-class basis by the Committee. Additionally, the proposal would eliminate references to equity option orders and index options orders so that all options orders would be subject to the proposed changes.

The Exchange further proposes amendments to Commentary .02(d)(3) and (4) to Rule 950–ANTE(d) to include both facilitation and solicited orders.

Furthermore, the proposed amendments would also allow the Committee, under authority properly delegated by the Amex, to exempt a particular option class from the application of Commentary .02 to Rule 950–ANTE(d).

The Exchange also notes that Commentary .04 to Rule 950–ANTE(d) still applies to solicited orders. Notwithstanding Commentary .04 to Rule 950–ANTE(d), however, the participation guarantees of 20% or 40% set forth in amended Commentary .02(d)(1) will apply in those cases where a member firm is seeking to cross a public customer order with a solicited order.

Section 11(a)(1) of the Act[8] makes it unlawful for a member of an exchange to effect a transaction for its own account on that exchange unless a specific exception applies. The exceptions are set forth in Section 11(a)(1)[9] and in various rules adopted by the Commission subsequent to the enactment of Section 11(a). In connection with the use of affiliated or ''house'' floor brokers by Amex members, Section 11(a)(1)(G) of the Act[10] provides an exemption from the prohibitions of Section 11(a) for transactions effected for a member's own account (''G Orders''), if the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers and/or acting as a broker, and provided more than 50% of its gross revenues is derived from such businesses and related activities.[11] However, all G Orders must yield priority to any bid or offer at the same price for the account of a person who is not or is not associated with a member. Therefore, if a G Order is entered by a floor broker as part of a solicited transaction, the G Order will not be permitted an execution ahead of any non–member order on the book.[12]

The Committee will meet quarterly and will be chaired by the Chairman of the Board (''Chairman'') or his or her designee who will vote to break ties. Each quarter the composition of the Committee will be determined by the Chairman or his or her designee who will choose two (2) specialist representatives, two (2) ROT representatives and two (2) floor broker representatives from a pool annually chosen by the Board to serve on the Committee.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Amex has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[17] Because the proposal would establish rules that are substantially similar to rules that have been adopted by another exchange,[18] the Commission believes that the proposal does not raise new regulatory issues, and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[19]

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:

[7] *See* Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

[8] 15 U.S.C. 78k(a)(1).

[9] *Id.*

[10] 15 U.S.C. 78k(a)(1)(G).

[11] Rule 11a1–1(T)(b) under the Act, 17 CFR 240.11a1–1(T)(b), provides additional guidance to members seeking to meet the business mix test requirements of Section 11(a)(1)(G)(i), 15 U.S.C. 78k(a)(1)(G)(i).

[12] Because the ANTE System is not programmed to recognize ''G'' orders and provide for the order to yield to all non-member accounts, affiliated floor brokers are prohibited from sending ''G'' orders in options into the ANTE System. This prohibition is necessary in order to prevent a violation of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), by a member using an affiliated broker to represent a ''G'' order.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(F)(6)(iii).

[18] *See supra* note 6.

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml); or*

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–84 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–84 and should be submitted on or before October 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18131 Filed 9–13–07; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56379; File No. SR–ISE–2007–79]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

September 10, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal 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 ISE proposes to amend the Schedule of Fees to clarify and amend its Trading Application Software Fees with respect to FIX and API sessions. The text of the proposed rule change is available on the ISE's Web site (*http://www.ise.com*), at the principal office of the ISE, 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 ISE 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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule of Fees with respect to Electronic Access Member (''EAM'') Trading Application Software Fees. A member can connect via an Application Programming Interface (''API'') session or a Financial Information eXchange (''FIX'') session. The ISE uses an open API which members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The API processes quotes, receives orders from EAMs, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to the participating members. The ISE pays a licensing fee for the use of the options API, whereas ISE owns the proprietary rights to the equity API. Accordingly, fees are higher for options API sessions than they are for equity API sessions. FIX is an industry-wide messaging standard protocol. While the FIX specification is open and free, implementing FIX requires planning, software, and network services that ISE provides.

On December 5, 2006, the Exchange filed to adopt fees related to the trading of equity securities on the ISE Stock Exchange, LLC, a facility of ISE. In ISE–2006–76, the Exchange proposed to charge a Session/API[5] fee of $250 per month to connect to the ISE Stock Exchange, with a waiver until June 30, 2007 for second and subsequent connections.[6] The Exchange allowed this waiver to expire on June 30, 2007, at which time the fee to connect to the ISE Stock Exchange, on a monthly basis, became $250 per session, *i.e.*, for each connection to the ISE Stock Exchange, regardless of whether the Equity EAM is connected via FIX or API. Subsequent to the fee increase, the Exchange analyzed the impact of the fee increase on Equity EAMs and determined that the disparity between the increase in fees and the additional work required to assist the Equity EAMs in maintaining additional lines to the Exchange was not accurately

[5] Historically, the Schedule of Fees referred to ''FIX'' as ''Session.'' However, in this filing the Exchange is proposing to clarify this by defining session fees as either FIX or API.

[6] *See* Securities Exchange Act Release No. 54897 (December 8, 2006), 71 FR 75593 (December 15, 2006) (SR–ISE–2007–76) (Notice of filing and immediate effectiveness of proposed rule change relating to ISE Stock Exchange fees).

correlated. Accordingly, the Exchange has decided to reduce the fee for third and subsequent connections to the ISE Stock Exchange.[7] The Exchange proposes to assess the following fees for Equity EAMs: $250 each for the first and second connection and $50 for each additional connection, regardless of whether the Equity EAM is connected via FIX or API.[8]

Historically, the Exchange charged options members the following Session/API fee to connect to the Exchange: $250 per month for the first five CLICK terminals and $100 per month for six or more terminals. Further, under a pilot program previously adopted by the Exchange, all Session/API fees associated with a second and any subsequent CLICK terminals were waived. As a result, members were only charged a $250 per month Session/API fee to connect to the Exchange. Earlier this year, once all existing CLICK terminals were decommissioned, the Exchange submitted a fee filing that, among other things, proposed to remove all references to CLICK terminals from its fee schedule.[9] In doing so, and after conducting an internal analysis of the impact of fees to members, the Exchange notes that the CLICK Fee Filing actually raised the Session/API fees for members, contrary to what the Exchange intended. Thus, this filing seeks to remedy the mistake the CLICK Fee Filing has caused.

Accordingly, the Exchange proposes to reinstate the tiered session fee for EAM Options API, as it was never the intent of the Exchange to eliminate this fee reduction on sixth and additional sessions.[10] For Options EAMs that connect via the API the proposed fee is $250 for each of the first five connections and $100 for each additional connection.[11] With respect to the FIX fees, the Exchange proposes to charge EAMs one fee for FIX sessions, regardless of whether the EAM is an Options EAM or an Equity EAM. As discussed above, the Exchange proposes a $250 fee for the first FIX connection and an additional $250 for the second FIX connection and $50 for each additional connection thereafter.

Further, the Exchange proposes to rearrange and add clarifying language to this section of the Schedule of Fees to delineate specifically which fees apply to FIX sessions and which fees apply to API sessions, and which fees apply to Options EAMs and which fees apply to Equity EAMs.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act[12] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-ISE–2007–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 ISE. 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–ISE–2007–79 and should be submitted on or before October 5, 2007.

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[7] Telephone conference between Laura Clare, Assistant General Counsel, ISE, and Jan Woo, Special Counsel, Division of Market Regulation, Commission, on September 7, 2007 (''Telephone conference on September 7, 2007'') (correcting the filing to state that the Exchange is proposing to reduce the fee increase for the third and subsequent connections (whether they are API or FIX) to the ISE Stock Exchange for Equity EAMs).

[8] Telephone conference on September 7, 2007 (clarifying that the $250 charge will be assessed for each of the first two connections made by Equity EAMs that connect via the API or FIX).

[9] *See* Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (the ''CLICK Fee Filing'').

[10] Telephone conference between Laura Clare, Assistant General Counsel, ISE, and Jan Woo, Special Counsel, Division of Market Regulation, Commission, on September 10, 2007 (clarifying that the proposed rule change is to reinstate a tiered session fee for EAM Options API including a fee reduction for sixth and additional sessions).

[11] Telephone conference on September 7, 2007 (clarifying that the $250 charge will be assessed for each of the first five connections made by Options EAMs that connect via the API).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18132 Filed 9–13–07; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11021 and #11022; New York Disaster Number NY–00053]

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–1724–DR), dated 08/31/2007.

Incident: Severe Storms, Flooding and Tornado.

Incident Period: 08/08/2007.

Effective Date: 09/07/2007.

Physical Loan Application Deadline Date: 10/30/2007.

EIDL Loan Application Deadline Date: 06/02/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 08/31/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Kings.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E7–18172 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10927 and #10928]

Oklahoma Disaster Number OK–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of OKLAHOMA (FEMA–1712–DR), dated 07/07/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/10/2007 through 07/25/2007.

Effective Date: 09/06/2007.

Physical Loan Application Deadline Date: 10/05/2007.

EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of OKLAHOMA, dated 07/07/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
Atoka, Caddo, Coal, Creek, Delaware, Garfield, Garvin, Kay, Kingfisher, Lincoln, Marshall, Mayes, Muskogee, Noble, Okfuskee, Okmulgee, Pushmataha, Washita, Woods

Contiguous Counties:
Oklahoma: Adair, Alfalfa, Cherokee, Grant, Harper, Haskell, Latimer, Le Flore, Love, Mccurtain, Mcintosh, Pittsburg, Sequoyah, Woodward
Arkansas: Benton
Kansas: Barber, Comanche, Cowley, Sumner

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–18137 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10919 and #10920; Texas Disaster Number TX–00254

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 9.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1709–DR), dated 06/29/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/16/2007 through 08/03/2007.

DATES: *Effective Date:* 09/06/2007.

Physical Loan Application Deadline Date: 10/29/2007.

EIDL Loan Application Deadline Date: 03/31/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 06/29/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
Milam, Montague, Stephens, Wise.
Contiguous Counties:
Texas: Burleson, Robertson.
Oklahoma: Jefferson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–18123 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #11025; Vermont Disaster #VT–00006 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Vermont, dated 09/06/2007.

Incident: Colby Block Fire.
Incident Period: 05/07/2007.

DATES: *Effective Date:* 09/06/2007.
EIDL Loan Application Deadline Date: 06/06/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Orange.
Contiguous Counties:
Vermont: Addison, Caledonia, Washington, Windsor.
New Hampshire: Grafton.
The Interest Rate is: 4.000.
The number assigned to this disaster for economic injury is 110250.
The States which received an EIDL Declaration # are Vermont; New Hampshire.

(Catalog of Federal Domestic Assistance Number 59002)

Steven C. Preston,

Administrator.

[FR Doc. E7–18126 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #11010 and #11011; Wisconsin Disaster Number WI–00010

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1719–DR), dated 08/26/2007.

Incident: Severe Storms and Flooding.
Incident Period: 08/18/2007 through 08/31/2007.

DATES: *Effective Date:* 09/06/2007.
Physical Loan Application Deadline Date: 10/25/2007.
EIDL Loan Application Deadline Date: 05/26/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 08/26/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
Columbia, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Racine, Rock.
Contiguous Counties:
Wisconsin: Dodge, Green Lake, Lafayette, Marquette, Milwaukee, Walworth, Waukesha.
Illinois: Boone, Jo Daviess, Lake, McHenry, Stephenson, Winnebago.
Iowa: Dubuque.
All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–18133 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Office of the National Ombudsman; Regulatory Fairness Boards Annual Meeting

The U.S. Small Business Administration (SBA), Office of the National Ombudsman is announcing the annual board meeting of the ten Regional Regulatory Fairness Boards on Thursday and Friday, September 13–14, 2007, beginning at 9 a.m. As mandated by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Section 222 the purpose of this meeting is for the Regulatory Fairness Boards to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The meeting will be at the SBA Headquarters, 409 3rd Street, SW., Washington, DC 20416, in the Eisenhower Conference Room, 2nd Floor. For further information, please direct inquiries to José Méndez, Event Coordinator, Office of the National Ombudsman, 409 3rd Street, Suite 7125, Washington, DC 20416, phone (202) 205–6178, fax (202) 401–2707, e-mail *Jose.mendez@sba.gov*.

For more information on the Office of the National Ombudsman, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–18124 Filed 9–13–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages included in this notice are for extensions of and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB),

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA),

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by e-mailing the Reports Clearance Officer at *oplm.rco@ssa.gov.*

1. Application for Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696. Medicare Part D, codified in 20 CFR 418, provides voluntary prescription drug coverage of premium, deductible, and co-payment costs for certain low-income individuals. As per 20 CFR 418.3101, beneficiaries who meet eligibility criteria may receive help with these Medicare Part D costs. The Social Security Administration, which helps to administer the subsidy program, uses form SSA–1020 (the Application for Help with Medicare Prescription Drug Plan Costs) and its online equivalent, the i1020, to collect information that will be used to make Medicare Part D subsidy determinations. The respondents are eligible beneficiaries who want to apply for help with Medicare Part D costs.

Type of Request: Revision of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–1020 (paper application form)	2,545,716	1	35	1,485,001
i1020 (online equivalent)	380,394	1	45	285,296
Totals	2,926,110			1,770,297

2. Appeal of Determination for Help with Medicare Prescription Drug Plan Costs—0960–0695. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173; MMA) established a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs. Form SSA–1021, the Appeal of Determination for Help with Medicare Prescription Drug Plan Costs, was developed to obtain information from individuals who appeal SSA's decisions regarding eligibility or continuing eligibility for a Medicare Part D subsidy. The respondents are applicants who are appealing SSA's eligibility or continuing eligibility decisions.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 12,500 hours.

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by emailing *OPLM.RCO@ssa.gov.*

1. *Correction Notice:* This 30-day **Federal Register** Notice published on August 10, 2007, at 72 FR 45079. At the time, we inadvertently omitted two notices which are part of this collection. The revised burden chart below now contains these notices.

Medicare Quality Review Forms—20 CFR 418(b)(5)—0960–0707. The Social Security Administration (SSA) uses the Medicare Quality Review Forms collection to verify the information reported on Medicare Part D Subsidy applications (OMB No. 0960–0696) for a selected number of applicants. SSA is planning to expand the scope of this collection by conducting Quality Reviews with some current recipients of Medicare Part D subsidies who have recently undergone the redetermination process (OMB No. 0960–0723). This ICR is for two new appointment letters (forms SSA–9313 and SSA–9314) that such beneficiaries will complete to schedule an appointment for their Quality Review. The respondents are current recipients of Medicare Part D subsidies who have recently undergone a redetermination and who were selected for a Quality Review.

Type of Request: Revision to an existing OMB-approved information collection.

Form No. and name	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–9301 (Medicare Subsidy Quality Review Case Analysis Questionnaire)	10,000	1	35	5,833
SSA–9302 (Notice of Quality Review Acknowledgement Form for those with Phones)	10,000	1	15	2,500
SSA–9303 (Notice of Quality Review Acknowledgement Form for those without Phones)	1,000	1	15	250
SSA–9304 (Checklist of Required Information; burden accounted for with forms SSA–9302, SSA–9303)				
SSA–9308 (Request for Information)	20,000	1	15	5,000
SSA–9310 (Request for Documents)	10,000	1	5	833
SSA–9309 (Life Insurance Verification Form)	8,000	1	15	2,000
SSA–9311 (Notice of Appointment—Denial—Reviewer Will Call)	450	1	15	113
SSA–9312 (Notice of Appointment—Denial—Please Call Reviewer)	50	1	15	13
SSA–8510 (Authorization to the Social Security Administration to Obtain Personal Information)	10,000	1	5	833
SSA–9313 (Notice of Appointment Quality Review Acknowledgement Form)*	4,500	1	15	1,125
SSA–9314 (Notice of Quality Review Acknowledgement Form (unknown phone numbers)*	500	1	15	125

Form No. and name	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Total	.....	.....	.....	18,625

* These are the two new forms being cleared in the current ICR for this collection.

2. *Correction Notice:* This 30-day notice published on August 7, 2007, at 72 FR 44211. It has since been decided to allow other types of respondents (other third-parties besides representatives) to use this form. Revised burden information is provided below.

Electronic Records Express Third-Party Registration Form—0960–NEW. ERE (Electronic Records Express) is an online system which enables medical providers and various third parties to submit disability claimant information electronically to SSA as part of the disability application process. Third parties who wish to use this system must complete a unique registration process so the Agency can ensure they are authorized to access a claimant's electronic disability folder. This request is for the Third-Party Registration Form. The respondents are third-party representatives of disability applicants or recipients who want to use ERE to electronically access beneficiary folders and submit information to SSA.

Type of Request: New information collection.

Number of Respondents: 78,344.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 3,917 hours.

Dated: September 10, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–18104 Filed 9–13–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5936]

Culturally Significant Objects Imported for Exhibition Determinations: ''A New World: England's First View of America''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''A New World: England's First View of America,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the North Carolina Museum of History, Raleigh, North Carolina, beginning on or about October 20, 2007, until on or about January 13, 2008, Yale Center for British Art, New Haven, Connecticut, beginning on or about March 6, 2008, until on or about June 1, 2008; Jamestown-Yorktown Foundation, Williamsburg, Virginia, beginning on or about July 15, 2008, until on or about October 15, 2008 and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 4, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–18170 Filed 9–13–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5935]

Culturally Significant Objects Imported for Exhibition Determinations: ''Sir Anthony van Dyck: Portrait of an Old Man''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Sir Anthony van Dyck: Portrait of an Old Man'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Dayton Art Institute, Dayton, OH, from on or about September 21, 2007, until on or about January 27, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 10, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary, for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–18171 Filed 9–13–07; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Bear Creek Dam Leakage Resolution Project, Franklin County, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National

Environmental Policy Act. TVA has decided to implement Alternative 2—Modify Dam and Maintain Summer Pool Level of 576 Feet, the preferred alternative identified in its Final Environmental Impact Statement (EIS), Bear Creek Dam Leakage Resolution Project.

FOR FURTHER INFORMATION CONTACT: Charles P. Nicholson, NEPA Policy Program Manager, Environmental Stewardship and Policy, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902–1401; telephone (865) 632–3582 or e-mail *cpnicholson@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA completed Bear Creek Dam in 1969 at mile 74.6 on Bear Creek in Franklin County, Alabama. The dam and associated reservoir are part of the Bear Creek Project authorized for the purposes of flood control, recreation, and economic development, including water supply. Excessive leakage of water has occurred through the foundation of Bear Creek Dam since its completion and this increases the risk of dam failure. TVA has unsuccessfully attempted repairs on several occasions. The most recent of these repair efforts was in 2004–2005; after TVA refilled the reservoir to its normal summer pool level of 576 feet above sea level, excessive leakage continued. Since then, TVA has operated the reservoir at a reduced summer pool level of 568 feet as a precautionary measure to reduce the leakage and provide a greater margin for flood management. However, following periods of heavy rainfall, the reservoir level can rise, and the risk of dam failure increases. TVA prepared this EIS to evaluate alternatives for a long-term solution to the problem of excessive leakage through Bear Creek Dam.

TVA published a Notice of Intent to prepare this EIS in the **Federal Register** on June 2, 2006. A public scoping meeting was held on June 20, 2006 and attended by about 150 people. Scoping comments were received from two federal agencies, four state agencies, and several individuals. The Notice of Availability of the Draft EIS was published in the **Federal Register** on June 1, 2007. TVA held a public meeting on the Draft EIS on June 26, 2007 and accepted comments through July 16, 2007. Comments on the Draft EIS were received from three federal agencies, one state agency, three local public water suppliers, and three individuals. The Notice of Availability of the Final EIS was published in the **Federal Register** on August 10, 2007.

Alternatives Considered

TVA identified four alternatives in the EIS

Under Alternative 1, the No Action Alternative, TVA would not implement a long-term solution to the leakage problem and would attempt to operate the dam at the originally-intended summer pool level of 576 feet. Normal winter pool would remain at 565 feet. Under this alternative, TVA would implement new seasonal minimum flows from the dam as recommended by the U.S. Fish and Wildlife Service to improve habitat conditions for endangered species in Bear Creek downstream of the dam. Adoption of Alternative 1 would not remedy the leakage problem, and the dam would be at risk of failure, which would cause downstream flood damage. Although this alternative differs from the current interim operating regime, it better represents the historic baseline conditions.

Under Alternative 2, Modify Dam and Maintain Summer Pool Level of 576 Feet, TVA would repair or rebuild the dam in place or immediately downstream and restore the normal summer pool to 576 feet. TVA would also implement the new seasonal minimum flows described above for Alternative 1 and raise the normal winter pool by one foot to 566 feet. The existing roadway across the dam would be returned to service following dam repairs. Three sub-alternatives are considered under this alternative. Alternative 2a is the construction of a roller-compacted concrete structure at the downstream edge of the existing dam. This structure would be keyed into the bedrock, and a cutoff wall would be installed beneath the structure to prevent seepage. Alternative 2b is the placement of additional earth fill on the downstream dam face and the installation of a cutoff wall into bedrock on the downstream side of the dam. Alternative 2c is the installation of a cutoff wall into bedrock on the upstream dam face.

Under Alternative 3, Lower Dam and Maintain Summer Pool Level of 565 Feet, the existing dam would be partially removed and stabilized. A grout curtain or cutoff wall would be installed within the dam and into the underlying bedrock to prevent seepage under the dam. The existing roadway across the dam would be rebuilt. The reservoir pool level would be maintained at approximately 565 feet throughout the year.

Under Alternative 4, Remove Dam and Restore Former Creek Channel, TVA would remove Bear Creek Dam and the reservoir would be eliminated. The former creek channel would be dredged of excess sediment to facilitate water flow. A bridge would be built to replace the existing roadway over the dam.

Comments on the Final EIS

The U.S. Environmental Protection Agency (EPA) commented on the final EIS. Their comments focused on potential effects to wetlands and sought clarification of responses to previous EPA comments on the draft EIS. Due to favorable hydrologic conditions, approximately 77 acres of scrub-shrub, emergent, and aquatic bed wetlands have developed at various locations around the reservoir fringe at the interim summer pool elevation of 568 feet. None of these wetlands is forested. The forested wetlands on Bear Creek Reservoir are confined to the heads of coves where tributary streams enter the reservoir. The hydrology of these areas depends on the tributary streams, and the forested wetlands are generally unaffected by fluctuation in the reservoir level. Forested/scrub-shrub wetlands also occur on flats associated with Island Branch and further upstream. Based on the size of trees present, these wetlands have persisted in this location for over 20 years and would not be inundated when the reservoir is refilled. No forested wetlands would be affected adversely under Alternatives 1 and 2. Forested wetlands have not developed in the drawdown zone between elevation 576 feet (normal summer pool) and 565 (normal winter pool) because tree growth is inhibited by extended inundation during the growing season.

Because they perform only minor wetland functions due to their fringe nature and because traditionally accepted hydric soil characteristics are not present, TVA does not consider these wetlands to be jurisdictional wetlands in accordance with the Clean Water Act. Accordingly, no compensatory mitigation is required to offset their loss.

Bear Creek Reservoir is narrow with fairly steep, rocky banks and few areas of overbank. Fringe wetlands are likely to become reestablished along parts of the normal (576 foot) summer shoreline, particularly in bottomland areas associated with tributaries, if the reservoir were refilled under Alternative 1 or 2. Shoreline steepness and the presence of adequate soil substrate are the primary factors affecting wetland development at the current 568-foot summer pool level and at the 576-foot normal summer pool elevation under Alternatives 1 and 2. Competition from exotic plants or animal life does not

appear to present any barrier to wetland establishment.

Much of the Bear Creek Reservoir shoreline has eroded since the reservoir was filled in 1969, and rock outcrops and bluffs are common along the shoreline. No critically eroding shoreline has been identified. At the 576-foot elevation, shoreline vegetation present prior to the 2005 emergency drawdown has not decreased. Refilling the reservoir under Alternatives 1 and 2 is not expected to cause additional erosion. Thus, establishment of shoreline buffers to prevent erosion is neither feasible nor necessary.

Returning the reservoir to its original full summer pool is expected to result in water quality conditions virtually identical to the pre-2005 conditions. Most of the shoreline surrounding Bear Creek Reservoir is undeveloped and forested. Runoff from upland areas enters the reservoir primarily via tributary streams. The degree of upland runoff filtered by wetlands is dependent on those wetlands present in coves and associated with streams. These areas have not been affected dramatically by changes in reservoir levels. Historically, low levels of dissolved oxygen have occurred in the deeper portions of the reservoir. Currently there are no plans to improve dissolved oxygen. However, TVA will continue to monitor water quality on Bear Creek Reservoir and would take remedial measures as necessary.

Decision

TVA has decided to implement Alternative 2, Modify Dam and Maintain Summer Pool Level of 576 Feet. Under this alternative, the original project objectives of flood control, recreation, economic development, and water supply would be met. The new seasonal minimum flows would improve conditions for endangered species downstream of the dam, and the one-foot increase in the winter pool level would improve operating conditions for the public water supply intake and treatment plant on the reservoir.

Three alternative methods of repairing the dam are identified in the EIS. TVA has selected Alternative 2a, the construction of a roller-compacted concrete structure at the downstream edge of the existing dam.

Environmentally Preferred Alternative

Alternative 2—Modify Dam and Maintain Summer Pool Level of 576 Feet is the environmentally preferred alternative. Implementation of this alternative would afford a stable water supply source for the Franklin County Water Service Authority and would restore water-based recreational opportunities on Bear Creek Reservoir. Repair of the dam under this alternative would provide increased flood protection to downstream areas compared to the other alternatives. Operation of the dam under Alternative 2 to provide target minimum flows would provide improved water quality for three federally listed mussel species known to occur downstream of Bear Creek Dam.

The potential environmental consequences of implementing any of the three Alternative 2 repair methods are similar. However, Alternative 2a—Roller-Compacted Concrete Structure is preferable to the other two methods in that it would most likely provide the best long-term solution to the leakage problems. It would provide protection against the probable maximum flood. The need for future construction disturbance would be reduced under Alternative 2a.

Mitigation

Standard construction best management practices would be followed in all aspects of the proposed repairs and construction to avoid or minimize adverse environmental impacts. TVA would ensure that all necessary permits are obtained from the appropriate regulatory agencies and that permit requirements are met. TVA would ensure that all site operations adhere to the requirements in each permit and would employ all necessary actions to minimize environmental impacts. The following non-routine measures would be implemented to reduce the potential for adverse environmental effects:

- Construction buffers would be delineated around any caves within one-fourth mile of a construction area. The buffer for caves would be 200 feet. Within this buffer, vegetation would not be cleared, and vehicles or equipment would be restricted to existing roads.

- TVA would increase patrols and monitoring of cultural resources within the reservoir drawdown area until conditions are stabilized or protected.

- Archaeological surveys as required by the Memorandum of Agreement between TVA and the Alabama State Historic Preservation Officer will be conducted, and mitigation will be performed on any sites or resources determined to be eligible for inclusion on the National Register of Historic Places in accordance with the terms of the Memorandum of Agreement.

Dated: September 10, 2007.

Janet C. Herrin,

Senior Vice President, River Operations.

[FR Doc. E7–18146 Filed 9–13–07; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Corridors of the Future Program

AGENCY: Department of Transportation (DOT).

ACTION: Notice; announcement of the Corridors of the Future under the Corridors of the Future Program.

SUMMARY: The U.S. Department of Transportation (DOT) announces the selection of the Corridors of the Future (CFP) Phase 2 applications to be designated as the Corridors of the Future. The DOT has identified nationally significant corridors and the corresponding CFP applications that have the potential to alleviate congestion and provide national and regional long-term transportation benefits that will increase freight reliability and enhance the quality of life for U.S. citizens within the corridors and across the Nation.

FOR FURTHER INFORMATION CONTACT: Ms. Alla C. Shaw, Attorney-Advisor, (202) 366–1042 (*alla.shaw@dot.gov*), Federal Highway Administration, Office of the Chief Counsel, 1200 New Jersey Avenue, E84–463, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access: An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background: On September 5, 2006, the DOT published a notice in the **Federal Register** seeking applications from States, or private sector entities, interested in working together to build and manage corridors in a way that alleviates congestion on our highways, rail, or waterways (71 FR 52364). The notice outlined a two-phase submission and selection process and explained that the DOT would select up to 5 corridors in need of investment. However, the compelling nature of the Phase 2 applications justified DOT's selection of the 6 corridors outlined below. For Phase 1, interested parties were asked to submit proposals containing general information about the proposed corridor projects. The DOT

received 38 Phase 1 proposals. The DOT established a team comprised of representatives from DOT's surface transportation administrations with expertise in the areas of finance, environment and planning, infrastructure, and operations to review the proposals (CFP Team). The proposals were evaluated based on each applicant's responsiveness to the information requested for Phase 1. In a **Federal Register** Notice published on February 7, the DOT invited 14 Phase 1 applicants, with proposals for projects located on 8 major transportation corridors, to participate in Phase 2. (72 FR 5787)

At the end of Phase 2, the DOT received 11 applications for projects located on the 8 corridors identified during Phase 1. The CFP Team evaluated the applications based on each applicant's responsiveness to the information requested for Phase 2 in the September 5, 2006 **Federal Register** notice. For Phase 2, applicants were asked to submit detailed information about the proposed corridor including how the proposed corridor would reduce current national and regional areas of congestion or address future congestion, increase mobility of people and freight, support national and international commerce by reducing congestion and providing reliable travel times, and information about innovative project delivery and financing features proposed for the project. Based on the recommendations of the CFP Team, the DOT identified the following corridors and corresponding Phase 2 applications, to designate as the Corridors of the Future.

1. Interstate 95

A. Interstate 95 (I–95)—Florida to the District of Columbia—Submitted by the North Carolina DOT in partnership with the Florida, Georgia, South Carolina, and Virginia DOTs.

B. I–95—Florida to the Canadian Border—Submitted by the I–95 Corridor Coalition.

2. Interstate 70 Dedicated Truck Lanes—Submitted by the Indiana DOT in partnership with the Illinois, Missouri, and Ohio DOTs.

3. Interstate 15—A Corridor without Borders—Submitted by the Nevada DOT on behalf of the Western States Coalition (Arizona, California, Nevada, and Utah DOTs).

4. Interstate 5—A Roadmap for Mobility—Submitted by the Washington DOT in partnership with the California and Oregon DOTs.

5. Interstate 10—Submitted by the I–10 National Freight Corridor Coalition.

6. Interstate 69 Corridor—Submitted by Arkansas State Highway and Transportation Department on behalf of the I–69 Steering Committee.

The DOT encourages State departments of transportation and other project sponsors to continue to advance those ideas contained in the applications that were not selected.

Authority: 49 U.S.C. 101.

Issued on: September 5, 2007.

Thomas J. Barrett,

Deputy Secretary.

[FR Doc. 07–4550 Filed 9–11–07; 11:07 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation

[Docket Number FRA–2007–28612]

CSX Transportation (CSX) seeks a permanent waiver of compliance from certain provisions of the *Locomotive Safety Standards,* 49 CFR 229.129(c), as it pertains to railroad locomotive horn testing. CSX seeks to utilize an automated sound measurement system (ASMS) to test locomotive horns as required in Sections 229.129(a) and (b). The ASMS utilizes a Class 1 sound-level measuring instrument that is permanently mounted in a fixed test site and uses the same technology that is used to measure noise at airports nationwide.

CSX requests to extend the requirement for acoustic calibration (49 CFR 229.129(c)(2) and (9)) from immediately before and after each session of compliance tests to a period of not more than every 6 months. The 6-month period is to be extended to 1 year if the system demonstrates a history of stability that indicates the 6-month testing is unnecessary. CSX states in their petition that the ASMS is equipped with an electrostatic test device that monitors acoustic calibration, and that they would review these tests daily and perform calibration as needed.

In addition, CSX requests a waiver to reduce the requirement from a locomotive needing a 200-foot clearance (49 CFR 229.129(c)(5)) to the front and sides from large reflective surfaces to 150 feet at the side clearance. CSX states in their request that they performed horn testing at 150 feet and again at the required 200 feet with no measurable difference in meter readings. A reduction in the side clearance would assist the railroad in finding suitable test sites closer to their maintenance facilities.

Finally, CSX requests a waiver from the requirement of testing cab- and low-mounted horns (49 CFR 229.129(c)(7)) at a 4-foot level in order to allow all locomotive horns to be tested at the 15-foot level. CSX feels that testing all horns at the 15-foot level would provide more consistent and meaningful measurements for both types of horn mountings. CSX testing shows that cab- and low-mounted horns showed reduced sound measurement at the 4-foot level compared to the 15-foot level, due to the effect of the acoustic shadow created by the locomotive.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–28612) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on September 6, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. E7–18168 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Fiscal Year 2007 Funds: Solicitation of Grant Applications.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the availability of funds in Fiscal Year (FY) 2007 for the Over-the-Road Bus (OTRB) Accessibility Program, authorized by section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility regulation. The authorizing legislation calls for national solicitation of applications, with grantees to be selected on a competitive basis. Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost.

In FY 2007, $5,700,000 was appropriated for intercity fixed-route service providers and $1,900,000 was appropriated for other OTRB service providers. In anticipation of additional appropriations for the program in FY 2008, FTA reserves the right to select projects for funding with FY 2008 funds from applications received in response to this notice.

This announcement is available on the Internet on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Website and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* Applications may be submitted to FTA in hard copy or electronically through the Grants.Gov APPLY function.

DATES: Complete applications for OTRB Program grants must be submitted to the appropriate FTA regional office (see Appendix B) by November 13, 2007, or submitted electronically through the Grants.Gov Web site by the same date. Anyone intending to apply electronically should initiate the process of registering on the Grants.Gov site immediately to ensure completion of registration before the deadline for submission. FTA will announce grant selections in the **Federal Register** when the competitive selection process is complete.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366-2053, e-mail: *blenda.younger@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

Overview Information

Federal Agency Name: Department of Transportation. Federal Transit Administration (FTA).

Funding Opportunity Title: Capital and Training Assistance Program for Over-The-Road Bus Accessibility.

Announcement Type: Initial Announcement: Notice of Availability of Fiscal Year 2007 Funds: Solicitation of Grant Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.518.

Capital and Training Assistance Program for Over-The-Road Bus Accessibility.

Dates: Complete applications for OTRB Program grants must be submitted to the appropriate FTA regional office (see Appendix B) by November 13, 2007, or submitted electronically through the Grants.Gov Web site by the same date. Anyone intending to apply electronically should initiate the process of registering on the Grants.Gov site immediately to ensure completion of registration before the deadline for submission. FTA will announce grant selections when the competitive selection process is complete.

SUPPLEMENTARY INFORMATION:

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I. Funding Opportunity Description

A. Authority

The program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–85 as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–059, August 10, 2005.

B. Background

OTRBs are used in intercity fixed-route service as well as other services, such as commuter, charter, and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's Over-the-Road Bus Accessibility regulation, ''Transportation for Individuals with Disabilities'' (49 CFR part 37, subpart H).

Summary of DOT's OTRB Accessibility Rule Deadlines for Acquiring Accessible Vehicles

Under the Over-the-Road Bus Accessibility regulation, all new buses obtained by large (Class I carriers, i.e., those with gross annual operating revenues of $5.3 million or more), fixed-route carriers after October 30, 2000, must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule required 50 percent of the fixed-route operators fleets to be accessible by 2006, and 100 percent of the vehicles in their fleets to be accessible by 2012. New buses acquired by small (gross operating revenues of less than $5.3 million annually) fixed-route operators after October 29, 2001, also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small operators also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies must provide service in an accessible bus on 48 hours advance notice. Fixed-route operators must also provide this kind of service on an interim basis until their fleets are completely accessible.

Deadlines for Delivering Accessible Service

The rules for delivering accessible motorcoach service went into effect October 29, 2001, for large fixed-route, charter, tour and other demand-responsive motorcoach operators, and for small operators on October 28, 2002. Operators should consult 49 CFR part 37, subpart H, regarding the acquisition of accessible vehicles and the provision of accessible service to determine the applicable section that best describes their operating characteristics.

Specifications describing the design features of an accessible over-the-road bus are listed in 49 CFR part 38, subpart G.

C. Purpose

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, and efficient, and offers flexibility of choices is a key strategic goal of the DOT. OTRB Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and training to ensure that drivers and others are properly trained to use accessibility features as well as how to treat patrons with disabilities.

D. Vehicle and Service Definitions

An ''over-the-road bus'' is defined in 49 CFR 37.3 as a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-route over-the-road bus service is regularly scheduled bus service for the general public, using an OTRB that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points. The application includes five criteria factors that will be reviewed to determine eligibility for a portion of the funding available to operators that qualify under this definition.

''Other'' OTRB service means any other transportation using OTRBs, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions). While some commuter service may also serve the needs of some intercity fixed-route passengers, the statute includes commuter service in the definition of ''other'' service. Commuter service providers may apply for these funds, even though the services designed to meet the needs of commuters may also provide service to intercity fixed-route passengers on an incidental basis. If a commuter service provider can document that more than 50 percent of its passengers are using the service as intercity fixed-route service, the provider may apply for the funds designated for intercity fixed-route operators.

II. Award Information

Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost. In FY 2007, $5,700,000 was appropriated for intercity fixed-route service providers and $1,900,000 was appropriated for other over-the-road bus service providers. In anticipation of additional appropriations for the program in FY 2008, FTA reserves the right to select projects for FY 2008 funding from applications received in response to this notice. Successful applicants will be awarded grants. Typical grants under this program range from $25,000 to $180,000, with most grants being less than $40,000, for lift equipment for a single vehicle.

III. Eligibility Information

1. Eligible Applicants

Grants will be made directly to operators of OTRBs. Intercity, fixed-route OTRB service providers may apply for the $5,700,000 that was appropriated for intercity fixed-route providers in FY 2007. Applicants must establish eligibility as intercity fixed-route providers by meeting established criteria on six factors identified in the application. Other OTRB service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for the $1,900,000 that was appropriated in FY 2007 for these providers. OTRB operators who provide both intercity, fixed-route service and another type of service, such as commuter, charter or tour, may apply for both categories of funds with a single application. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from most other FTA programs for which the direct applicant must be a State or local public body. FTA does not award grants to public entities under this program.

2. Eligible Projects

Projects to finance the incremental capital and training costs of complying with DOT's OTRB accessibility rule (49 CFR part 37) are eligible for funding. Incremental capital costs eligible for funding include adding lifts, tie-downs, moveable seats, doors and training costs associated with using the accessibility features and serving persons with disabilities. Retrofitting vehicles with such accessibility components is also an eligible expense. Please see Buy America section for further conditions of eligibility.

FTA may award funds for costs already incurred by the applicants. Any new wheelchair accessible vehicles delivered after June 8, 1998, the date that the TEA–21 became effective, are eligible for funding under the program. Vehicles of any age that have been retrofitted with lifts and other accessibility components after June 8, 1998, are also eligible for funding.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of OTRB services for these purposes are also eligible expenses.

FTA will not fund the incremental costs of acquiring used accessible OTRBs that were previously owned, as it may be impossible to verify whether or not FTA funds were already used to make the vehicles accessible. Also, it would be difficult to place a value on the accessibility features based upon the depreciated value of the vehicle. The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country. The purchase of previously-owned accessible vehicles, whether or not they were funded by FTA, does not further this objective of increasing the number of wheelchair accessible OTRBs.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Project ACTION is a national technical assistance program to promote cooperation between the disability community and the transportation industry. Project ACTION provides training, resources and technical assistance to thousands of disability

organizations, consumers with disabilities, and transportation operators. It maintains a resource center with up-to-date information on transportation accessibility. Project ACTION may be contacted at: Project ACTION, 1425 K Street, NW., Suite 200, Washington, DC 20005, Phone: 1–800–659–6428 (TDD: (202) 374–7385). Internet address: *http://www.projectaction.org/.*

3. Cost Sharing or Matching

Federal transit funds are available to intercity fixed-route providers and other OTRB providers at up to 90 percent of the project cost. A 10 percent match is required.

IV. Application and Submission Information

1. Address To Request Application Package

This announcement includes all of the application materials. It is also available on the Internet on the FTA Web site at *http://www.fta.dot.gov.* FTA will announce final selections on its Website and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

2. Content and Form of Application Submission

Guidelines for Preparing Grant Application

The application should provide information on all items for which you are requesting funding in FY 2007. If you use another company's previous application as a guide, remember to modify all elements as appropriate to reflect your company's situation. The application must include a project narrative in the format provided in Appendix A, in addition to Standard Form 424, ''Application for Federal Assistance.''

Application Content

• Applicant Information

This addresses basic identifying information, including:

a. Company name.

b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

c. Contact information for notification of project selection: contact name, address, email address, fax and phone number.

d. Description of services provided by company, including areas served.

e. For fixed-route carriers, whether you are a large (Class I, with gross annual operating revenues of $5.3 million or more) or small (gross operating revenues of less than $5.3 million annually) carrier.

f. Existing fleet and employee information, including number of over-the-road buses used for (1) Intercity fixed-route service, and (2) other service, and number of employees.

g. If you provide both intercity fixed-route service and another type of service, such as commuter, charter or tour service, please provide an estimate of the proportion of your service that is intercity.

h. Description of your technical, legal, and financial capacity to implement the proposed project. Include evidence that you currently possess appropriate operating authority (e.g, DOT number if you operate interstate or identifier assigned by State if you do not operate interstate service).

• Project Information

Every application must:

a. Provide the Federal amount requested for each purpose for which funds are sought in the format in Appendix A.

b. Document matching funds, including amount and source.

c. Describe project, including components to be funded (e.g., lifts, tie-downs, moveable seats, or training).

d. Provide project timeline, including significant milestones such as date or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

e. Address each of the five statutory evaluation criteria described in V.

f. If requesting funding for intercity service, provide evidence that:

1. The applicant provides scheduled, intercity, fixed route, over-the-road bus service that interlines with one or more scheduled, intercity bus operators. (Such evidence includes applicant's membership in the National Bus Traffic Association or participation in separate interline agreements, and participation in interline tariffs or price lists issued by, or on behalf of, scheduled, intercity bus operators with whom the applicant interlines); and

2. The applicant has obtained authority from the Federal Motor Carrier Safety Administration or the Interstate Commerce Commission to operate scheduled, intercity, fixed route service; and as many of the following as are applicable;

3. The applicant is included in Russell's Official National Motor Coach Guide showing that it provides regularly scheduled, fixed route OTRB service with meaningful connections with scheduled intercity bus service to more distant points.

4. The applicant maintains a Web site showing routes and schedules of its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

5. The applicant maintains published schedules showing its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

6. The applicant participates in the International Registration Plan (IRP) apportionment program.

• Labor Information

a. Identify any labor organizations that may represent your employees and employees of any transit providers in the service area of the project. For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (e.g., Amalgamated Transit Union local 1258.) Since the Department of Labor (DOL) makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

b. For each independent labor organization (i.e., a union that is not affiliated with a national or international organization) the local information will be necessary (name of organization, address, contact person, phone, fax numbers).

c. Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company and associated union information.

3. Submission Dates and Times

Complete applications for OTRB Accessibility Program grants must be submitted to the appropriate FTA regional office (see Appendix B) November 13, 2007, or submitted electronically through the Grants.Gov Web site by the same date. Applicants planning to apply electronically are encouraged to begin the process of registration on the Grants.Gov site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. FTA will announce grant selections when the competitive selection process is complete.

4. Intergovernmental Review

This program is not generally subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal

Programs.'' For more information, contact the State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's homepage at *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Only applications from eligible recipients for eligible activities will be considered for funding (see section III). Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

6. Other Submission Requirements

Applicants should submit three copies of their project proposal application, consistent with the application format provided at Appendix A, to the appropriate regional office or apply electronically through the government wide electronic grant application portal at *http://www.grants.gov.*

V. Application Review Information

1. Project Evaluation Criteria—Projects will be evaluated according to the following criteria:

A. The identified need for OTRB accessibility for persons with disabilities in the areas served by the applicant (20 points).

B. The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to OTRBs to persons with disabilities (20 points).

C. The extent to which the OTRB operator acquired equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule (20 points).

D. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant (20 points).

E. The impact of accessibility requirements on the continuation of OTRB service with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals (20 points).

Note: These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding previously awarded to applicants in prior years. Applicants will not be considered for funding as intercity fixed-route operators unless they satisfy at a minimum the first two criteria and at least one of criteria three through five listed in Project Information in the application content applicable to intercity fixed-route applicants.

2. Review and Selection Process

Each application is screened by a panel of members consisting of FTA headquarters and regional staff. Incomplete or non-responsive applications will be disqualified. Intercity fixed-route service providers must provide evidence that they meet at a minimum the first two criteria and at least one of the next three criteria set forth in Project Information, if funds are requested under this category (see Appendix A, 2, B). Applicants that do not qualify as intercity-fixed route operators may be considered for funding in the ''other'' category using the same application. FTA will make an effort to award every qualified applicant at least one lift.

VI. Award Administration Information

1. Award Notices

FTA will screen all applications to determine whether all required eligibility elements, as described in Part III ''Eligibility Information,'' are present. The FTA evaluation team will evaluate each application according to the criteria described in this announcement. FTA will notify all applicants, both those selected for funding and those not selected when the competitive selection process is complete. Projects selected for funding will be published in a **Federal Register** notice. Applicants selected for funding must then apply to the FTA regional office for the actual grant award, sign Certifications and Assurances, and execute a grant contract before funds can be drawn down.

2. Administrative and National Policy Requirements

A. Grant Requirements

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Title 49, United States Code, section 5311). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

The authority for these requirements is provided by TEA–21, Public Law 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998; 49 U.S.C. section 5310, note; and DOT and FTA regulations and FTA Circulars.

B. Buy America

Under the OTRB Accessibility Grant Program, FTA's Buy America regulations, 49 CFR part 661, apply to the incremental capital costs of making vehicles accessible.

Generally, Buy America applies to all accessibility equipment acquired with FTA funds, i.e., all of the manufacturing processes for the product take place in the United States. The lift, the moveable seats, and the securement devices will each be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States regardless of the origin of its respective subcomponents.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal ''small purchase'' threshold, which is currently $100,000. (See 49 CFR 661.7, Appendix A(e)). Because section 3038(b) of TEA–21, limited FTA financing to the incremental capital costs of compliance with DOT's OTRB accessibility rule, the small purchase waiver applies only to the incremental cost of the accessibility features. Where more than one bus is being made accessible, the grantee must calculate the incremental cost increase of the entire procurement when determining if the small purchase waiver applies. For example, if $30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of $90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus or component manufacturer that all items included in the incremental cost for which the applicant is applying for funds meet Buy America requirements. The Buy America regulations can be found at *http://www.fta.dot.gov/library/legal/buyamer/.*

C. Labor Protection

Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of

negotiations or discussions with the union. The grant applicant can facilitate DOL certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant, if any. Receiving funds under the OTRB Accessibility program, however, will not require the grantee's employees to be represented by organized labor. Nothing in the labor protection provisions in 49 U.S.C. 5333(b) requires a motorcoach operator to become a union carrier or encourages union organizing in any manner. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good-faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Applicants must identify any labor organizations that may represent their employees and all labor organizations that represent the employees of any other transit providers in the service area of the project.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union (e.g., Amalgamated Transit Union local 1258). Since DOL makes its referral to the national union's headquarters, there is no need to provide a means of contacting the local organization.

However, for each independent labor organization (i.e., a union that is not affiliated with a national or international organization) the local information will be necessary, such as the name of organization, address, contact person, phone, and fax numbers.

Where a labor organization represents transit employees in the service area of the project, DOL must refer the proposed protective arrangements to each union and to each recipient. For this reason, please provide DOL with a contact person, address, telephone number and fax number for your company, and associated union information.

DOL issued a **Federal Register** notice addressing the new TEA–21 programs, including the OTRB Accessibility Program, ''Amendment to Section 5333(b) Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21);'' Final Rule, dated July 28, 1999. FTA issued a ''Dear Colleague'' letter, dated December 5, 2000, addressing DOL processing of grant applications. Attached to the letter is an application checklist, which provides information that DOL must have in order to review and certify FTA grant applications. This letter and attachment can be found at: *http://www.fta.dot.gov/office/public/c0019.html*. Questions concerning protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Department of Labor, 200 Constitution Avenue, NW., Room N–5411, Washington, DC 20210; telephone (202) 693–0126, fax (202) 219–5338.

D. Planning

Applicants are encouraged to notify the appropriate State Departments of Transportation and Metropolitan Planning Organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public, and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by States and MPOs also is encouraged, but is not required.

E. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. Certifications and Assurances for grants to be awarded under this program in FY 2008 will be included in the FTA Certifications and Assurances for FY 2008, which will be published in the **Federal Register** at a later date, and made available for electronic signature in FTA's grants system. Every applicant must submit Certification 01, ''For Each Applicant.'' Each applicant for more than $100,000 must provide both Certification 01, and, 02, the ''Lobbying Certification.''

3. Reporting

Post-award reporting requirements include submission of final Financial Status Report and milestone report, or annual reports for grants remaining open at the end of each Federal fiscal year (September 30). Documentation is required for payment.

VII. Agency Contact(s)

Contact the appropriate FTA Regional Administrator (see Appendix B) for application-specific information and issues. For general program information, contact Blenda Younger, Office of Program Management, (202) 366–2053, e-mail: *blenda.younger@dot.gov*. A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 10th day of September, 2007.

James S. Simpson,

Administrator.

Appendix A Over-the-Road Bus Accessibility Program Project Proposal Application (Paper or Electronic Project Narrative)

(See section IV.2 of **Federal Register** announcement for detailed explanation of application content).

In addition to OMB Standard Form 424, Application for Federal Assistance, provide the following information:

1. Applicant Information
A. Company Name: _____
B. DUNS Number: _____
C. For Notification of Project Selection Contact: _____
Name of Individual: _____
Address: _____
Fax: _____
Telephone number: _____
D. Describe Services Provided by Company, including Areas Served: _____
E. Intercity Fixed-Route Carriers: _____
____Large/Class I (gross annual operating revenues of $5.3 million or more).

____ Small (gross annual revenues of less than $5.3 million).

F. Existing Fleet and Employee Information:

____ Total number of over-the-road buses in fleet.

____ Number of over-the-road buses in fleet used for intercity fixed-route service.

____ Number of over-the-road buses intercity-fixed-route service that currently have lifts.

____ Number of over-the-road buses in fleet used for Other Service, e.g., Charter, Tour, & Commuter.

____ Number of over-the-road buses used in ''other'' service that currently have lifts.

____ Number of Employees.

G. Estimate of the proportion of service, if any, that is intercity fixed-route ____% of services is intercity fixed-route.

H. Describe your technical, legal, and financial capacity to implement the proposed project. Include evidence of operating authority.

2. Project Information

A. Federal Amount Requested (Up to 90% Federal Share):

Intercity Fixed Route Service:

$ _____ for # _____ New Over-the-road Buses

$ _____ for # _____ Retrofits

$ _____ for # _____ Employees—Training

Other Service (Commuter, Charter, or Tour)

$ _____ for # _____ New Over-the-road Buses

$ _____ for # _____ Retrofits

$ _____ for # _____ Employees—Training

B. If requesting funding for intercity service, provide evidence of any of the following that are applicable:

1. The applicant provides scheduled, intercity, fixed route, over-the-road bus service that interlines with one or more scheduled, intercity bus operators. Such evidence includes applicant's membership in the National Bus Traffic Association or participation in separate interline agreements, and participation in interline tariffs or price lists issued by, or on behalf of, scheduled, intercity bus operators with whom the applicant interlines.

2. The applicant has obtained authority from the Federal Motor Carrier Safety Administration or the Interstate Commerce Commission to operate scheduled, intercity, fixed route service.

3. The applicant is included in Russell's Official National Motor Coach Guide showing that it provides regularly scheduled, fixed route OTRB service with meaningful connections with scheduled intercity bus service to more distant points.

4. The applicant maintains a website showing routes and schedules of its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

5. The applicant maintains published schedules showing its regularly scheduled, fixed route OTRB service and its meaningful connections to other scheduled, intercity bus service.

6. The applicant participates in the International Registration Plan (IRP) apportionment program.

C. Document Matching Funds, including Amount and Source

D. Describe Project, including Components to be funded (i.e., lifts, tie-downs, moveable seats or training).

E. Provide Project Time Line, including significant milestones such as date of contract for purchase of vehicle(s), and actual or expected delivery date of vehicles.

F. Project Evaluation Criteria

Provide information addressing the following criteria:

- The identified need for OTRB accessibility for persons with disabilities in the areas served by the applicant (20 points).
- The extent to which the applicant demonstrated innovative strategies and financial commitment to providing access to OTRBs to persons with disabilities (20 points).
- The extent to which the over-the-road bus operator acquired equipment required by DOT's OTRB accessibility rule prior to the required time frame in the rule (20 points).
- The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant (20 points).
- The impact of accessibility requirements on the continuation of OTRB service with particular consideration of the impact of the requirements on service to rural areas and for low income individuals (20 points).

G. Labor Information

- List labor organizations that may represent your employees and all labor organizations that represent the employees of any transit providers in the service area of the project.
- For each local of a nationally affiliated union, provide the name of the national organization and the number or other designation of the local union.
- For each independent labor organization, provide the local information, including: Name of organization, address, contact person, phone and fax numbers.
- For transit employee unions in service area of project, provide information including: Contact person, address, telephone number and fax number for your company and associated union information.

Appendix B—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine. Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II—New York, New Jersey, Virgin Islands. Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC. Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico. Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, (404) 865–5620.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan. Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, (312) 353–2789.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII—Iowa, Nebraska, Kansas, Missouri. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah. Terry Rosapep, Acting FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, (720) 963–3300.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1831, (415) 744–3133.

Region X—Washington, Oregon, Idaho, Alaska. Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. E7–18122 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 25, 2007. No comments were received.

DATES: Comments must be submitted on or before October 15, 2007.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* MARAD Desk Officer.

FOR FURTHER INFORMATION CONTACT: Frances Jerry, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–5861; or e-mail: *frances.jerry@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Uniform Financial Reporting Requirements.

OMB Control Number: 2133–0005.

Type of Request: Extension of currently approved information collection.

Affected Public: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Form Numbers: MA–172.

Abstract: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to MARAD are authorized by Section 801, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1211). Financial reports are also required by regulation of purchasers of ships from MARAD on credit, companies chartering ships from MARAD, and of companies having Title XI guarantee obligations (46 CFR Part 298).

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Annual Estimated Burden Hours: 1276 hours.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect, if OMB receives it within 30 days of publication.

Dated: September 6, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–18127 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 25, 2007. No comments were received.

DATES: Comments must be submitted on or before October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–4156; or e-mail: *joe.strassburg@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: War Risk Insurance, Applications and Related Information.

OMB Control Number: 2133–0011.

Type of Request: Extension of currently approved information collection.

Affected Public: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Form Numbers: MA–355; MA–528; MA–742; MA–828, and MA–942.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Annual Estimated Burden Hours: 1378 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect, if OMB receives it within 30 days of publication.

Dated: September 6, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–18173 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2007 29216]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OCEAN SPIRIT.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–29216 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses

U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–29216. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEAN SPIRIT is:

Intended Use: ''Charters for sightseeing, burial at sea and similar.''

Geographic Region: ''Southern California and Baha, Mexico.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: September 10, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–18129 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–26844]

Woodside Natural Gas, Inc. OceanWay Secure Energy Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement/Environmental Impact Report

AGENCY: Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration and the U.S. Coast Guard announce the intent to prepare an environmental impact statement/environmental impact report (EIS/EIR). The application describes a project located in the Federal waters of the Santa Monica Basin, approximately 27 miles southwest of Los Angeles International Airport.

The EIS/EIR will be prepared with the City of Los Angeles (City) as a cooperating agency in the environmental review with the Coast Guard since the applicant has also filed an application for lease/franchise of offshore submerged City lands and an onshore pipeline franchise for the subsea pipelines through City waters and a pipeline through the City. The EIS/EIR will meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

Publication of this notice begins a 30 day scoping process that will assist in the identification and determination of the environmental issues to be addressed in the EIS/EIR. This notice requests public participation in the scoping process and provides information regarding how to participate in the process. It announces a public meeting to be held in connection with the EIS/EIR; requests public comment on the scope of the EIS/EIR; and also serves as a notice of intent (NOI) and notice of preparation (NOP) for the purposes of California law.

DATES: The Coast Guard, Maritime Administration, and the City will conduct an informational open house, followed by a public scoping meeting Wednesday, September 26, 2007 to receive oral or written comments. The informational open house will run from 4:30 p.m. to 6 p.m. followed by a public meeting from 6:30 p.m. to 8:30 p.m. The time may be extended depending on the number of speakers. Comments or related material must be received by October 12, 2007.

ADDRESSES: The open house and public meeting will be held at the Los Angeles Airport Marriott, 5855 West Century Blvd, Los Angeles, CA 90045; (310) 641–5700. Please Note: All attendees are requested to bring their hotel parking tickets inside the hotel for parking validation.

The public docket for USCG–2007–26844 is maintained by the Department of Transportation, Docket Management Facility, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001. Docket contents are available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed Project, the license application process, or the EIS/EIR process may be directed to Roddy Bachman, U.S. Coast Guard, telephone: (202) 367–1451, e-mail: (*Roddy.C.Bachman@uscg.mil*), or Linda Moore, City of Los Angeles, telephone: (213) 485–5751, e-mail: (*Linda.Moore@lacity.org*).

Questions regarding viewing or submitting materials to the docket may be directed to, Renee V. Wright, Program Manager, Docket Operations, (202–493–0402).

The DOT Docket Management System also chronologically contains the application and related correspondence, public meeting transcripts, will contain the Draft and the Final EIS/EIR, and will contain all comments submitted whether at public meetings or submitted directly. This can be accessed at *http://dms.dot.gov*, and search for docket number 26844.

Information pertaining to the proposed OceanWay Deepwater Port Project is also available online with the City of Los Angeles at: *http://eng.lacity.org/techdocs/emg/Environmental_Review_Documents.htm*.

This public notice may be requested from the City of Los Angeles in an alternative format such as Spanish translation, audiotape, large print, or Braille. Contact the City of Los Angeles at the City project Web site listed above.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

The Coast Guard, Maritime Administration, and City plan to conduct an informational open house and public meeting related to preparation of an EIS/EIR for the proposed Project. The open house will be an informal opportunity to ask questions and receive information regarding the Project. The public scoping meeting will be structured to provide the public with an opportunity to present comments regarding the approach and conduct of the environmental analysis. Comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS/EIR.

Speaker registrations will be available at the door. Speakers at the public scoping meeting will be recognized in the following order: Elected officials, public agencies, individuals or groups in the sign-up order, and anyone else who wishes to speak. Speakers may be asked to limit their oral comments to three (3) minutes in order to afford everyone an opportunity to speak and the meeting time may be extended. Speakers must identify themselves and any organization represented, by name. Remarks will be recorded or transcribed for inclusion in the public docket. Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See ''Request for Comments'' for information about the DMS and your rights under the Privacy Act.

Written comments will also be accepted. You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Please notify Roddy Bachman, U.S. Coast Guard, telephone: (202) 367–1451, e-mail: (*Roddy.C.Bachman@uscg.mil*) as soon as possible, but at least three (3) business days before the scheduled meeting, if translation of written materials is required.

A court reporter will also be available during the open house to transcribe oral comments if you wish to speak at the meeting.

All public scoping meeting spaces will be wheelchair-accessible. Individuals may request special accommodations for the public scoping meetings, such as real-time translation. Contact the Coast Guard or City of Los Angeles (see **FOR FURTHER INFORMATION CONTACT**) if special accommodations are required. Requests should be made as soon as possible but at least three (3) business days before the scheduled meeting. Include the name and telephone number of the contact person, the timelines for requesting accommodations, and a TDD number that can be used by individuals with hearing impairments.

Request for Comments

The Coast Guard, Maritime Administration, and the City request submittal of comments and related material regarding this notice using one of the methods described below. The Coast Guard, Maritime Administration, and the City most particularly seek comments that identify potentially significant impacts, alternatives, or mitigation measures that should be taken into account in determining the scope of the EIS/EIR.

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity to comment. In addition to or in place of attending the meeting, comments may be submitted to the Docket Management Facility or City of Los Angeles during the public comment period (see **DATES**). The Coast Guard, Maritime Administration, and City will consider all comments and material received during the comment period. It is not necessary to present comments more than once. Comments need not be submitted to multiple agencies; all comments received will be shared amongst agencies.

Submissions to the DOT Docket Management System should include:

- Docket number USCG–2007–26844.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information provided. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477). You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

Background

A notice of application for the proposed OceanWay DWP was published in the **Federal Register** (FR) on September 7, 2007 (72 FR 51488). Consult that notice for additional information regarding the proposed DWP, the ship-to-ship transfer locations, the offshore and onshore pipelines and the receiving and custody transfer facility. The ''Summary of the Application/Proposed Action'' from that publication is reprinted below for your convenience.

Congress first authorized DWPs in 1974. Federal law (33 United States Code [U.S.C.] 1501 *et seq.*) defines a DWP as any fixed or floating manmade structure other than a vessel, or any group of such structures, that is located beyond State seaward boundaries, and that is used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any state. All DWPs require a license granted by the Maritime Administrator based on an application process administered by the Coast Guard, in coordination with the Maritime Administration. Part of that process involves assessment of the natural and human environmental impacts from the port, in compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332). The Maritime Administration and Coast Guard are the lead Federal agencies for NEPA compliance. The Coast Guard, in cooperation with the Maritime Administration, determines the scope and completes the environmental review of the proposed project. This includes consultation with States that are adjacent to the proposed port. For the purposes of the OceanWay deepwater port application, California is an adjacent coastal state. The Coast Guard and Maritime Administration have determined that compliance with the NEPA requires preparation of an EIS.

The City has determined that the proposed port would require a City license/franchise for subsea pipelines through City waters to deliver the natural gas to shore, and a new franchise and other approvals for the onshore pipeline and receiving and custody transfer station (RCTS) to deliver the natural gas into the existing

pipeline system, and that compliance with the California Environmental Quality Act (CEQA) requires preparation of an EIR. Because of the many similarities between an EIS and an EIR, the Coast Guard, Maritime Administration and the City have agreed to cooperate in preparing a single document that satisfies both the NEPA and the CEQA.

The EIS/EIR will be consistent with the Deepwater Port Act (DWPA) of 1974, as amended (33 U.S.C. 1501 *et seq.*); the NEPA (Section 102[2][c]), as implemented by Council on Environmental Quality regulations (40 Code of Federal Regulations 1500 to 1508); and the CEQA (California Public Resources Code 21000 *et seq.*) as implemented by the State CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*). The environmental review and analysis will be completed according to the timeline prescribed by the DWPA, which requires a decision within 356 days. The period to complete all NEPA/CEQA documents is approximately 240 days. This timeline will govern the activities related to the processing of the license application and the completion of all NEPA and CEQA related actions needed to support the decision regarding whether to approve, approve with conditions, or disapprove the proposed license/lease/franchise.

This notice of intent is in compliance with the requirements of the NEPA regulations and also serves as the notice of preparation as required by CEQA. It briefly describes the proposed action and possible alternatives and our proposed scoping process. Address any questions about the proposed action, the scoping process, or the EIS/EIR to the Coast Guard or City of Los Angeles (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application/Proposed Action/Project'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

The proposed action requiring environmental review by the City of Los Angeles is the granting of a pipeline franchise and appurtenant approvals for the same project.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues addressed in the EIS/EIR. Scoping begins with this notice, continues through the public comment period and ends when the Coast Guard, Maritime Administration and the City have:

- Invited the participation of Federal, State, and local agencies, any affected Indian tribes, the applicant, and other interested persons;
- Determined the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identified and eliminated from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocated responsibility for preparing EIS/EIR components;
- Indicated any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identified other relevant environmental review and consultation requirements;
- Indicated the relationship between timing of the environmental review and other aspects of the application process; and
- At the Federal agencies' discretion, exercised the options provided in 40 CFR 1501.7 (b).

Once the scoping process is complete, the Coast Guard and City of Los Angeles will prepare a draft EIS/EIR (DEIS/DEIR), and publish a **Federal Register** notice announcing its public availability. To receive that notice, please contact those identified in (**FOR FURTHER INFORMATION CONTACT**). An opportunity to review and comment on the draft EIS/EIR will be provided. The Coast Guard, Maritime Administration and City will consider those comments in the preparation of the final EIS/EIR (FEIS/FEIR). As with the draft EIS, we will announce the availability of the FEIS/FEIR and once again allow an opportunity for review and comment.

Availability of EIS/EIR

A notice of availability (NOA) will be published in the **Federal Register** when the DEIS/DEIR is available, and the City will file a notice of completion with the California State Clearinghouse and the Los Angeles County Clerk and will publish a notice of availability in the ''City of Los Angeles Environmental Notices'' section of the Los Angeles Times. The DEIS/DEIR in hardcopy or electronic format will be distributed to agencies, local public libraries and interested parties that have requested copies. Anyone who wishes to comment on the draft report will be provided with an opportunity to review the DEIS/DEIR and to offer comments on the environmental effects of the proposed project. Comments received during the DEIS/DEIR review period will be available in the public docket and responded to in the FEIS/FEIR. An NOA of the FEIS/FEIR will also be published in the **Federal Register**, and the City will issue notices of availability and completion. Additional public meetings will be held after the draft and final documents are published.

Summary of the Application/Proposed Action/Project

Woodside Natural Gas proposes to construct, own, and operate a deepwater port with associated ship-to-ship transfer (STS) location(s) and single point mooring (SPM) buoys for the receiving of regasification liquefied natural gas carriers (RLNGCs), offshore and onshore natural gas pipelines and a receiving and custody transfer facility (RCTS) to deliver natural gas with an annualized rate of 0.4 billion cubic feet per day (bcf/d) and a peak of 1.1 bcf/d into the Southern California market on initial development and an annualized rate of 1.0 bcf/d and a peak of up to 1.6 bcf/d at full project development.

The deepwater port would be located in the Federal waters of the Santa Monica Basin, 21 miles from the nearest point on the mainland of Southern California, and 18 miles from the western end of Santa Catalina Island, approximately 27 miles southwest of Los Angeles International Airport (LAX), in a water depth of approximately 3,000 feet. It would consist of two single point mooring (SPM) buoys that serve as cargo discharge system connections for the RLNGCs, a mooring/anchoring array, four flexible risers that connect the SPMs to four seafloor riser end manifolds, two pipeline end manifolds (PLEMs) and two parallel 24-inch pipelines beginning on the seafloor at the PLEMs beneath the SPM buoys and continuing to shore. The SPMs would be located approximately 5 nautical miles (5.75 miles) outside established shipping lanes (SPM NE: Latitude: 33°41′52″ N, Longitude: 118°48′33″ W and SPM SW: Latitude: 33°39′58″ N, Longitude: 118°49′15″ W).

Woodside has proposed three ship-to-ship transfer locations ranging from approximately 35 to 90 nautical miles (40 to 104 miles) from shore and 55 to 111 nautical miles (63 to 128 miles) from the port where each RLNGC is expected to receive LNG cargo at sea from conventional LNG carriers

(LNGCs): STS1 Santa Rosa (Latitude 33°39′ N, Longitude 119°56′30″ W), STS2 Inshore San Clemente (Latitude 33°05′ N, Longitude 118°10′ W) and STS3 Skaugen Offshore (Latitude 32°15′ N, Longitude 120°0′ W). Only one transfer location would be used at a time. The RLNGCs, with storage capacity of 224,000 m^3 of LNG would be capable of receiving LNGCs with storage capacities of up to 216,000 m^3 of LNG.

As proposed, LNG would be delivered from overseas by LNGCs and transferred to a Woodside RLNGC at one of the three STS locations. The RLNGC would then be sailed and moored to a SPM, where the LNG would be regasified into natural gas and delivered to shore via two new parallel 24-inch pipelines. The RLNGC would then return to a STS location.

The RLNGCs would use a turret system with the SPMs to allow the RLNGC to weathervane (rotate) around the buoy. Onboard utilities and systems associated with RLNGC operations would include electric power generation and distribution, instrumentation and controls, and fire and safety systems. The RLNGC would include all marine systems, communications, navigation aids and equipment necessary to safely conduct RLNGC carrier operations receive and vaporize the product.

The RLNGCs would use a forced draft ambient air LNG vaporization system employing a combination of intermediate fluid and direct ambient air with heat provided by ambient air called the Woodside Hybrid Air Vaporization (WHAV) concept.

Natural gas would be delivered onshore via two 24-inch parallel pipelines, approximately 35 miles in length. These pipelines would come onshore on the north end of LAX at Dockweiler Beach. It is proposed that horizontal directional drilling be used to install the pipelines beneath land and seabed in offshore City waters and underneath the beach and adjacent dunes from a point about 1000 feet inland from the high tide mark just east of Vista del Mar on LAX property.

Woodside would lease/franchise from the City a 300 foot wide corridor on submerged City lands out to the 3 nautical mile (3.45 mile) offshore limit of the City boundary. On-shore pipelines would be constructed on City-owned land from the high tide line to Pershing Drive, passing under the beach and the El Segundo Dunes, and underground through City streets. The route would include Westchester Parkway/Arbor Vitae Street, then south on Bellanca Avenue to the receiving and custody transfer station (RCTS) and adjacent Inert Gas Injection Facility (IGIF) located at 5651 96th Street, Los Angeles, about 4 miles inland. A single 36-inch pipeline would run approximately a quarter of a mile back north on Bellanca Avenue to Arbor Vitae, then to the existing Southern California Gas natural gas pipeline infrastructure with Tie-in #1 at the intersection of Aviation Boulevard and Arbor Vitae Street. A second stage, with development depending on demand, may include additional pipelines and tie-ins that are an approximate 11-mile single 24-inch line from Tie-in #1 along Arbor Vitae, Prairie, Manchester, Firestone, and California to Tie-in #3 at Santa Ana Street and Otis Avenue in South Gate and approximate 1 mile single 24-inch line from Manchester Street to Central Ave to Tie-in #2 at the intersection of S. Central Avenue and E. Century Boulevard. These pipeline routes include areas within the cities of Los Angeles, Inglewood, and South Gate. At full development, Southern California Gas would own and operate the system downstream of the RCTS.

The application also includes an alternative DWP location in the Gulf of Santa Catalina approximately 30 miles from Huntington Beach at latitude 117°56′28.53″ west, longitude 33°13′24.88″ north with a 30-mile pipeline running north to a shore crossing at the AES power plant in Huntington Beach. It would cross through the cities of Huntington Beach, Fountain Valley, Westminster, Garden Grove, Santa Ana, and Orange. It would be trenched through city streets traveling north along Newland Street towards Bolsa Avenue; turn east at Bolsa Ave. (1st Street); turn north at the OCTA Metrolink Right of Way and join Lincoln Ave; east on Fairhaven Ave.; north at Cambridge Street; and finally west on Palm Ave., where it would connect to the SCG tie-in in Orange.

Currently Identified Environmental Issues

The NEPA and CEQA processes require agencies to consider environmental impacts that may result from a proposed action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. Additionally, CEQA requires measures to avoid or lessen the significant impacts of a project when granting an approval, unless it finds certain benefits of the project outweigh those significant effects.

The EIS/EIR for the OceanWay DWP will describe the nature and extent of environmental impacts of the proposed action and each alternative, and will discuss appropriate mitigation measures for any adverse impacts. The EIS/EIR will include, among other matters, discussions of the purpose and need for the proposed action, a description of alternatives, a description of the affected environment, an evaluation of the environmental impacts of the proposed action and alternatives, and explanations of proposed mitigation. The EIS/EIR will assess the impacts of the alternatives on the natural and human environment, including the no-action/no project alternative, which for this Project would mean that the Maritime Administration would not approve the application or the City would not approve the application for the lease/franchise of the offshore pipelines in City waters, the RCTS, and onshore pipelines. Regardless of geographic or other jurisdictional boundaries, the Coast Guard, Maritime Administration and the City will consider the entire proposed Project. Environmental issues that will require detailed analysis include, but are not necessarily limited to:

Aesthetics: Alteration of the view shed by construction and operations.

Air Quality: Impacts on regional air quality, including visibility and other resources in sensitive Federal Class I areas (e.g., Channel Islands National Park).

Geological Resources and Soils: Impacts on facilities from seismic hazards; Impacts on onshore facilities from liquefaction; and erosion and dust.

Hazardous/Toxic Materials and Wastes: Impacts from HAZMAT spills including petroleum, LNG, other hydrocarbons, fuels, lubricant, urea, paints, solvents, and sanitary or other hazardous/toxic materials or waste.

Marine Transportation: Disruption in marine transportation affecting existing ship traffic to and from the ports of Los Angeles and Long Beach or other ports; potential navigational hazards to marine traffic; and increase in tanker travel to and from the single point mooring locations that could impact existing marine traffic.

Marine Biology: Vessels potentially striking sea turtles and marine mammals; crushing and displacement of benthic communities during construction; effects of ''cold water'' resulting from LNG release to marine mammals; and effects of increases in turbidity and changes in water quality, lights, and noise.

Terrestrial and Freshwater Biology: Impacts from construction or operation on wetlands and other habitats, and sensitive species, within the proposed pipeline landing and corridor areas.

Recreation: Impacts on boating and commercial and recreational fishing

opportunities; recreational areas potentially impacted by noise or dust generated during construction; access to the beach or ocean; and permanent and temporary areas of restricted access around the RLNGC.

Hazards and Risk/Safety: LNG releases resulting in potential impacts on third parties from fire, radiant energy, or ignitable gas clouds (mainly to passengers of small craft operating near the RLNGC); and effects of pipeline failures on humans, property, and marine and terrestrial ecosystems. The EIS/EIR will include an independently prepared, site-specific risk assessment.

Noise: Potential increases in noise levels due to project construction and operation; and effects of noise on local residents, recreational visitors, passengers and crews on marine vessels, and marine mammals.

Water Quality: Impacts from LNG or spills, increases in turbidity, or unearthing of contaminated sediments; and increases in shoreline erosion during construction and operation.

Environmental Justice: Potential disproportionate effects on minority and low-income populations within the Project area. The EIS/EIR will identify any relevant populations that might be disproportionately affected by the proposed Project.

Cultural Resources: Potential effects on known and as yet unidentified cultural resources, offshore and onshore.

Energy and Mineral Resources: Restriction of future availability of exploitable oil and gas resources due to infrastructure development and restricted access.

Land Use and Traffic: Impacts to existing land uses, especially in coastal areas designated for recreational purposes; impacts on marine resources off the coast of Los Angeles, including Catalina Island, the Channel Islands National Marine Sanctuary and Channel Islands National Park; and disruptions to traffic use and patterns.

Population and Housing: Impacts on the existing community character and development, population, housing, infrastructure and social services, employment, and the regional economic base.

Cumulative Impacts: The EIS/EIR will evaluate the cumulative effects of the project within each resource area examined. These include the incremental effects of past projects, other current and proposed projects, and reasonably foreseeable future projects.

No-Action/No Project Alternative: The EIS/EIR will examine the impacts of not approving the DWP license/lease/franchise application.

Alternative Offshore Locations: The EIS/EIR will consider an alternative location in the vicinity of the proposed Project and other locations adjacent to the California coast.

Land-Based Alternatives: The California Legislature mandated the evaluation of land-based LNG sites. Land-based alternatives previously considered by California agencies will be considered.

Alternative Technologies: Alternative Project technologies, including open rack vaporizers and a hybrid vaporization system and alternative facility designs will also be evaluated.

Alternative Pipeline Routes: The EIS/EIR will also evaluate an alternative submarine pipeline route and an alternative onshore pipeline route.

Federal, State, and City Permit, Approval, and Consultation: The major federal and city permit, approval, and consultation requirements for OceanWay include, but are not necessarily limited to, the following:

Federal

- DOT/Maritime Administration—DWP license.
- DHS/U.S. Coast Guard—DWP design and operational requirements.
- U.S. Environmental Protection Agency (EPA) Title V Federal air operating permit; Clean Water Act (CWA) storm water and wastewater discharge permits.
- U.S. Army Corps of Engineers (USACE)—Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permits.
- U.S. Fish and Wildlife Service—Section 7, Endangered Species Act (ESA) consultation.
- National Oceanic and Atmospheric Administration (NOAA), Section 7, ESA consultation requirements.
- NOAA Fisheries—Magnuson-Stevens Fisheries Management and Conservation Act consultation.
- NOAA Fisheries—Marine Mammal Protection Act consultation.

California

- California Coastal Commission Compliance with California Coastal Act and consistency with California Coastal Management Program.
- California State Historic Preservation Officer (SHPO), National Historic Preservation Act Section 106 and California historic preservation requirements, consultation and compliance.

City of Los Angeles

- Los Angeles Regional Water Quality Control Board (RWQCB)—CWA Section 401 certification.
- Los Angeles RWQCB—Hydrostatic test water discharge permit.
- Pipeline franchise and lease or easement approvals.
- Local coastal development permit in compliance with the California Coastal Act.

(Authority: 49 CFR 1.66)

Dated: September 10, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–18130 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket Number: RITA–2007–27185]

Notice of Termination for Approval To Collect Survey Data To Evaluate Close Call Reporting System for Railroad Operations

AGENCY: Volpe National Transportation Systems Center (Volpe Center), Research and Innovative Technology Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces that the Volpe Center no longer intends to request the Office of Management and Budget (OMB) to approve a data collection effort to help in the evaluation of a five-year demonstration project focused on improving rail safety by analyzing information on close calls and other unsafe occurrences in the rail industry.

FOR FURTHER INFORMATION CONTACT: Joyce Ranney, RTV–4G, Room 1–655A, Volpe Center; Kendall Square, 55 Broadway; Cambridge, MA 617–494–2095; Fax No. (617) 494–3622; e-mail: *ranney@volpe.dot.gov.*

SUPPLEMENTARY INFORMATION: The Volpe Center is notifying the public that it no longer intends to seek OMB approval for the information collection activity described in its February 13, 2007 Notice and Request for Comments (see 72 FR 6808). The agency did not receive any comments to its February 13, 2007 Notice. The Bureau of Transportation Statistics (BTS) will continue to collect Close Call Reporting System evaluation related survey data under OMB Number 2139–0011.

Issued in Cambridge, Massachusetts on August 7, 2007.

Nelson H. Keeler,

Director, Office of Aviation Programs.

[FR Doc. E7–18177 Filed 9–13–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35075]

Watco Companies, Inc., and Watco Transportation Services, Inc.—Continuance in Control Exemption—Austin Western Railroad, Inc.

Watco Companies, Inc. (Watco Companies) and its wholly owned subsidiary, Watco Transportation Services, Inc. (Watco Transportation) (collectively, Watco), both noncarriers, jointly have filed a verified notice of exemption to continue in control of Austin Western Railroad, Inc. (AWRR), upon AWRR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35072, *Austin Western Railroad, Inc.—Operation Exemption—Capital Metropolitan Transportation Authority*. In that proceeding, AWRR seeks an exemption under 49 CFR 1150.31 to operate 164.83 miles of rail line owned by Capital Metropolitan Transportation Authority between specified points in Texas.

The parties intend to consummate the transaction on or shortly after October 1, 2007.

Watco currently controls 16 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Timber Rock Railroad, Inc., Stillwater Central Railroad, Inc., Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., Pennsylvania Southwestern Railroad, Inc., Great Northwest Railroad, Inc., Kaw River Railroad, Inc., Mission Mountain Railroad, Inc., Mississippi Southern Railroad, Inc., Yellowstone Valley Railroad, Inc., Louisiana Southern Railroad, Inc., Arkansas Southern Railroad, Inc., Alabama Southern Railroad, Inc., and Vicksburg Southern Railroad, Inc.[2]

Watco represents that: (1) The rail lines to be operated by AWRR do not connect with any other railroads in the Watco corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.[3]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than September 21, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35075, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 6, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–17978 Filed 9–13–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35072]

Austin Western Railroad, Inc.—Operation Exemption—Capital Metropolitan Transportation Authority

Austin Western Railroad, Inc. (AWRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement with Capital Metropolitan Transportation Authority (CMTA), CMTA's approximately 164.83 miles of railroad extending between (1) Milepost 0.0 west of Giddings, TX, and milepost 56.4 near Austin, TX; (2) milepost 56.4 near Austin, TX, and milepost 154.1 near Llano, TX; and (3) milepost 0.0 near Fairland, TX, and milepost 6.5 near Marble Falls, TX, including the 3.3-mile Scobee Spur and the 0.93-mile Burnett Spur.[1] The agreement also will allow Veolia Transportation Services, Inc. (Veolia) to provide commuter rail operations over a portion of the lines.[2]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35075, *Watco Companies, Inc., and Watco Transportation Services, Inc.—Continuance in Control Exemption—Austin Western Railroad, Inc.* In that proceeding, Watco Companies, Inc. and its wholly owned subsidiary, Watco Transportation Services, Inc., jointly have filed a verified notice of exemption to continue in control of AWRR upon its becoming a rail carrier.

The transaction is expected to be consummated on October 1, 2007, after the September 30, 2007 effective date of the exemption.

AWRR certifies that its projected annual revenues as a result of the transaction will not result in AWRR becoming a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, AWRR also certifies that it has complied with the notice requirements of 49 CFR 1150.32(e).[3]

If the verified notice contains false or misleading information, the exemption

[1] Watco owns 100% of the issued and outstanding stock of AWRR.

[2] In *Watco Companies, Inc., and Watco Transportation Services, Inc.—Continuance in Control Exemption—Michigan Central Railway, LLC,* STB Finance Docket No. 35064, (STB served July 27, 2007), Watco was authorized to continue in control of Michigan Central Railway, LLC (Michigan Central), once Michigan Central becomes a Class III rail carrier. The effectiveness of the exemption was delayed by decision served August 8, 2007, to coincide with the effectiveness of any exemption that is granted by the Board in the related line acquisition proceeding in *Michigan Central Railway, LLC—Acquisition and Operation Exemption—Lines of Norfolk Southern Railway Company,* STB Finance Docket No. 35063, petition filed on July 13, 2007.

[3] Watco notes that it will consummate this transaction before it consummates the transaction in STB Finance Docket No. 35064.

[1] CMTA retains the residual common carrier obligation with respect to these lines. *See Capital Metropolitan Transportation Authority—Acquisition Exemption—City of Austin, TX,* STB Finance Docket No. 33596 (STB served May 27, 1998).

[2] Veolia will not be providing, and will not have the ability to provide, common carrier freight service to customers on the lines. Because the Board does not have licensing jurisdiction over the commuter operations to be provided by Veolia, it is not seeking Board authority.

[3] AWRR certified its compliance with the notice requirements of 49 CFR 1150.32(e) on July 31, 2007.

is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 21, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35072, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 6, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–17980 Filed 9–13–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–118620–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–118620–97 (TD 8855), Communications Excise Tax; Prepared Telephone Cards.

DATES: Written comments should be received on or before November 13, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Communications Excise Tax; Prepaid Telephone Cards.

OMB Number: 1545–1628. Regulation Project Number: REG–118620–97.

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 104.

Estimated Time per Respondent: 20 min.

Estimated Total Annual Burden Hours: 34.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–18184 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209626–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–209626–93 (TD 8620), Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417 (§§ 1.411(a)–11T and 1.417(e)–1T).

DATES: Written comments should be received on or before November 13, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–6688, or through the internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417.

OMB Number: 1545–1471.

Regulation Project Number: REG–209626–93.

Abstract: These regulations provide guidance concerning the notice consent requirements under Code section 411(a)(11) and the notice and election

requirements of Code section 417, Regulation section 1.411(a)–11(c) provides that a participant's consent to a distribution under code section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Regulation section 1.417(e)–1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights under Code section 417(a)(3).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 750.000.

Estimated Time per Respondent: .011 hr.

Estimated Total Annual Burden Hours: 8,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 5, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–18185 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 4, 2007 from 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, October 4, 2007 from 1 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: September 11, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–18178 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 2, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, October 2, 2007 from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: September 7, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–18179 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 2, 2007, at Noon Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Foley at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, October 2, 2007, at Noon, Eastern Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Barbara Foley at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various VITA Issues

Dated: September 7, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–18187 Filed 9–13–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
September 14, 2007

Part II

Department of Agriculture

Rural Utilities Service
Rural Housing Service
Rural Business-Cooperative Service

7 CFR Parts 1779, 3575, 4279, et al.
Rural Development Guaranteed Loans; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1779

Rural Housing Service

7 CFR Part 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4280

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Part 5001

RIN 0570–AA65

Rural Development Guaranteed Loans

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture, is proposing a unified guaranteed loan platform for enhanced delivery of four existing Rural Development guaranteed loan programs—Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. This proposed rule would eliminate the existing loan guarantee regulations for these four programs and consolidate them under a new, single part. In addition to consolidating these four programs, the proposed rulemaking incorporates provisions that will enable the Agency to better manage the risk associated with making and servicing guaranteed loans and that will reduce the cost of operating the guaranteed loan programs. Such provisions include incorporating specific project eligibility criteria, revisions to the requirements for lenders to participate in the programs, allowing approved lenders to become preferred lenders, and allowing guaranteed loan applications to be submitted with less documentation accompanying the application under certain conditions.

DATES: Comments on the proposed rule must be received on or before November 13, 2007. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through November 13, 2007.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web Site: http://www.rurdev.usda.gov/regs.* Follow instructions for submitting comments on the Web site.
- *E-Mail: comments@wdc.usda.gov.* Include the RIN No. 0570–AA65 in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Foore, Rural Development, Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201, Washington, DC 20250–3201; e-mail: *Michael.Foore@wdc.usda.gov;* telephone (202) 690–4730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a qualitative benefit cost analysis to fulfill the requirements of Executive Order 12866. Based on the results of this qualitative analysis of the benefits and costs of the proposed rule, the Agency has concluded that the net effect of the rule will be beneficial in part due to improved underwriting.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required. Loan applications will be reviewed individually to determine compliance with NEPA.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must

be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Executive Order 12372, Intergovernmental Review of Federal Programs

Rural Development Guaranteed Loans are subject to the Provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' available in any Rural Development office, on the Internet at *http://rurdev.usda.gov.regs,* and in 7 CFR part 3015, subpart V.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to this program are 10.760, Water and Waste Disposal Systems for Rural Communities; 10.766, Community Facilities Loans and Grants; 10.768, Business and Industry Loans; and 10.775, Renewable Energy Systems and Energy Efficiency Improvements Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Rural Development Guarantee Loans.

Type of Request: New collection.

Abstract: Rural Development is implementing a new consolidated guaranteed loan platform. The new guaranteed loan platform would combine the following four existing guaranteed loan regulations into a consolidated rule: (1) The Community Facility Program, (2) the Water and Waste Disposal Program, (3) the Business and Industry Program, and (4) the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 (FSRIA 2002). These programs provide loan guarantees for a variety of projects intended to improve the economies of rural America.

The information required under the proposed rule is similar to much of the information currently being required under the four separate regulations. Under these four separate regulations, the current information being collected is approved under OMB control numbers 0570–0016, 0670–0018, 0572–0122, and 0575–0137. The proposed rule, however, is requesting some new information from lenders. The two primary examples are: (1) lenders are required to supply information to the Agency in order to be approved for participation in the program and (2) more frequent reporting of loans that are in default. On the other hand, the proposed rule would not include some information previously being requested. This is most evident for the Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan program, where technical reports are being required only for higher cost renewable energy systems projects because renewable energy projects of less than $200,000 are less complex, so for such projects the technical reports only have marginal value, and the energy audit requirements from energy efficiency improvement projects are sufficient so that separate technical reports also have only marginal value. The proposed rule creates a single set of common forms that lenders can use across all four programs, thereby creating efficiencies in reporting. On net, the information being requested to support the consolidated program is estimated to reduce burden and cost to lenders and borrowers.

As noted in the previous paragraph, the information requirements contained in this proposed rule require information from lenders and borrowers. This information is vital to Rural Development to make wise decisions regarding the eligibility of projects, borrowers, and lenders in order to reduce the risk associated with making the loan guarantees, to ensure compliance with the proposed rule, to ensure that the funds obtained from the Government are used appropriately, and to effectively monitor the borrowers and lenders to protect the financial interests of the Government. In sum, this collection of information is necessary in order to implement the consolidated guaranteed loan regulation being proposed.

The following estimates are based on the average over the first three years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.6 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, lenders.

Estimated Number of Respondents: 3,450.

Estimated Number of Responses per Respondent: 5.4.

Estimated Number of Responses: 18,472.

Estimated Total Annual Burden (hours) on Respondents: 48,892.

Copies of this information collection may be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742 or by calling (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

Rural Development 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.

I. Background

Rural Development proposes a unified platform for delivery of four existing Rural Development guaranteed loan programs—Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. These four programs are administered by Rural Housing Service (Community Facilities), Rural Utilities Services (Water and Waste Disposal), and Rural Business-Cooperative Service (Business and Industry and the Renewable Energy Systems and Energy Efficiency Improvements Projects). Collectively, Rural Development's programs work together to assist in building and maintaining entire, sustainable rural communities.

Under the unified guaranteed loan platform, Rural Development will simplify, improve, and enhance the delivery of these four guaranteed loan programs across their service areas. The remainder of this section describes Rural Development's mission, the four current guaranteed loan programs being aligned under the new platform, why the new platform is being proposed, and how the new platform will work.

A. Rural Development's Mission

By statutory authority, Rural Development is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper and supports them in the dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and markets.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. This proposed rulemaking addresses the use of guaranteed loans in achieving Rural Development's mission.

B. Current Guaranteed Loan Programs

Under this proposed rule, Rural Development is combining under one regulation the four guaranteed loan regulations of the following programs: Community Facilities, Water and Waste Disposal, Business and Industry, and Renewable Energy Systems and Energy Efficiency Improvements. The following paragraphs describe briefly the scope of each of the four current programs with regard to eligible projects, borrowers, and lenders; application processes; and guarantee and loan terms.

Community Facilities Guaranteed Loan Program. The Community Facilities Guaranteed Loan Program guarantees loans to develop essential community facilities in rural areas and towns of up to 20,000 in population. Loan funds may be used to construct, enlarge, or improve community facilities for health care, public safety, and public services. This can include costs to acquire land needed for a facility, pay necessary professional fees, and purchase equipment required for its operation. Refinancing existing loans may be considered an eligible guaranteed loan purpose under some circumstances.

Eligible borrowers for Community Facilities guaranteed loans are public entities, such as municipalities, counties, and special-purpose districts, as well as not-for-profit corporations and tribal governments who are unable to obtain a loan without the Government's guarantee. Borrowers must have the legal authority to borrow and repay loans; to pledge security for loans, and to construct, operate; and maintain the facilities.

Eligible lenders for Community Facilities guaranteed loans include banks, savings and loan associations, mortgage companies that are part of bank holding companies, banks of the Farm Credit System, and insurance companies regulated by the National Association of Insurance Commissioners. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. Lenders must also have the capability to adequately service the loans for which a guarantee is requested.

The lender is responsible for conducting an analysis of the proposed project to ensure loan repayment, taking into consideration tax assessments, revenues, fees, or other sources of money sufficient for operation and maintenance, reserves, and debt retirement. Financial feasibility studies, prepared by independent consultants, are normally required when loans are for start-up facilities or for existing facilities when the project will significantly change the borrower's financial operations.

Recently under this program, guarantees have averaged 85 percent of the eligible loss of the loan. Lenders may impose an interest rate that is similar to unguaranteed projects. Interest rates may be fixed or variable, are determined by the lender and borrower, and are subject to Agency review and approval.

Loan repayment terms may not exceed the lender's authority (under State law or organizational structure), the useful life of the facility, or a maximum 40 years.

Water and Waste Disposal Guaranteed Loan Program. The Water and Waste Disposal Guaranteed Loan Program guarantees loans to develop

water and wastewater systems, including solid waste disposal and storm drainage, in rural areas and to cities and towns with a population of 10,000 or less. Example projects include construction of water lines, pumping stations, wells, storage tanks, and sewage treatment facilities.

Eligible borrowers include public entities, such as municipalities, counties, special-purpose districts, and Indian tribes. In addition, funds may be made available to corporations operated on a not-for-profit basis. Borrowers must be unable to obtain funds from other sources at reasonable rates and terms. Borrowers must have the legal authority to borrow and repay loans, to pledge security for loans, and to construct, operate, and maintain the facilities.

Eligible lenders for Water and Waste Disposal guaranteed loans include banks, savings and loan associations, mortgage companies that are part of a bank holding company, banks of the Farm Credit System, and insurance companies regulated by the National Association of Insurance Commissioners. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. Lenders must also have the capability to adequately service the loans for which a guarantee is requested.

The lender is responsible for conducting an analysis of the proposed project to ensure loan repayment, taking into consideration tax assessments, revenues, fees, or other sources of money sufficient for operation and maintenance, reserves, and debt retirement. Feasibility studies are normally required when loans are for start-up facilities or existing facilities when the project will significantly change the borrower's financial operations. The feasibility study should be prepared by an independent consultant with recognized expertise in the type of facility being financed.

The Agency will determine borrower eligibility, project priority status, and funding availability. Priority is given to public entities, in areas with less than 5,500 people, to restore a deteriorating water supply, or to improve, enlarge, or modify a water facility or an inadequate waste facility. Preference is also given to requests that involve the merging of small facilities and those serving low-income communities. After an application is submitted, the time to process the application depends upon the scope of the project, environmental review, and legal issues.

Recently under this program, guarantees have averaged 90 percent of the eligible loss of the loan. Interest rates are set periodically, usually quarterly, and are based on current market yields for municipal obligations. Interest rates may be fixed or variable, are determined by the lender and borrower, and are subject to Agency review and approval.

The maximum term for all loans is 40 years; however, no repayment period will exceed State statutes or the useful life of the facility.

Business and Industry Guaranteed Loan Program. The Business and Industry (B&I) Guaranteed Loan Program guarantees loans that help create jobs and stimulate rural economies by providing financial backing for rural businesses. Loan guarantees expand the lending capability of private lenders who provide financing to credit worthy entities and individuals in rural areas, helping them make and service quality loans that provide lasting community benefits. Loan proceeds may be used for permanent working capital, machinery and equipment, buildings and real estate, and refinancing of any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan. The primary purpose is to create and maintain employment and improve the economic climate in rural communities.

Eligible borrowers for B&I loans include virtually any legally organized entity, including a cooperative, corporation, partnership, trust or other profit or not-for-profit entity, Indian tribe or Federally recognized tribal group, municipality, county, or other political subdivision of a State. Pursuant to section 310B(a) of the Consolidated Farm and Rural Development Act, borrowers need not have been denied credit elsewhere to apply for this program.

Eligible lenders for B&I loans include recognized commercial or other authorized lenders in rural areas (all areas other than cities of more than 50,000 people and the contiguous and adjacent urbanized areas of such cities or towns). Generally, authorized lenders include Federal or State chartered banks, credit unions, insurance companies, savings and loan associations, Farm Credit Banks or other Farm Credit System institutions with direct lending authority, a mortgage company that is part of a bank holding company, and the National Rural Utilities Cooperative Finance Corporation. Other lenders include eligible Rural Utilities Program electric and telecommunications borrowers, acting as financial intermediaries, and other lenders approved by Business and Cooperative Programs who have met the designated criteria.

The application process may be initiated using a preapplication or application. The Agency reviews each application for compliance with borrower eligibility guidelines, project priority, and the availability of funds.

Recently under this program, guarantees have averaged 78 percent of the eligible loss of the loan. The maximum aggregate debt that can be incurred by a borrowing entity at any given time under the B&I Guaranteed Loan program is $25 million. A maximum of 10 percent of program funding is available to value-added cooperative organizations for loans above $25 million to a maximum aggregate of $40 million. Repayment terms are up to 30 years for real estate; up to 15 years or useful life, whichever is less, for machinery and equipment; up to 30 years for combined loans on real estate and equipment; and up to 7 years on working capital loans.

Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loan Program. The Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loan Program provides loan guarantees for the purchase and installation of renewable energy systems and energy efficiency improvements. Eligible borrowers include farmers, ranchers, and rural small businesses. In addition to being a renewable energy system or energy efficiency improvement project, project eligibility requirements include the project site being controlled by the agricultural producer or small business for the proposed financing term of any associated Federal loans or loan guarantees.

Recently under this program, guarantees have averaged 78 percent of the eligible loss of the loan. Repayment terms are up to 30 years for real estate; up to 20 years or useful life, whichever is less, for machinery and equipment; up to 30 years for combined loans on real estate and equipment; and up to 7 years on working capital loans.

The minimum amount of a guaranteed loan is $5,000 (less any program grant awards). The maximum amount of a guaranteed loan is $10 million. The amount of the loan that will be made available to an eligible project can not exceed 50 percent of total eligible project costs.

How the Current Programs Work

While differences occur within each of the programs (e.g., borrower and

project eligibility, necessary documentation, and funding limits), the same basic framework for making loan guarantees applies to each.

- Each prospective borrower works with a lender to obtain a loan for a project eligible under one of the four programs, providing the lender with necessary information on the borrower and the project.
- Each lender evaluates borrower and project eligibility and performs a detailed credit analysis and, as applicable, an economic or financial analysis of the project to ensure that the project will be able to repay the loan.
- Each lender submits the guaranteed loan application, including its credit analysis, and all accompanying documentation to the Agency for review and approval.
- The Agency reviews each guaranteed loan application package in accordance with program requirements and approves or denies the guarantee. Subject to the availability of funds, each approved package is provided a loan guarantee.
- Each lender is responsible for the origination and servicing of its guaranteed loan portfolio and for working with the Agency, as necessary, to resolve borrower issues (such as default).

Variations do occur in this basic framework, but for the most part are not as significant as the scope of each of the programs.

Issues With the Current Programs

The regulations that are being combined under the proposed rule have developed over time and, in some aspects, independently of each other. Issues have developed when looking at all four program regulations as a whole as well as individually. Four of these operational issues are discussed below.

Inefficiencies. Many of the same lenders and, in some cases, borrowers, seek loan guarantees under more than one of these four programs. Thus, the same entities are required to learn multiple programs. This is inefficient and costly to the lenders and makes the programs less attractive to lenders.

Currently, when new programs are implemented, a whole new regulation is developed that, in many respects, addresses or adopts many of the same requirements. Time and effort are wasted in readdressing issues during the development of new program regulations leading to inefficient rulemaking and a delay in program implementation.

Inflexibility. Maintaining four separate sets of basic requirements creates certain inflexibilities. For example, with each program administered under separate regulations, any change to basic requirements calls for multiple concurrences. Similarly, adding a new program requires the addition of a new set of basic requirements, as these are not currently shared. The proposed combined platform will streamline basic loan guarantee requirements, allowing all programs to reach a uniform functionality of process.

Use of Agency Resources. Agency personnel spend a large amount of time performing process-related tasks that are not necessarily productive in making loan guarantees available to more lenders and, in turn, to more borrowers. These tasks are often inefficient and could be better managed by the private sector at the lender level. Further, these tasks are applied equally regardless of the relative level of risk of the associated loans. In sum, the current delivery of these four programs is not making the best use of Agency resources.

Risk Management. In making and managing a portfolio of loan guarantees, consideration must be given to project risk, institutional risk, Agency loss exposure, and internal operational risk.

Project risk refers to the ability of a project to repay its debt. The current process relies on the lender's evaluation of the project and then the Agency's review of the lender's analysis. The types of information required to be assessed under each of the programs by the lender may vary. Currently, the Agency lacks definitive parameters to evaluate project risk and is inconsistent in its evaluation of risk across State Offices.

The lack of definitive parameters inherently creates more risk. It allows projects to be funded based on completed processes as opposed to appropriate evaluation. Furthermore, this funding may come at the expense of less risky projects over time because of limitations of available funds. The proposed unified platform will significantly reduce inconsistencies in the implementation of these four programs across State offices and improve underwriting for loan guarantees, which should result in a reduction in risk and an improvement in the credit subsidy scores for these programs.

Institutional risk refers to the quality of the lender seeking the loan guarantee. Some lenders simply do a better job at managing their portfolios and thereby have a lower rate of defaults. The current system does little to pre-qualify lenders; that is, the criteria for a lender to originate a loan with the Agency are insufficient. By implementing a defined set of criteria to assess lender performance, the Agency can improve its management of lenders participating in these programs.

Agency loss exposure refers to the Agency's risk for potential loss in any one project in terms of the percent of guarantee and the size of the loan. Currently, Agency loss exposure is managed by putting limits on the percent of guarantee relative to the size of the loan, by having collateral requirements, and, for some of the programs, by limiting the size of the loan. While these limits are the primary mechanism for managing Agency loss exposure, the current programs could do more to manage this risk.

Agency operational risk refers to internal weaknesses inherent in administering multiple programs using a variety of regulations that require unique sets of processes and procedures. The new platform will reduce operational risk through reliance on commonalities, reduction of regulatory language, and integration of information management systems.

C. The New Platform

As noted above, Rural Development manages multiple guaranteed loan programs in separate regulations requiring users to become familiar with each. These regulations share many common elements. The inefficiencies in maintaining separate regulations have resulted in an in-depth evaluation of current program delivery. Further, in assessing the delivery of these programs, Rural Development sees the opportunity to better manage the risks associated with their delivery.

The proposed new platform simplifies, improves, and enhances the delivery of Rural Development's guaranteed loan programs, applies shared requirements when applicable, maintains programmatic nuances for varying rural development needs, and intends to reduce the amount of Agency loss claims paid through the provision of loan guarantees through improved underwriting. This new structure will also make it easier and faster to promulgate regulations for new loan guarantee programs in the future.

The following paragraphs address improvements under the proposed platform. These improvements provide the requisite flexibility to accommodate additional or new programs and enable the Agency to better manage its risk.

1. *Increase efficiency.* Having a common rule for multiple programs will reduce burden for the Rural Development staff, lenders, and borrowers, easing delivery and

increasing efficiency. A common platform will be easier to administer, improve communication of basic program aspects, and reduce end user confusion.

Internally, a common regulation will reduce the time, effort, and training necessary to guarantee a loan. Externally, a common regulation will reduce the lender's and borrower's cost by providing simpler and more consistent program requirements.

Further efficiencies will be realized as common program elements facilitate consolidation of information technology platforms and systems' maintenance cost. Internal management controls will improve with standardized servicing and oversight. Common elements will assist lenders in managing a diverse portfolio and meeting Federal requirements. Uniform processes will facilitate electronic commerce between Rural Development and its customers.

2. *Flexibility.* The structure of the new platform provides for the addition of other Agency, or newly authorized, guaranteed loan programs as needed without the addition of new sets of basic requirements. The common elements (proposed subpart A) of the proposed rule are intended to remain unchanged, while additional programs would be added to proposed subpart B.

3. *Refocus of Agency resources.* The new platform directs Agency resources away from a processing centric model toward a rural development model by emphasizing lender expertise, refocusing time spent on process to time spent with clients, and increasing access by eliminating regulatory redundancy.

4. *Reduce risk.* In developing the proposed new platform, the key consideration was how to implement it in a manner that reduces the overall risk that a loan would not be repaid. The Agency considered the risk associated with making and managing a portfolio of guaranteed loans in developing the new platform. How these risks are addressed in the proposed new platform is covered in the following section.

D. How the New Platform Works

Under the proposed platform, the common features of the four programs are incorporated into a single subpart (subpart A), with program specific features provided in a separate subpart (subpart B). While each of the four existing programs remains, the way these four programs will be delivered to Rural Development's customers is different. In delivering the proposed platform, the Agency will also publish **Federal Register** notices containing specific information associated with the guaranteed loan program.

The following paragraphs address the new platform by examining the proposed delivery mechanisms, concluding with a discussion of the **Federal Register** notices that will be used as part of the implementation of the new platform.

1. *Eligibility.* Under the new platform, three basic types of eligibility are identified—project eligibility, borrower eligibility, and lender eligibility.

Project eligibility is based on the proposed project being for the benefit of a rural area, on the ability of the activity to be funded to meet the requirements of the applicable program, on meeting a minimum set of project criteria, and, when applicable, on the boundaries of the proposed service area meeting a non-discrimination criterion. Projects that do not meet these proposed criteria would be ineligible under the new program. In addition, these criteria can not be voided under the exception authority provided in the proposed rule.

The applicable project eligibility requirements, located in proposed subpart B, remain essentially unchanged for those of the four current programs. Some differences are being proposed and these are discussed in sections II. and III. of this preamble. One important difference is that the proposed platform uses three minimum project financial conditions, which are specifically discussed, in detail, in section II.B. of this preamble, to reduce project risk by screening out those projects less likely to achieve a level of success that will support loan repayment. These three financial conditions establish minimum requirements for debt coverage ratio, cash equity or community support, and loan-to-value ratio. While the four existing programs address cash equity and community support, they do not have requirements associated with debt coverage ratios and loan-to-value ratios. By specifying these project financial conditions within the rule, borrowers and lenders will be able to determine a project's eligibility for a loan guarantee early in the process.

In addition to identifying eligible projects, the proposed rule identifies specific projects and purposes that are ineligible under all circumstances from receiving a loan guarantee. The Agency assembled this list mainly from the list of ineligible projects and purposes identified in the regulations for the four current programs.

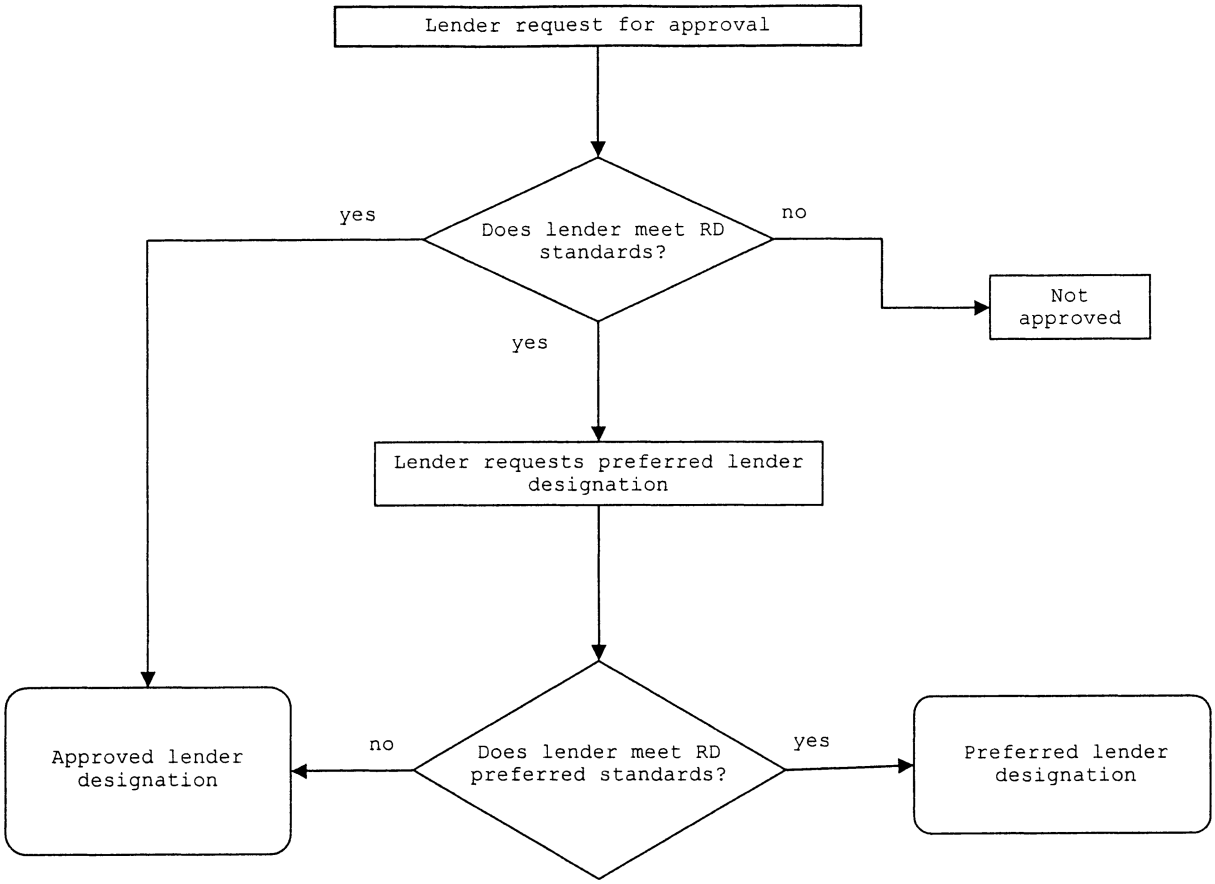
Borrower eligibility is based on the borrower meeting two common requirements, which are citizenship and legal authority and responsibility, and program-specific criteria, which are contained in proposed subpart B. The proposed rule also identifies borrowers who would be categorically ineligible. In terms of eligible and ineligible entities, little has changed under the new platform compared to the four current programs.

Lender eligibility is based on criteria dependent on whether or not the lender is a regulated or supervised lender. A lender, who is not otherwise debarred or suspended by the Federal government, must be approved, as described below, by the Agency to participate in this program. As part of the approval process, the Agency may consider the experience and capabilities of the lender to properly originate and service the variety of guaranteed loans available within the Agency. If the Agency disapproves a lender for participation, the lender has the right to appeal that decision. In addition, all participating lenders will be reviewed for eligibility at least every two years.

Although the B&I guaranteed loan program has a process for ''other lenders'' to participate in the current B&I guaranteed loan program, the process for an eligible lender to participate in the proposed platform is generally new compared to the four current programs. Figure 1 illustrates the basic process for lender approval under the proposed platform, with the following paragraphs describing this process.

Any lender that is a regulated or supervised lender is eligible to participate in the guaranteed loan programs described in proposed subpart B. If a regulated or supervised lender has an existing portfolio with the Agency, it is considered to be ''approved'' for participation and would not be required to submit an application to the Agency for approval to participate. However, the lender would be required to submit certification to the Agency that it is in ''good standing'' with its regulator. If a regulated or supervised lender does not have an existing portfolio with the Agency, it must submit an application for lender approval to the Rural Development State Office in the State in which the lender is chartered. The State Office will review the application and make a decision to approve or disapprove the lender for participation in this program. State Office approval of the lender will extend to all States and all programs covered by this part. If disapproved, the lender will have the right to appeal the decision to the National Appeals Division. To be approved, a regulated or supervised lender must be in good standing with its regulator(s).

Figure 1. Lender Approval



As proposed, all regulated or supervised lenders would be required to submit to the Agency a copy of their current written policies and procedures for originating and servicing guaranteed loans. This is not currently required under any of the four current programs.

If the lender is not a regulated or supervised lender, it must submit an application to the Rural Development State Office in the State in which the lender is chartered for approval for participation. The application will address a number of criteria that the Agency will consider in approving or disapproving the lender (see section II.B. for more detail on these criteria). The State Office will review the application and submit it, along with its comments, to the National Office for review. The National Office will make the determination as to whether to approve the lender for participation. If the National Office approves the lender, that approval will apply to all States for all programs covered by this part. If disapproved by the National Office, the lender will have the right to appeal the decision to the National Appeals Division.

The process described above is intended to help the Agency ensure that only qualified lenders participate in this program, and thereby mitigate institutional risk by encouraging the participation of better qualified and performing lenders.

2. *Preferred Lender versus Approved Lender.* An important aspect for managing institutional risk under the new platform is the ability of an approved lender to apply for preferred lender status (see Figure 1 above and § 5001.9(c) of the proposed rule). Currently, only the B&I guaranteed loan program has provisions for a preferred lender program, although there has been no material participation in it to date.

Under the proposed program, there are several benefits for being a preferred lender. Preferred lenders would have more opportunities to submit applications for guarantee with less supporting documentation, would be subject to fewer Agency visits, and would be eligible to receive higher percent guarantees than lenders without preferred status. In addition, the Agency may expend fewer resources evaluating preferred lender loan guarantee applications and reallocate resources to better manage risk and encourage program participation.

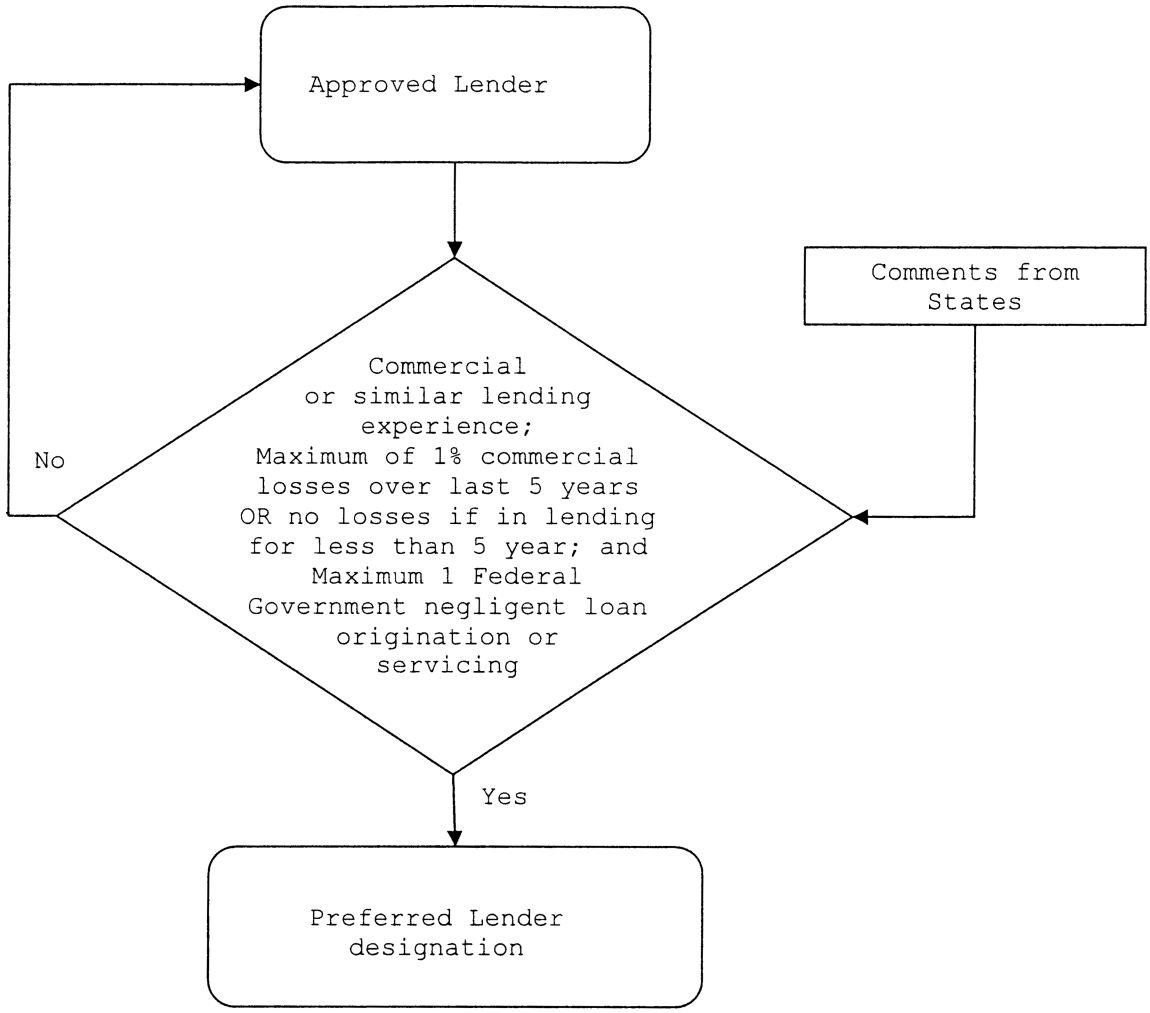
To receive preferred lender status, a Rural Development approved lender would submit an application for preferred lender status to the State Office in the State in which the lender is chartered. The State Office would then forward the application and its comments to the National Office for review and decision.

The criteria proposed for obtaining preferred lender status (see Figure 2) address the qualifications of the lender for loans of similar nature and the quality of the lender in managing its loan portfolio by examining its commercial loan losses and any instances of Federal negligent loan origination or servicing. The Agency will also consider any comments submitted by State Offices when evaluating these applications. National Office approval will apply to all States.

3. *Guaranteed loan approval.* Under the four current programs, the Agency views proper loan origination as a responsibility of the lender. The new platform clarifies this responsibility by

reinforcing the concept of negligent loan origination. To help lenders understand the importance of conducting proper credit analysis and sound loan origination, the new platform will clarify the Agency's policy regarding negligence in the origination and servicing of loans. In the case where the lender is the holder of the guarantee, losses associated with the lender's negligence will be deducted from the loss claims paid under the guarantee. In the case where there is a subsequent holder, losses associated with the lender's negligence will not be deducted from the loss payment under the guarantee. However, in such cases, loss claims paid under the guaranteed will be collected from the lender. The Agency anticipates that the clarification for negligent loan origination will reduce loan defaults through improved loan origination.

Figure 2. Preferred Lender Designation Criteria



Under the new platform, Rural Development has standardized, to the extent possible, the type of information to be included in the loan guarantee application, although some additional content information is required by some of the programs described in subpart B. In general, the information associated with a loan guarantee application is not significantly different than currently required under the four current programs.

The main difference in the application for loan guarantee under the new platform will be the amount of supporting documentation that is required to be submitted with or accompany the application for certain projects. If criteria are met as described below, the lender will have the option of submitting a ''low documentation'' application, which would allow the lender to self-certify that it has complied with certain Agency requirements. (See section II.B. for more information.) The Agency expects the lender to obtain the same level of documentation and to perform the same level of analysis and other origination activities whether the lender submits a full documentation application or a low documentation application.

The determination of whether a low documentation application can be submitted will depend on the borrower's status as a startup or existing business, on whether the lender has preferred lender status, and on certain project criteria.

As proposed, all loan guarantee applications for startup businesses must be submitted with full documentation (see section II.B. for details) given the risk associated with startup businesses.

For existing businesses, the proposed rule would allow Rural Development approved lenders with preferred lender status to submit applications with either low or full documentation if the loan guarantee request is for $5 million or less. For a larger loan guarantee request, a full documentation application would be required. These provisions apply to all four programs under the proposed platform.

For Rural Development approved lenders that do not have preferred lender status, all applications would have to be submitted with full documentation unless the project meets certain criteria, as discussed in section II.B., intended to lower the risk associated with the project. If the project meets the lower risk identification criteria, the Rural Development approved lender without preferred status would be allowed to submit a low documentation application.

The Agency will examine the lender's analysis of the project, the technical merit, any business plans or feasibility studies required, and environmental information. If the Agency disapproves the application, the lender and borrower have the right to appeal the decision.

4. *Servicing.* Once the loan has been approved, the lender will continue to be responsible for servicing the entire loan. The lender's servicing responsibilities, including those regarding negligent servicing, under the proposed unified platform are essentially the same as under the four existing regulations.

5. *Oversight and Monitoring.* As under the four current programs, the Agency will conduct under the proposed new platform any and all oversight and monitoring activities necessary to ensure that lenders are originating and servicing Agency guaranteed loans in a manner consistent with lender and Agency standards. These tools include, but are not limited to, conducting lender visits and meetings and requiring various reports and notifications. There are a few differences between the proposed platform and the four current programs for conducting these activities. These differences are discussed later in this preamble.

The Agency will also use this oversight and monitoring to ensure that lenders maintain the qualification criteria for being a Rural Development approved lender and, where applicable, for being a preferred lender.

6. *Managing Risk.* As noted above, the Agency has incorporated into the proposed new platform certain features to help manage risk.

To limit loss exposure, the Agency will require full supporting documentation on all applications for projects from startup businesses and from existing businesses unless, for existing businesses, the project is a ''lower risk'' project as defined by the criteria in the proposed rule. Applications for projects that meet these criteria may be submitted with less supporting documentation (i.e., a low documentation application).

The Agency will mitigate the possibility of increased loss exposure associated with low documentation applications as the discussed below.

- The loan amount that will be guaranteed under a low documentation application would be limited to $5 million. In other words, all loan requests for more than this amount must be submitted as full documentation applications. This applies across all four programs under the new platform. Setting a maximum value for which a low documentation application can be submitted will provide the Agency the ability to better monitor loans that represent greater potential liability.
- If the low documentation application is from a lender who does not have preferred status, the maximum percent guarantee that the Agency will consider for that loan is 10 percentage points lower than for a full documentation application. Reducing the maximum percent guarantee available will mitigate Agency loss exposure. In consideration of the additional criteria necessary to become a preferred lender, the Agency has determined that the risk mitigation obtained by applying the preferred lender criteria offsets the risk mitigation obtained by reducing the guarantee. Therefore, the Agency is proposing to not apply this reduction in the maximum guarantee available to a preferred lender.
- If the low documentation application if from a lender who does not have preferred status, the proposed rule requires additional financial criteria in order to qualify the project for a low documentation application. Requiring projects to meet additional financial criteria will mitigate project risk.

To limit project risk, the new platform requires projects to meet a minimum set of project financial criteria to prevent high risk projects from being proposed at all. In addition, in order to avoid bypassing project eligibility criteria, the Agency is proposing that exception authority not be extended to any project eligibility criterion, including the project financial criteria.

To limit institutional risk, the new platform requires lenders to meet criteria that help ensure the lender has the appropriate origination and servicing experience and track record to reduce the likelihood of loan defaults. The Agency is proposing different criteria for regulated and supervised lenders as opposed to those that are unregulated and not supervised. Further, by providing a preferred status designation, the Agency is hoping to attract more qualified lenders to the programs.

Finally, to limit operational risk, the new platform relies on commonalities, reduction of regulatory language, and integration of information management systems. The use of electronic reporting and standardized forms also allows the Agency to better manage its portfolio of outstanding guaranteed loans.

7. **Federal Register** notices. To implement the new platform, the Agency will publish at least one **Federal Register** notice each year. Each notice will address the following items as necessary:

- *Ineligible projects and purposes.* If the Agency has identified any additional projects or purposes for which guaranteed loans will not be made, it will include such ineligible projects and purposes in the **Federal Register** notice. If there are no new ineligible projects or purposes have been identified, the notice would include a statement to that effect.
- *Maximum loan amounts.* The Agency will identify in the **Federal Register** notice the maximum loan amount per loan that will be available under each of the programs.
- *Fees.* If any are required, the Agency will identify in the **Federal Register** notice the guarantee fee and the renewal fee that will be used for that year in the calculation of the guarantee fee and the renewal fee for each program. In addition, for the B&I guaranteed loan program, the Agency will specify in the **Federal Register** notice the limit on the maximum portion of the guarantee authority available for that fiscal year that may be used to guarantee loans with the reduced guarantee fee of 1 percent.
- *Priority Scoring.* For the B&I guaranteed loan program, the Agency will identify the scoring criteria that will be used, if necessary, to allocate funds if funds are insufficient to cover all applications within the program. The Agency will manage the Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan program funds in the same manner.

II. Discussion of Proposed Rule

In this section, the proposed rule is described. First, an overall organization of the proposed rule is presented,

followed by a section-by-section discussion of each part.

A. Overall Organization of the Rule

The proposed rule is divided into two main parts. The first part, subpart A, contains the provisions that apply to all of the guaranteed loan programs covered by the proposed rule. The second part, subpart B, contains the provisions specific to the four programs identified earlier in this preamble.

Subpart A. Subpart A is divided into five major elements. In the first element are *general provisions* that cover the purpose of this part (§ 5001.1), the definitions and abbreviations used in this part (§ 5001.2), various Agency authorities associated with providing guaranteed loans (§ 5001.3), oversight and monitoring (§ 5001.4), and forms, regulations, and instructions (§ 5001.5).

The second element covers the basic *eligibility requirements* for the project (§ 5001.6) and unauthorized projects and purposes (§ 5001.7), for the borrower (§ 5001.8), and for the lender, including how a lender can be approved for preferred status, (§ 5001.9).

The third element covers the basic requirements associated with the *guaranteed loan application,* describing the process for submitting an application and its approval (§ 5001.11) and the contents of the application (§ 5001.12).

The fourth element covers the *responsibilities of the lender and the borrower.* Section 5001.15 covers general responsibilities of the lender. Lender responsibilities for originating the loan are covered by § 5001.16 and for servicing the loan by § 5001.17. Responsibilities of the borrower are found in § 5001.25.

The fifth element covers basic *provisions associated with the guarantee, including parameters for the guaranteed loan.* General guarantee provisions are found in § 5001.30, with guaranteed loan parameters (e.g., interest rates, term length, maximum percent guarantee, etc.) found in § 5001.31. The remaining sections in the fifth element address the process for obtaining the guarantee through changes in the guarantee and concluding with termination of the guarantee.

Subpart B. This subpart addresses provisions that are specific to the individual programs. Section 5001.101 covers provisions specific to the Community Facilities Program, § 5001.102 covers provisions specific to the Water and Waste Disposal Facilities Program, § 5001.103 covers provisions specific to the Business and Industry Program, and § 5001.104 covers provisions specific to the Renewable Energy Systems and Energy Efficiency Improvements Program.

Within each of these four sections, the specific provisions are related back to a corresponding section in subpart A. For example, each of the four sections has subsections that address project eligibility. Another example is additional application documentation requirements. The intent of subpart B is to identify all of the provisions specific to each of the four programs. In this way, each of the four programs maintains their integrity under the new platform.

B. Discussion of Sections

Purpose (§ 5001.1)

This section defines the purpose of this part.

Definitions and Abbreviations (§ 5001.2)

This section presents the definitions and abbreviations used in this part, including terms that may be specific to one of the four programs found in subpart B.

The proposed rule contains fewer definitions than found in the four existing regulations, primarily because the deleted terms are no longer used in the proposed rule. Some definitions have been added or revised, including, but not limited to: Essential community facility, negligent loan origination, negligent loan servicing, rural or rural areas, and water and waste disposal project.

Agency Authorities (§ 5001.3)

Under this section, the proposed rulemaking identifies Exception Authority and Appeal Rights.

Exception authority. This paragraph identifies the situations under which the Administrator may make exceptions to the requirements contained in the regulation. The exceptions will be made on a case-by-case basis.

Unlike the four current regulations, the proposed rule identifies four exceptions to this Exception Authority, where the Administrator would not be allowed to make exceptions. These four exceptions are:

- Applicant and borrower eligibility, including both prospective borrowers and lenders.
- Project eligibility, as found in proposed § 5001.6 and the individual program in subpart B.
- Rural area definition, as found in proposed § 5001.2.
- Maximum term length of a guaranteed loan, as found in proposed § 5001.31(c).

The Agency believes that applicant/borrower and project eligibility criteria must be maintained at all times in order to maintain an acceptable level of risk associated with guaranteed loans made under this part. The Agency also believes that it is important to maintain the definition of rural area at all times in order to ensure that loans guaranteed under this program are used to benefit rural areas. Lastly, the Agency believes that it is important to ensure a reasonable period of payback on guaranteed loans in order to manage its portfolio of outstanding loans and, therefore, is proposing not to allow exceptions to the maximum term length of a guaranteed loan. For these reasons, the Agency is proposing that the Administrator not be allowed to exempt a project from any of these four criteria.

Appeal rights. As provided by the four current programs, this paragraph provides the legal basis for a person to file an appeal of an adverse decision made by the Agency in implementing the proposed program. Such adverse decisions include, but are not limited to: (1) disapproving a lender for participation in the program, (2) disapproving an approved lender for preferred lender status, and (3) denying an application for a loan guarantee for reasons other than a lack of funds. When the Agency makes an adverse decision, a person may file an appeal with either the appropriate Agency official that oversees the program or with the National Appeals Division. Some negative determinations may affect a holder, in which case this paragraph provides the holder the legal right to file an appeal.

Oversight and Monitoring (§ 5001.4)

This section of the rule lays out the types of oversight and monitoring the Agency will perform in implementing this program. Consistent with the four current programs, these activities include, but are not necessarily limited to, reviewing lender records and meeting with the lenders to review the status of their guaranteed loans. The purposes of these oversight and monitoring activities are to: (1) Ensure that the lender has implemented, and is in compliance with, the provisions of this part and (2) determine if the lender is maintaining the appropriate requirements to maintain their status as a Rural Development approved lender and, if applicable, a preferred lender. The amount of oversight and monitoring will vary depending on whether the Rural Development approved lender has preferred lender status or not.

Reports. The proposed rule would require each lender to submit periodic reports to the Agency on the condition of its Agency guaranteed loan portfolio. These reports include borrower status,

loan classification, and any material changes in the general financial condition of the lender since the last periodic report was submitted. For loans that are not in default, these reports would be submitted semiannually, as is the practice in the four current programs.

The Agency considered requiring these reports on a monthly basis. This shorter duration provides the Agency with the more current information on the lenders' portfolio status, which would allow the Agency more ''up-to-date'' information to evaluate its loss exposure. The Agency, however, believes that the benefit of having this more ''up-to-date'' information did not outweigh the costs associated with generating this information on a monthly basis using current Agency technology. The Agency also considered annual submittal of these reports, but rejected this option because it does not provide for a timely assessment of the Agency's loss exposure of all its guaranteed loans.

For loans that go into or are in default, the proposed program would require default status reports to be provided on a monthly basis, regardless of the guaranteed loan amortization schedule, until such time the loan is no longer in default. This reporting frequency, which is shorter than found in the four current programs, helps the Agency focus its resources on problem loans sooner and with more frequency, thereby helping to mitigate the risk associated with such loans.

Notifications. The Agency is proposing that the lender notify it within 5 days when the borrower has violated any terms of the loan agreement (including if the borrower has missed a scheduled payment by more than 30 days) and when there has been any permanent reduction in the interest rate. The Agency is seeking these notifications to further allow the Agency to better manage its loss exposure in such instances that could affect repayment of the loan. Because both situations have substantial lead times, the Agency believes that 5 days is sufficient time for the lender to notify the Agency when either situation occurs.

All four programs currently require notification when there has been a permanent reduction in the interest rate, although they allow a 10-day notification period. Only the current Community Facility and Water and Waste Disposal Facilities guaranteed loan programs require lender notification when a borrower has violated any term of the loan agreement, and those programs currently allow a longer notification period (30 days versus 5 days under the proposed rule).

Forms, Regulations, and Instructions (§ 5001.5)

This section describes where the lender and borrower can obtain all of the forms, regulations, and instructions necessary to participate in this program. These are available from any Rural Development State Office of the Agency and from the Agency's Web site.

Project Eligibility (§ 5001.6)

In order for a project to receive a guaranteed loan under this program, it must be an ''eligible'' project. This section identifies four criteria that each project must meet in order to be eligible. For some projects, the fourth criterion is not applicable. In such cases, the project must meet each of the first three criteria in order to be eligible.

Loan guarantee applications for projects that meet these criteria are not automatically approved. Instead, any project that fails to meet any one of these criteria are automatically ineligible for consideration for a loan guarantee, regardless of the other attributes of the project.

Benefit a rural area. The first criterion (§ 5001.6(a)) addresses the purpose of the project—the project must be for the benefit of a rural area. This criterion is generally consistent with what the four current programs, but, unless otherwise specified in subpart B, does not require the project to be physically located within a rural area.

Eligible project. The second criterion (§ 5001.6(b)) addresses the requirement that the project must meet the criteria specified in the applicable program identified in subpart B of the proposed rule. For example, if a project is for an anaerobic digester, it must meet the eligibility requirements specified in proposed § 5001.104 for renewable energy projects. If a project is for a community meeting hall, it must meet the eligibility requirements specified in proposed § 5001.101 for community facility projects. Generally, the same project criteria found in the four current programs have been carried over to subpart B of the proposed rule.

Financial conditions. The third criterion (§ 5001.6(c)) addresses three financial conditions that the project must meet. The conditions are: (1) Be able to demonstrate a debt coverage ratio of 1.0 or higher, (2) have a cash equity of 10 percent for existing businesses or 20 percent for new businesses or, for community facility guaranteed loans and water and waste disposal guaranteed loans only, be able to demonstrate community support, and (3) have a loan-to-value ratio of no more than 1.0.

As specified in subpart B, community facility guaranteed loans and water and waste disposal guaranteed loans may either satisfy the cash equity requirements noted above or demonstrate community support. However, as proposed, if a lender has stricter eligibility requirements, a project would be required to meet the lender's requirements. For example, if a lender requires a community facility project to meet a cash equity requirement of 30 percent, which is more stringent than the proposed rule, and the lender does not accept community support in lieu of cash equity, then the project would be required to meet the lender's cash equity requirement of 30 percent.

As noted earlier, these financial metric criteria represent minimum conditions that a project must meet in order to be considered for a loan guarantee. If a project does not meet any one of these criteria, it is automatically ineligible for a loan guarantee. If it meets these criteria, the project is not automatically guaranteed a loan guarantee. For example, based on the Agency's evaluation of the loan guarantee application and associated risks, the Agency may require more stringent financial ratios as a condition of approval.

The four current programs do not have specific minimum criteria that a project must pass in order to be eligible for a guaranteed loan. Instead, the four programs rely on an evaluation of equity, cash flow, and collateral as appropriate to assess the viability of projects to repay the loan.

There are no equivalent requirements in the four current programs regarding debt coverage ratios and loan-to-value ratios. With regard to the cash equity/community support requirement, this is similar or the same as to what is required under the current programs. For example, both the Community Facilities and Water and Waste Disposal guaranteed loan programs require that projects demonstrate community support. The Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan program currently requires demonstration of the adequacy of equity based on either 15 or 25 percent of eligible project costs. Under the B&I guaranteed loan program, tangible balance sheet equity (rather than cash equity) is used to assess the adequacy of equity, requiring 10 percent for existing businesses and 20 percent for new businesses.

Service area selection. The fourth criterion (§ 5001.6(d)) specifies that, for

projects that are determined by a service area, the proposed service area of the project must be chosen in a way that no user or area is excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This criterion, where applicable, is the same as found under the current regulations of the Community Facilities and the Water and Waste Disposal guaranteed loan programs.

To reiterate, a project must meet each one of the four project eligibility criteria, or each of the first three criteria if the fourth criterion is not applicable, in order to be eligible for a guaranteed loan under the proposed rule. Meeting only some of the criteria is insufficient to be eligible. These criteria would be applied to all projects seeking a loan guarantee under each program covered by the proposed rule and cannot be waived under the Exception Authority (§ 5001.3(a)).

The Agency is proposing the project financial conditions under the third criterion in order to manage project risk. The Agency is concerned that under the current programs, loans are being sought for projects that are ''too risky'' and, in some cases, such projects are being funded. This increases the potential for loan defaults and reduces funding for projects that are inherently less risky. The Agency believes that setting such project financial conditions will allow more projects with less risk to be funded.

The Agency selected these three project financial conditions because they represent the best metrics for initially evaluating the overall risk of any single project. The specific numerical values are those that the Agency believes are reasonable measures of risk. The Agency requests comments on the three project financial conditions of the third criterion (see section IV.A. of this preamble), and is specifically interested in receiving comments on the three project financial conditions selected and the values used.

Unauthorized Projects and Purposes (§ 5001.7)

This section of the proposed rule identifies the types of projects that are ineligible for loan guarantees under this program regardless of whether the project meets the conditions specified in subpart B and § 5001.6. These projects represent both an aggregation of projects already prohibited under the four programs being included in today's proposed rulemaking and the addition of projects that the Agency has determined represent significant risk based on past experience (e.g., golf courses).

The Agency has determined that certain recreational projects, such as golf courses, require a level of support or patronage beyond the local rural community that may be insufficient in order to sustain the project over the life of the loan. This determination by the Agency stems from the Agency's poor loss experience in providing loan guarantees in the past to recreational projects of this type. Other recreational facilities may exhibit the same characteristics that would lead to similar Agency losses. In order for the Agency to mitigate the increased risk associated with these types of projects, the Agency is proposing to make ineligible certain recreational projects as specified in § 5001.7(b).

As noted earlier in this preamble, the Agency will publish at least once per year a notice in the **Federal Register** to identify additional projects or purposes that the Agency has determined are ineligible for loan guarantees under this part.

Borrower Eligibility (§ 5001.8)

As for projects, in order for a prospective borrower to be eligible under this program, the borrower must also be an ''eligible'' borrower. This section identifies the eligibility requirements for prospective borrowers.

Prospective borrowers must meet the program-specific eligibility requirements found in subpart B for the program under which their project falls. These specific requirements are discussed later in this preamble.

This section also identifies two common borrower eligibility requirements that all prospective borrowers must meet, regardless of which program is applicable for their project. These two criteria address citizenship and legal authority and responsibility. These two criteria are in some of the four current regulations, but not in each.

To be eligible, a prospective borrower must either be a citizen of the United States (U.S.) or reside in the United States after legal admittance for permanent residence. If the prospective borrower is an entity other than an individual, the borrower must be at least 51 percent owned by persons who are U.S. citizens or are legally admitted permanent residents residing in the U.S.

In addition, the prospective borrower must have, or be able to obtain, the legal authority to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

This section also identifies ineligible borrowers (§ 5001.8(b)). A prospective borrower is ineligible if the borrower has an outstanding judgment obtained by the U.S. in a Federal Court is delinquent on the payment of Federal income taxes, is delinquent on Federal debt, or is debarred or suspended from receiving Federal assistance. These conditions are generally consistent with those found in the four current programs.

Lender Eligibility and Designation (§ 5001.9)

As proposed, all lenders must be approved by the Agency under the standards of this regulation in order to participate. If a lender is debarred or suspended by the Federal government, the lender would be ineligible to participate. As noted earlier in this preamble and as discussed later in section III.C., there are differences between the lender approval process under the proposed rule and under the four current programs.

Lender approval process. The Agency is proposing requirements to approve lenders in order to reduce institutional risk. There are some lenders that simply do a better job than others in originating and servicing their loans. The Agency is seeking, therefore, to reduce this institutional risk by setting lender requirements for participation, which in turn will lower the risk to the Agency's outstanding loan guarantees.

The proposed rules would use two different processes and requirements—one for lenders that are regulated or supervised and one for lenders that are not regulated or supervised.

As noted earlier in this preamble, any lender that is a regulated or supervised lender is eligible to participate in the guaranteed loan programs described in proposed subpart B. If a regulated or supervised lender has an existing portfolio with the Agency (see proposed § 5001.9(a)(1)(ii)), it is considered to be ''approved'' for participation and would not be required to submit an application to the Agency for approval to participate. However, the lender would be required to submit a certification to the Agency that it is in ''good standing'' with its regulator and a copy of its current written policies and procedures for origination and servicing guaranteed loans.

If a regulated or supervised lender does not have an existing portfolio with the Agency (see proposed § 5001.9(a)(1)(i)), it must submit an application for lender approval to the Rural Development State Office in the State in which the lender is chartered. Along with this application, the lender would submit a copy of its current written policies and procedures for origination and servicing guaranteed

loans. The Rural Development State Office will review the application and make a decision to approve or disapprove the lender for participation in this program. Rural Development State Office approval of the lender will extend to all States and all programs covered by this part. If disapproved, the lender will have the right to appeal the decision to the National Appeals Division. To be approved, a regulated or supervised lender must be in good standing with its regulator(s).

The criteria for approving a non-regulated or supervised lender are substantially more detailed (see proposed § 5001.9(b)). A non-supervised lender must have:

- a minimum net worth of $2.5 million,
- liquid assets of at least $500,000, and
- an Agency-approved line of credit that totals $5 million or more.

If a non-regulated or supervised lender can not meet each of the above three criteria, then the National Office will not approve the lender for participation in this program. If the lender meets each of the above three criteria, then the lender can submit an application for lender approval to the Rural Development State Office in the State in which it is chartered that presents additional information on the lender. This information addresses:

- Evidence showing that the lender has the necessary capital, resources, and funding capacity to successfully meet its requirements;
- Copies of any license, charter, or other evidence of legal authority to engage in the proposed loan making and servicing activities;
- Certification(s) of good standing from the States in which the lender intends to do business; and
- Satisfactory description of its lending history and experience.

If approved (by a Rural Development State Office for a regulated or supervised lender or by the National Office for a non-regulated or supervised lender), the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any State in which it is authorized to do business. In addition, approved lenders may submit an application for any of the four programs identified in subpart B.

Finally, a Rural Development approved lender retains approved status for as long as the lender maintains the minimum requirements for approval. For regulated or supervised lenders, this means for as long as the lender remains in good standing with its regulator and as long as it meets the Agency requirements under this regulation or until otherwise notified by the Agency. For non-regulated or supervised lenders, this means for as long as the lender meets or exceeds the minimum Agency requirements specified and remains in good standing with the States in which they intend to conduct business.

Preferred lender designation. A lender that has been approved as described above for participation is referred to as a ''Rural Development approved lender'' in the proposed rule. Under the proposed rule, a Rural Development approved lender may apply for preferred lender status.

To become a preferred lender under the proposed rule, a Rural Development approved lender would submit an application for preferred lender status to the Agency in the State in which it is chartered or domiciled. The Rural Development State Office would review the application, comment on it, and then forward the application and its comments to the National Office for review and decision. If approved by the National Office, the lender will be afforded preferred lender status, which will be applicable in each State. If disapproved, the lender would be able to appeal the decision.

The criteria that the Agency will use to make in determining whether to approve an application for preferred lender status are:

- The lender's current level of experience in commercial lending, government guaranteed commercial lending, financing, or other activity under similar loan programs;
- Having had no annual losses of greater than 1 percent of its outstanding commercial loan portfolio if the lender has been making commercial loans for 5 years or more or, no losses for the length or time the lender has been making commercial loans, if the lender has been making commercial loans for less than 5 years; and
- Having no more than one instance of Federal government negligent loan origination or servicing.

By including a preferred lender status, the Agency is seeking to encourage more participation by higher qualified lenders in this program. This would reduce institutional risk, which in turn reduces the risk to the Agency's portfolio of outstanding loan guarantees. While Rural Development approved lenders with referred lender status would still be required to meet the same origination and servicing requirements as Rural Development approved lenders who do not have preferred lender status, lenders with preferred lender status would, as noted earlier in this preamble, have a reduced loan guarantee application burden for certain projects, would be subject to fewer Agency visits, and would be able to apply for higher loan guarantees for certain projects.

Guarantee Application Process (§ 5001.11)

To begin the application process, an approved lender may submit either a preapplication or a guarantee application. In the evaluation of the application, the Agency may require the lender to obtain additional assistance in those areas where the lender does not have the requisite expertise to originate or service the loan.

The Agency is providing the preapplication option, which is not found in all of the four current programs, to allow lenders and borrowers a lower cost alternative to obtain Agency input on the proposed project before spending the time and effort assembling the guarantee application.

If a lender submits a preapplication, the Agency will review the information in it and make an informal assessment of the project's and prospective borrower's eligibilities. The Agency will provide the lender with a written assessment of its findings, including the strengths and weaknesses of the project and borrower. It is important to note that the Agency's findings may change as more information on the project and borrower is made available. It is also important to note that the Agency's findings are solely advisory in nature and does not obligate the Agency to approve a guarantee if a guarantee application is subsequently submitted. Finally, the Agency's findings are considered neither a favorable or adverse decision and are thus not appealable.

Guarantee Application Content (§ 5001.12)

This section of the proposed rule identifies the content of the application for guarantee. As proposed, the supporting documentation that must be submitted with the application for the guarantee varies, requiring either all of the supporting documentation (referred herein as a ''full documentation'' guarantee application) or some supporting documentation with certification to the remaining documentation (referred herein as a ''low documentation'' guarantee application). The contents of a full documentation application are generally the same as being requested by the four current programs. The main difference is found under the low documentation application, which is discussed in

section III.B. of this preamble. As noted earlier in the preamble, the Agency expects the lender to perform the same level of analysis and other origination activities whether the lender submits a full documentation application or a low documentation application.

Full documentation guarantee application. These applications must contain the following:

(1) Agency-approved application forms;

(2) Lender's analysis and credit evaluation (conforming to § 5001.16(b));

(3) Environmental information;

(4) Technical reports and energy audits (see subpart B);

(5) A copy of Form 10-K, ''Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934,'' for companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations;

(6) Proposed loan agreement between the lender and borrower;

(7) Energy assessments (see subpart B);

(8) Appraisals;

(9) Business plan (only if the information is not already provided in the feasibility study);

(10) Feasibility study (see subpart B);

(11) If the application is for 5 or more residential units or for for-profit nursing homes or assisted-living centers, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3);

(12) Preliminary engineering report (as specified in subpart B);

(13) Current credit reports or equivalent on the prospective borrower and any other person liable for the debt, except for public bodies; and

(14) If the guaranteed loan is $1 million or more, the most recent audited financial statements of the borrower or, if the guaranteed loan is less than $1 million, the most recent audited or unaudited financial statements of the borrower.

Low documentation guarantee applications. These applications must contain the following:

(1) Agency-approved application forms;

(2) Lender's analysis and credit evaluation (conforming to § 5001.16(b));

(3) Environmental information;

(4) Technical reports and energy audits (see subpart B);

(5) A copy of Form 10-K, ''Annual Report Pursuant to Section 13 or 15D of the Act of 1934,'' for companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations;

(6) Proposed loan agreement between the lender and borrower;

(7) Certification to (as applicable):

- Energy assessment;
- Appraisals;
- Business plan;
- Feasibility study;
- Affirmative Fair Marketing Housing plan;
- Preliminary engineering report;
- Current credit reports; and
- Audited or unaudited financial statements.

For a low documentation application, the certifications required indicate that the lender possesses and has reviewed the information to which it is certifying. In addition, the lender submitting a low documentation application must also certify that it has identified and reported to the Agency any significant risks that would jeopardize the repayment of the loan.

A lender who is not yet a Rural Development approved lender may submit a guarantee application provided the lender submits with the application the lender application for approval and, if necessary, the application for preferred lender status. In this scenario, the review of the guarantee application will be deferred until the lender application and, if applicable, preferred lender status application are approved.

Determination of documentation level. As stated above, the guarantee application may be submitted with full supporting documentation or with low supporting documentation. As proposed (see proposed § 5001.12(c)), the criteria for determining which level of supporting documentation is required depends on four factors:

- Whether the application is for a startup business or an existing business
- Whether the application is from a preferred lender or not;
- The size of the guarantee request; and
- The project's ability to meet certain metric criteria (similar to the floor metric criteria noted earlier).

If the guarantee application is for a startup business, it must always be submitted with the full supporting documentation regardless of the lender or project. The Agency believes this is appropriate to minimize the typically greater risk of projects associated with startup businesses.

If the guarantee application is for an existing business submitted by a Rural Development approved lender with preferred lender status, a full documentation application must always be submitted if the requested loan guarantee is greater than $5 million. If, however, the requested loan guarantee is for $5 million or less, a preferred lender has the option of submitting either a full documentation guarantee application or a low documentation guarantee application for the project.

If the guarantee application is for an existing business submitted by a Rural Development approved lender that does not have preferred lender status, a full documentation application must be submitted unless the project has:

- Debt coverage of 1.25 or higher;
- Cash equity of at least 25 percent of eligible project costs or community support as described in subpart B;
- A minimum FICO (Fair Isaac and Company) credit score of 680 or equivalent industry credit score for each individual who signs the promissory note or guarantees repayment of the loan;
- A loan-to-value ratio of no more than 0.8; and
- Loan guarantee portion of the loan at or below $5 million.

If the project meets each of the five criteria specified above, the Rural Development approved lender without preferred lender status has the option of submitting either a full documentation guarantee application or a low documentation guarantee application for the project. The purpose of the non-preferred lender criteria is to offset institutional and project risk by allowing non-preferred lenders to submit low documentation guarantee applications for lower risk projects. The Agency welcomes comments on this set of project criteria for determining when a low documentation guarantee application from a non-preferred lender can be submitted.

Lender Responsibilities—General (§ 5001.15)

This section spells out three basic responsibilities of the lender, which are generally consistent with lender's responsibilities under the four current programs.

First, the lender must make sure that the project for which it is submitting a guarantee application complies with all Federal, State, and local laws and regulations at the time the guarantee application is submitted and that affect the project, the borrower, or lender activities.

Second, the lender must provide full cooperation to the Agency and its representatives in all oversight and monitoring activities the Agency uses in implementing this program.

Third, the lender remains responsible for the origination and servicing of a loan guaranteed under this part regardless of any action or inaction by the Agency.

Lender Responsibilities—Origination (§ 5001.16)

This section lays out the basic responsibilities associated with originating a guarantee under this program. These responsibilities cover: A general requirement of conformity with this part and the lender's policies and procedures; credit evaluation; appraisals; personal and corporate guarantees; design requirements; monitoring requirements; compliance with other Federal laws; environmental responsibilities; and conflicts of interest.

General

Under the proposed rule, the lender is responsible for originating the loan in accordance with their current written policies and procedures and with the requirements of this part. Where a lender's current written policies and procedures address a corresponding requirement in this part, the lender would be required to comply with whichever is more stringent.

Compared to the four current programs, these requirements represent a departure by incorporating into the proposed rule reference to each lender's own policies and procedures for loan origination. The appropriate standards to be followed by each lender for loan origination will be based on the lender's own origination policies and procedures and those specified in the proposed rule, whichever is more stringent.

Credit Evaluation

The lender has the responsibility for conducting a credit evaluation of the project for which it is submitting the guarantee application. This credit evaluation must be consistent with Agency standards found in this part and with the lender's policies, procedures, and lending practices. Where a lender's current policy or procedure addresses a corresponding requirement in this part, the lender must comply with whichever is more stringent.

The proposed rule identifies what the Agency considers to be an acceptable credit evaluation. Specifically, the lender must use credit documentation procedures and an underwriting process that are consistent with generally accepted commercial lending practices, and the lender's own policies, procedures, and lending practices, and the lender must include an analysis of all credit factors associated with each guarantee application to ensure loan repayment.

In making this analysis, the proposed rule requires the lender to consider the following:

- *Credit worthiness.* This refers to those qualities that generally impel the prospective borrower to meet its obligations as demonstrated by its credit history.
- *Cash flow.* This refers to a prospective borrower's ability to produce sufficient cash to repay the loan as agreed.
- *Capital.* This refers to the financial resources that the prospective borrower currently has and those it is likely to have when payment is due. The prospective borrower must be adequately capitalized.
- *Collateral.* This refers to the assets pledged by the prospective borrower in support of the loan. Adequacy will be based on market value. For the purchase of cooperative stock, the lender must at least secure the loan with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal or corporate guarantee of the borrower.
- *Conditions.* This refers to the general business environment and status of the prospective borrower's industry.

The elements that lenders must include in their credit evaluation are essentially the same as currently required under the current programs. However, as noted for the general loan origination requirements, the credit evaluation requirements of the proposed rule represent a departure for the four current programs by incorporating into the proposed rule reference to each lender's own policies and procedures for credit evaluation. The appropriate standards to be followed by each lender for credit evaluation will be based on the lender's own loan origination policies and procedures and those specified in the proposed rule, whichever is more stringent.

Appraisals

The lender would be required to have real property collateral appraised in accordance with the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices to determine its value. All appraisals used to establish the fair market value of the real property would have to be no more than 1 year old, unless otherwise specified in subpart B. Because market value can be affected by environmental conditions, all appraisals would have to include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. This requirement is generally consistent with the conduct of appraisals under the four current programs.

Personal and Corporate Guarantees

Under the proposed rule, Agency-approved personal and corporate guarantees for the full term of the loan, and at least equal to the guarantor's percent interest in the borrower times the loan amount, would be required from those owning at least a 20 percent interest in the borrower, unless, as discussed in the next paragraph, the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. When warranted by an Agency assessment of potential financial risk, the Agency may also require Agency-approved guarantees from parent, subsidiaries, and affiliated companies owning less than a 20 percent interest in the borrower and require security for any guarantee provided under this section.

The proposed rule would allow exceptions to the requirement for personal guarantees. Such exemptions would have to be requested by the lender and concurred by the Agency approval official, and would be done on a case-by-case basis. In order to be considered for an exemption, the lender would have to document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

As proposed, guarantors would be required to execute an Agency-approved unconditional guarantee form. This provides the Agency with another resource to recover losses on loans that are defaulted. Unconditional personal and corporate guarantees obtained under this program would be part of the collateral for the loan, but would not be considered in determining whether a loan is adequately secured for loan making purposes.

Overall, the requirements for personal and corporate guarantees are generally consistent with those in the current B&I guaranteed loan program and, by incorporation, in the Renewable Energy Systems and Energy Efficiency Improvements program. The other two programs, however, do not currently use similar personal and corporate guarantee provisions.

Design Requirements

As under the four current programs, the lender would be required to ensure that all projects are designed utilizing accepted architectural and engineering practices. If the Agency comments on the design of the project, the lender would also be responsible for ensuring that the Agency's comments are taken into consideration when the facility is

being designed. The design and construction of the project must conform to applicable Federal, State, and local codes and requirements. Lastly, the lender would also be required to ensure that the planned project will be fully constructed, within the original budget, to facilitate completion of the loan purpose and will be suitable, once completed, for the borrower's needs in accordance with the borrower's loan application.

Monitoring Requirements

The lender would be required to monitor the progress of construction and ensure that construction conforms to applicable Federal, State, and local code requirements and proceeds in accordance with the approved plans, specifications, and contract documents. The lender would also be required to ensure that funds are used only for eligible project costs. If any problems develop during project development, the lender must expeditiously report them to the Agency. These requirements are consistent with the four current programs.

Compliance With Other Federal Laws

As required under the four current programs, lenders would be required to comply with other applicable Federal laws including Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

Environmental Responsibilities

As proposed, the lender has several responsibilities for overseeing the borrower with regard to environmental requirements. These responsibilities are generally consistent with those under the four current programs.

First, the lender must ensure that the prospective borrower has provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with subpart G of either 7 CFR part 1940 or 7 CFR part 1794, including the provision of all required Federal, State, and local permits.

Second, the lender must ensure that the prospective borrower has complied with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse environmental impacts of construction or operation of the facility financed with the guaranteed loan.

Third, the lender must ensure that the prospective borrower has not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If such actions or obligations have been incurred that would limit the range of alternatives, the project will be denied a guarantee.

Conflicts of Interest

The proposed rule, consistent with the four current programs, requires the lender to report to the Agency all appearances of conflicts of interest.

Lender Responsibilities—Servicing (§ 5001.17)

This section of the proposed rule lays out the lender's requirements for servicing guaranteed loans made under this part, which are generally consistent with lender's responsibilities under the four current programs. However, the Agency has made revisions in some servicing areas to incorporate industry standard practices.

General

Each lender is responsible for servicing the loan in accordance with the Lender's Agreement, the requirements specified within this regulation, and their current written policies and procedures for servicing loans. Where a lender's current written policies and procedures address a corresponding requirement in this regulation or in the Lender's agreement, the lender must comply with whichever is more stringent.

The lender must also ensure that the borrower has obtained all necessary insurance coverage appropriate to the proposed project. Such coverage is subject to Agency review and approval. In addition, the lender must ensure that the borrower maintains the necessary insurance coverage for the life of the loan.

Finally, the Agency may determine that the lender is not adequately protecting the rights of the lender or the Agency in its servicing of the loan. The Agency, therefore, reserves the right to take any legal action it determines necessary to protect the rights of the lender and the Agency with respect to the loan.

Compared to the four current programs, these requirements represent a departure by incorporating into the proposed rule reference to each lender's own policies and procedures for loan servicing. The appropriate standards to be followed by each lender for loan servicing will be based on the lender's own loan servicing policies and procedures and those specified in the proposed rule, whichever is more stringent.

Certification

For each guarantee loan application it submits to the Agency, the lender would be required to certify in the Lender's Agreement that it will service the guaranteed loan according to Agency requirements and the lender's current written servicing policies and procedures and that, where the lender's current written policies and procedures address corresponding requirements of this regulation, it will comply with whichever is more stringent. Such certification is not part of the policies of the four current programs.

When applicable, the lender will require an audit of the borrower in accordance with Office of Management and Budget requirements. This is consistent with the policies of the four current programs.

Collateral Inspection and Release

As proposed, the requirements for collateral inspection and release are generally consistent with the four current programs. Under the proposed rule, the lender would be required to inspect the collateral as often as necessary to properly service the loan.

The Agency may require the lender to obtain Agency approval prior to releasing any collateral. In addition, the Agency may, at its discretion, require an appraisal of the remaining collateral in cases in which the Agency determines that it may be adversely affected by the release of the collateral. If an appraisal is required, it will be at the expense of the borrower and must meet the requirements of proposed § 5001.16(c).

In all cases, the sale or release of collateral must be based on an arm's-length transaction.

Transfers and Assumptions

Under the proposed rule, the Agency is generally less involved in the processing of transfers and assumptions than under the four current programs. The proposed rule relies more on a lender's own policies and procedures for conducting transfers and assumptions.

General. Under the proposed rule, any time that a third party assumes a loan guaranteed under this part, it would be required to be processed and approved by the Agency as if it were a new loan guarantee. This is consistent with the four current programs.

Processing transfers and assumptions. Under the proposed rule, the lender is allowed to release the transferor (including any guarantor) from liability, regardless of the amount of the loan being transferred or assumed.

If a lender wants to change the terms of the loan, the lender would be

required to first obtain, in writing, Agency approval with the concurrence of the holder and transferor (including guarantor if it has not been released from personal liability). Any new loan terms would not be allowed to exceed those authorized in this part as measured from the date the loan was initially guaranteed.

In the case of a transfer and assumption of less than the outstanding balance, the lender (if holding the guaranteed portion) may file an estimated Report of Loss with respect to the difference.

Transfer fees. As under the four current programs, the Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency would set the amount of the transfer fee in an annual notice of funds availability.

Mergers

The Agency may withdraw the guarantee when a borrower participates in a merger, but the Agency is no longer requiring that it provide prior approval of the merger.

Subordination of Lien Position.

The Agency currently has the authority to allow lenders to subordinate under each of the four programs being addressed under the proposed rule. However, the Agency has rarely used this authority. As proposed, the consolidated rule would allow the Agency to continue to provide the Agency the ability to allow subordinations when it has determined that it is in the Federal government's financial interest. Before a subordination of the lender's lien position can occur, the lender would be required to first make the request for subordination of the lien position in writing to the Agency and receive Agency concurrence for the subordination. Agency concurrence would require that the Agency's financial interest will be enhanced, collateral will remain adequate to secure the loan, the lien to which the guaranteed loan is subordinated will be for a fixed dollar limit and that lien priorities remain for the portion of the loan that was not subordinated, and subordination to a revolving line of credit does not exceed 1 year.

Repurchases From Holder(s)

Under the proposed rule, the requirements associated with repurchases from holders, including repurchase by the lender and by the Agency, are generally consistent with those under the four current programs.

The holder may make written demand on the lender or the Agency to repurchase the unpaid guarantee portion of the loan under two situations. The first situation is in the case of borrower default. The second situation is the failure of the lender to pay the holder its pro-rata share. The lender or Agency may determine that repurchase of the loan from the holder is necessary to adequately service the loan. In this situation, the holder must sell the guaranteed portion to the lender or Agency, whichever made the request.

Repurchases by lender. The lender must respond to the holder's demand within 30 days and notify the Agency, in writing, of its decision, including notifying the Agency of all repurchases it makes. If the lender decides to repurchase the loan, the lender would be required to accept an assignment without recourse from the holder upon repurchase. As proposed, all repurchases would be for an amount equal to the unpaid principal balance of the guaranteed portion and accrued interest less the lender's servicing fee and must cover the principal and interest on the guaranteed loan accruing only up to 90 days after the date of the demand by the holder.

Repurchases by Agency. If the Agency repurchases the loan, the holder would be required to submit a specific written demand to the Agency, along with appropriate documentation. The Agency will be subrogated to all rights of the holder and, subject to satisfactory documentation, will purchase the unpaid principal balance and interest of the guaranteed portion to date of repurchase less the lender's servicing fee within 30 days after receipt of the demand. The lender would not be allowed to charge the Agency any fees unless provided for in the Assignment Guarantee Agreement. The lender would be required to use a form approved by the Agency to send the guaranteed loan payments to the Agency on all loans repurchased by the Agency from holders. Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee and does not waive any of the Agency's rights against the lender, borrower, or guarantor.

Additional Expenditures and Loans

As proposed and consistent with the four current programs, the lender would not be allowed to make additional expenditures or new loans to the borrower with an outstanding loan guaranteed under this part without first obtaining in writing Agency approval.

Lender Failure

In the event a lending institution fails, the applicable Administrator will provide instruction to the successor entity on a case-by-case basis. Such instructions may include that the Agency may determine to service the entire loan or the guaranteed portion of the loan. This provision is consistent with the four current programs.

Under the proposed rule, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan in the event no successor entity can be determined. The intent of this new provision is to permit the Agency to take over and/or service loans when a non-regulated or non-supervised lender does not have a successor entity appointed. With regulated or supervised lenders, State law usually provides a structure for the identification of a successor to a failed lender, but not necessarily for failed lenders who are not regulated or supervised. Thus, the Agency sees a need for this provision.

Delinquent Loans

Under the proposed rule, the lender would be required to service delinquent loans in accordance with the Lender's Agreement, its current servicing standards, and reasonable and prudent lending standards. This is consistent with the four current programs except that the proposed rule adds the requirement to service delinquent loans in accordance with the lender's own current servicing standards.

If a borrower is delinquent more than 30 days, the lender would be required to coordinate with the Agency and the borrower to implement appropriate curative actions to resolve the problem. Any curative action that affects the return to the holder would be required to receive the holder's concurrence. Any change in the repayment schedule would be limited to the remaining life of the collateral. Finally, any loan performing in accordance with a curative action will no longer be delinquent.

Protective Advances

Under the proposed rule and consistent with the four current programs, protective advances would be allowed only when they are necessary to preserve the value of the collateral and must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved. Protective advances would not be allowed to include attorneys' fees and advances in lieu of additional loans.

As proposed, the lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than $200,000 or 10 percent of the guaranteed loan, whichever is less. This provision is different from current policy which requires Agency approval when the amount is $5,000 or more to the same borrower.

Liquidation

Under the proposed rule and consistent with the four current programs, the lender may decide to liquidate a loan when one or more incidents of default or third party actions occur that the borrower can not or will not cure or eliminate within a reasonable period of time. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the security instruments to the Agency.

Liquidation by the lender. If the lender decides to liquidate a loan, the lender must first develop, in consultation with the Agency, a liquidation plan to determine the best course of action. The lender must include in this plan all aspects of liquidation, including, but not limited to, reports to the Agency, protection of collateral, loss payment, transmission of proceeds to the Agency, and future recovery. The lender would be required to submit its liquidation plan to the Agency at least 30 days before implementing the plan and must notify the Agency of any changes to or deviations from the plan.

As under the four current programs, the proposed rule requires the lender to prepare a liquidation plan. However, the proposed rule would not require Agency's prior approval of the liquidation plan, but would require the lender to notify the Agency of deviations from the plan. These two aspects are different from the current programs.

Compromise settlement and release of personal guarantors. The lender may consider a compromise settlement at any time, unless otherwise provided in subpart B. However, before a guarantor is released from liability, the Agency must concur with the lender. Once agreement is reached, the lender may then proceed to implement a settlement compromise. These provisions are consistent with those found in the B&I guaranteed loan program, but have been simplified.

Litigation

Under the proposed rule, the Agency has consolidated requirements associated with all litigation into this new section. The provisions of this section are generally consistent with current Agency policy in implementing the four current programs.

In all litigation proceedings, the lender would be responsible for protecting the rights of the lender or the Agency with respect to the loan, and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender would be required to cooperate with the Agency. Any cost to the Agency associated with such action would be assessed against the lender.

Loss Calculations and Payment

Similar to the litigation section above, the Agency has consolidated into one section the requirements associated with loss calculations and payment. Generally, these provisions are consistent, but simplified, with the policies being implemented under the four current programs for loss calculations and payments.

The proposed plan describes the general calculation procedures that would be followed in determining losses (see proposed § 5001.17(n)).

During the course of any reorganization plan, the lender would be required to request and revise estimated loss payments using Agency-approved forms. The estimated loss claim, as well as any revisions to this claim, would be accompanied by documentation to support the claim.

In a chapter 9 or chapter 11 reorganization, the lender would be required to obtain an independent appraisal of the collateral if so directed by the Agency. The Agency and the lender would share the appraisal fee equally.

Final settlement of liquidation would be made with the lender after the collateral is liquidated (unless otherwise designated as a future recovery) or after settlement and compromise of all parties has been completed. The Agency retains the right to recover losses paid under the guarantee from any liable party. Final settlement would be subject to the following:

- If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.
- If the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, the lender may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan.
- Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, the lender would have to prepare a final report of loss and submit it to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before Agency approval of any final loss report, the lender must account for all funds, disposition of the collateral, and costs incurred, and must provide any other information necessary for successful completion of the liquidation.
- After a final loss has been paid by the Agency, any future funds recovered by the lender would be pro-rated between the Agency and the lender based on the original percentage of guarantee even if the Loan Note Guarantee has been terminated.
- In a bankruptcy, the lender would submit an estimated loss claim based on the final orders of the bankruptcy court's direction. The Agency would pay the lender the estimated final loss based on these directions.

Lastly, the proposed rule would require the lender to submit with each loss claim a copy of the current version of the lender's written policies and procedures for origination and servicing. This new requirement reflects the intent of the proposed rule to ensure that the guaranteed loan is serviced to the lender's own standards consistent with this rule.

Basic Borrower Provisions

Borrower Responsibilities (§ 5001.25)

Under the proposed rule, the Agency has consolidated and simplified the responsibilities of borrowers under the guaranteed loan program. These responsibilities are consistent with those associated with the four current programs.

Under the proposed rule, borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the project including, but not limited to land use zoning; health, safety, and sanitation standards as well as design and installation standards; and protection of the environment and consumer affairs. Borrowers must also obtain all permits, agreements, and licenses that are applicable to the project. The borrower would also be responsible for maintaining all hazard,

flood, liability, worker compensation, and personal life insurance, when required, on the project.

Upon request by the Agency, the borrower would be required to permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the borrower pertaining to any Agency guaranteed loan.

Basic Guarantee and Loan Provisions

General (§ 5001.30)

Underwriting

All loans guaranteed by the Agency must be underwritten in accordance with the credit evaluation requirements specified in proposed § 5001.16(b). As discussed earlier in this preamble, the credit evaluation requirements are generally consistent with the requirements found in the four current programs.

Conditions of Guarantee

Each loan guarantee issued under this part would be evidenced by a Loan Note Guarantee, which would be issued by the Agency. In addition, each lender would be required to execute a Lender's Agreement.

The entire loan would be required to be secured by the same security, with equal lien priority being given for the guaranteed and unguaranteed portions of the loan. The guaranteed portion would be paid first and given preference and priority over the unguaranteed portion.

The lender would remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

The holder of a guaranteed portion would have all rights of payment, as defined in the Loan Note Guarantee to the extent of the portion purchased. The lender would remain bound by all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations.

The lender would receive all payments of principal and interest on the entire loan and would be required to promptly remit to each holder a pro-rata share, less any lender servicing fee.

No loan guaranteed by the Agency under this part would be conditioned on any requirement that the borrower accept or receive electric service from any particular utility, supplier, or cooperative.

These provisions are consistent with those found in the four current programs.

Full Faith and Credit

A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation by the lender or holder, as appropriate, when the lender or holder has actual knowledge, participates in, or condones such fraud or misrepresentation.

A note that provides for the payment of interest on interest would not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest would be void.

The guarantee would not be enforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent loan origination, negligent loan servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned would not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee.

When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement would not cover interest accruing 90 days after the holder has demanded repurchase by the lender. When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement would not cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

As proposed, the Agency would guarantee payment as follows:

- To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.
- To the lender, the lesser of any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or the guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

These provisions are consistent with those found in the four current programs. The proposed rule, however, does make explicit that negligent loan servicing may result in the guarantee not being enforceable to the extent any loss is occasioned by such negligent loan servicing.

Soundness of Guarantee

Consistent with the four current programs, all loans guaranteed under this part must be financially sound and feasible, with reasonable assurance of repayment.

Rights and Liabilities

When a guaranteed portion of a loan is sold to a holder, the holder would succeed to all payments of the lender under the Loan Note Guarantee to the extent of the portion purchased. While consistent in intent with the current policy, this provision has been revised to reflect that the holder ''would succeed to all payments'' of the lender rather than the holder ''shall have all rights'' of the lender.

A guarantee and right to require purchase would be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones.

The lender would not be allowed to represent a Conditional Commitment of Guarantee as a guarantee. This is a clarification of Agency policy to prevent misrepresentation of the Conditional Commitment of Guarantee.

The Agency continues to reserve the right to collect from the lender any payments made to the holder that would not have been payable to the lender had they been the holder.

Reduction of Loss Claims Payable

As proposed, the Agency may reduce the amount of loss claims payable under the loan guarantee to the lender, to zero if necessary, where the Agency has determined that the lender has engaged in either negligent loan origination or in negligent loan servicing that has resulted in a loss. The amount of the reduction would be based on the loss sustained as a result of the negligence. The Agency notes, however, that any reduction in claims payable under the guarantee would not apply to any subsequent holders. Claims payable associated with the lender's negligence paid to subsequent holders will be collected from the lender.

While new compared to the four current regulations, this section of the proposed rule would implement current Agency policy to clarify how the Agency will address reduction of loss claims payable.

Write-Downs

Consistent with current B&I policy, as proposed, debt write-downs for an

existing borrower where the same principals retain control of and decision-making authority for the business would be prohibited.

Guaranteed Loan Parameters (§ 5001.31)

Interest Rates

Under the proposed rule, the provisions addressing interest rates and changes to interest rates (reductions and increases) are consistent with the provisions of the four current programs.

As proposed, interest rates on the loan for which a guarantee is made would be allowed to be fixed or variable or a combination of both, as long as they are legal. If variable interest rates are used, they must be tied to an acceptable published index and the lender must incorporate the provision for adjustment of payment installments into the Note. When combined fixed and variable rates are used, the lender would provide the Agency with the overall effective interest rate for the entire loan.

Under the proposed rule, interest rates, interest rate caps, and incremental adjustment limitations would be negotiated between the lender and the borrower.

If the lender and borrower agree, the interest rate on the guaranteed portion of a loan may differ from the rate on the unguaranteed portion provided under certain conditions. These conditions are:

- The rate on the unguaranteed portion is equal to or below the market rate and does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and
- the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion unless the rate on the guaranteed portion is fixed and the unguaranteed portion is variable.

Interest Rate Changes

Under the proposed rule, the Agency must approve, in writing, any change in the interest rate between issuance of the Conditional Commitment for Guarantee and issuance of the Loan Note Guarantee. All changes would then be shown as an amendment to the Conditional Commitment for Guarantee.

The interest rate change may be either a reduction or increase, but are subject to certain restrictions.

Reductions. The borrower, lender, and holder (if any) would be allowed to collectively effect a permanent or temporary reduction in the interest rate on the guaranteed loan at any time during the life of the loan by their written agreement, subject to the following conditions:

- If a permanent reduction was implemented, the Loan Note Guarantee would be allowed to cover only losses of interest at the reduced interest rate.
- In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest would be calculated for the periods the given rates were in effect. The lender would be required to maintain records that adequately document the accrued interest claimed.
- The lender would be responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. The lender would have to provide copies of all legal documents to the Agency.

The lender would be required to keep sufficient records to allow the Agency to calculate any loss at the reduced interest rate and to notify the Agency of all permanent interest rate reductions, as specified in proposed § 5001.4(b)(3)(ii).

Increases. Increases in interest rates, in general, are prohibited under the proposed rule. However, increases would be allowed only when the increase results from normal fluctuations in approved variable interest rates or the increase returns the rate to the rate prior to the temporary reduction.

Term Length

Under the proposed rule, the loan term would be based on (1) the use of proceeds, (2) the useful economic life of the assets being financed, and (3) the borrower's repayment ability. However, under no circumstances would the term be allowed to exceed the lesser of the useful economic life of the asset, or 40 years.

The proposed rule's provisions for term length are consistent with those found in the Community Facility and the Water and Waste Disposal Facilities programs, but are different from those found in the other two programs. The other two programs have shorter timeframes for several types of assets.

Loan Schedule and Repayment

Repayment of loans for which a loan guarantee has been obtained under this part would be required to be structured in accordance with proposed § 5001.31 and in accordance with the Loan Agreement. Repayments would be due and payable in accordance with the Note.

As proposed, only loans that require a periodic payment schedule that retires the debt over the term of the loan without a balloon payment will be guaranteed by the Agency. Lenders, therefore, must ensure that the principal balance of a guaranteed loan is properly amortized within the prescribed loan maturity.

These provisions are consistent with those found in the four current programs.

Maximum Loan Amounts

Under the proposed rule, the maximum amount that may be guaranteed would be determined on a program-by-program basis. The Agency will publish a notice in the **Federal Register** each year in which it will specify the maximum loan amounts for each of the programs in this part. As seen later in this preamble, the maximum loan amounts being proposed are consistent with those in the current programs.

Maximum Percent of Guarantee

As proposed, the maximum guarantee for each guaranteed loan program covered by this part is specified in subpart B. As seen later in this preamble, the maximum percent guarantees are consistent with those found in the current programs, except that a lower maximum percent guarantee is being proposed in specific situations.

Fees

Under the proposed rule, a guarantee fee and a renewal fee are used to offset the costs of the guaranteed loan programs. Each year, the Agency will establish the guarantee fee and renewal fee for each guaranteed loan program, subject to any statutory limitations. The Agency will publish a notice in the **Federal Register** each year identifying these fees.

Guarantee fee. This fee is a one-time, upfront fee based on the principal loan amount, and the percent of guarantee. Consistent with standard industry practice, this fee is referred to as the ''guarantee fee.'' As proposed, the guarantee fee would be paid to the Agency by the lender at the time the Guaranteed is issued and is non-refundable. The lender, however, would be allowed to pass this fee on to the borrower. Each of the four programs covered by the proposed rule currently charge a guarantee fee.

Renewal fee. This fee is assessed annually, is based on a fixed fee rate established at the beginning of the loan, and, consistent with standard industry terminology, is referred to as a ''renewal fee.'' As applicable, the renewal fee would be calculated on the unpaid guaranteed principal balance as of close of business on December 31 of each

year. The fee would be billed to the lender and is non-refundable. Like the guarantee fee, the lender would be allowed to pass the renewal fee on to the borrower. Currently, the Business and Industry guaranteed loan program and the Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan program have provisions for an annual renewal fee, while the Community Facilities and the Water and Waste Disposal guarantee loan programs do not. The proposed rule allows for, but does not require, the charging of the renewal fee for all of the four programs. At the present time, the Agency is not considering the implementation of an annual renewal fee in the Community Facility and Water and Waste Disposal programs.

Lender Fees

As proposed and consistent with the four current programs, the lender may levy reasonable, routine, and customary charges and fees for the guaranteed loan provided they are similar to those charged other applicants for the same type of loan for which a non-guaranteed borrower would be assessed. The proposed rule prohibits late payment charges from being covered by the Loan Note Guarantee. Further, the lender would be prohibited from adding such charges to the principal and interest due under any guaranteed note.

Conditional Commitment for Guarantee (§ 5001.32)

Consistent with the four current programs, upon approval of a loan guarantee, the Agency will issue a Conditional Commitment for Guarantee to the lender containing conditions under which the Guarantee will be issued. The lender must complete and sign the Acceptance of Conditions and return a copy to the Agency. The lender may propose alternate conditions for Agency consideration.

Conditions Precedent to Issuance of Loan Note Guarantee (§ 5001.33)

This section identifies the conditions that need to have occurred in order for the Agency to issue the Loan Note Guarantee. These conditions are consistent with the conditions in the four current programs, but have been simplified.

The Loan Note Guarantee would be issued once all of the conditions specified in the Conditional Commitment for Guarantee have been met and each of the following has occurred:

- The lender has paid the appropriate guarantee fee;
- The lender has advised the Agency of any plans to sell or assign any part of the loan as provided in the Lender's Agreement; and
- The lender has certified that the prospective borrower has obtained all necessary insurance appropriate to the proposed project.

Issuance of the guarantee (§ 5001.34)

As proposed and consistent with the four current programs, the Agency, at its sole discretion, will determine if the conditions within the Conditional Commitment for Guarantee have been met and whether or not to issue the guarantee.

Loan Closing

At loan closings, the lender would provide the lender's certifications, guarantee fee, and, if applicable, secondary market sale document.

Issuance

Consistent with the four current programs, but simplified, under the proposed rule, the Agency would issue the Loan Note Guarantee and Assignment Guarantee Agreement upon the lender's compliance with requirements of the Conditional Commitment for Guarantee.

Refusal To Execute Loan Note Guarantee

Consistent with the four current programs, if the Agency determines that it can not execute the Loan Note Guarantee, the Agency would promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee would be issued.

Replacement of Loan Note Guarantee or Assignment Guarantee Agreement

Consistent with the four current programs, if the Loan Note Guarantee or Assignment Guarantee Agreement has been lost, stolen, destroyed, mutilated, or defaced, the Agency may issue a replacement to the lender or holder upon receipt from the lender of a notarized certificate of loss and an indemnity bond acceptable to the Agency. An indemnity bond would not be required, however, if the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia.

Alterations to Loan Instruments (§ 5001.35)

Consistent with the B&I and the Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan programs, the provisions of this section would prohibit the lender from altering or approving any alterations of the Loan Note Guarantee or any other loan instrument without the prior written approval of the Agency.

Reorganizations (§ 5001.36)

The provisions in this section of the proposed rule address changes in borrowers and lenders. In general, these provisions are consistent with those found in the current programs.

Change in Borrower Prior to Closing

As proposed, any change in borrower ownership or organization prior to the issuance of the Loan Note Guarantee would be required to meet program eligibility requirements. Agency approval would be required prior to the issuance of the Conditional Commitment for Guarantee. Once the Conditional Commitment for Guarantee is issued, no substitution of borrower(s) or change in the form of legal entity would be approved, except that a change in the legal entity may be approved when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

Transfer of Lender Prior to Issuance of the Loan Note Guarantee

Prior to issuance of a Loan Note Guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee to a new eligible lender, provided the present lender makes the request in writing and no substantive changes have occurred in the borrower, project, loan agreement, or Conditional Commitment for Guarantee. The new lender would have to meet the appropriate requirements specified in this part to become a Rural Development approved lender. In addition, a new application for guarantee would have to be executed.

Substitution of Lender After Issuance of the Loan Note Guarantee

After the issuance of a Loan Note Guarantee, the lender would not be allowed to be substituted without the prior written approval of the Agency. A substitution of the lender would have to be requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence. The Agency may approve the substitution of a lender if the new lender is Rural Development approved; agrees in writing to acquire title to any unguaranteed portion of the loan held by the original lender; and assumes all

original loan requirements and lender responsibilities.

The Agency would not pay any loss or share in any costs with a substitute lender who it not in compliance with the requirement of this section (i.e., proposed § 5001.36).

Sale or Assignment of Guaranteed Loan (§ 5001.37)

General

As proposed, the lender would be allowed to sell all or part of the guaranteed portion of the loan on the secondary market, subject to the following conditions:

- Any sale or assignment by the lender of the guaranteed portion of the loan would have to be accomplished in accordance with the conditions in the Lender's Agreement.
- The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain sufficient interest to perform its duties under this part.
- The lender would be prohibited from selling or participating any amount of the guaranteed, or non-guaranteed, portion of the loan to the borrower or members of the borrower's immediate family, the borrower's officers, directors, stockholders, other owners, or a parent, subsidiary, or affiliate.
- Disposition of the guaranteed portion of a loan would not be allowed prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency.
- If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, the loan must not be in default.
- The lender would be required to retain all or part of the unguaranteed portion of the loan. However, if the lender does not have preferred lender status, the lender would be required to retain a minimum of 5 percent of the total loan amount in its portfolio. The amount required to be retained would have to be of the unguaranteed portion of the loan and could not be participated. Lenders would be allowed to sell the remaining amount of the unretained portion of the loan only through participation.

These provisions are generally consistent with those found in the four current programs. One difference concerns the minimum retention provision. Under the current programs, all lenders would be required to retain a minimum of 5 percent of the total loan amount. Under the proposed rule, this 5 percent requirement would apply only to lenders who do not have preferred lender status.

Termination of Lender Servicing Fee

As proposed and consistent with the four current programs, the lender's servicing fee would stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee would be allowed to be charged to the Agency and all loan payments and collateral proceeds received would be applied first to the guaranteed loan.

Termination of Loan Note Guarantee (§ 5001.38)

This section identifies the situations under which a Loan Note Guarantee will terminate. These situations, which are consistent with those found in the regulations for the four current programs, are:

- Full payment of the guaranteed loan; or
- full payment of any loss obligation or negotiated loss settlement except for future recovery provisions and payments made as a result of the Debt Collection Improvement Act (DCIA). After final payment of claims to lenders and/or holders, the Agency will retain all funds received as the result of the DCIA; or
- written request from the lender to the Agency that the guarantee will terminate 30 days after the date of the request, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency to be canceled.

Subpart B—Program Specific Provisions

Subpart B presents the program specific requirements for each of the four programs covered by this subpart.

Community Facilities (§ 5001.101)

This section identifies program specific requirements for community facility projects seeking loan guarantees. The lender and prospective borrower must comply both with subpart A provisions and the provisions in this section when seeking a community facility loan guarantee. The program specific provisions for community facility projects follow.

Project Eligibility

Project eligibility for community facility projects under the proposed rule is similar to the requirements found in the current community facility regulations. The proposed rule requires projects to be an eligible project for public use located in a rural area, unless otherwise excepted, with demonstrated community support. In addition, the proposed rule allows leased space to qualify under certain conditions.

While the proposed rule streamlines the current regulatory language that identifies the types of projects that are eligible, its requirements are intended to be consistent with the types of projects and purposes currently eligible for community facility guaranteed loans. This includes considering the various types of other improvements to community projects, as found in 7 CFR 3575.24(a)(2), as being eligible for guaranteed loans, and considering the use of funds identified in 7 CFR 3573.24(b) as part of an essential community facility. In some instances, some of the currently eligible projects and purposes will be addressed in guidance material (e.g., a handbook) rather than in the regulatory language. Overall, the intent of the proposed rule is to allow more flexibility, but to maintain the current intent of the program as to the types of projects eligible for community facility guaranteed loans.

Eligible projects. As proposed, to be eligible for community facility funding, the project would have to meet the project eligibility requirements specified in subpart A and be one of the types of projects or purposes shown below.

- Essential community facilities. These are facilities such as, but not limited to, fire, rescue, health and public safety facilities or equipment, telecommunications, supplemental and supporting structures for other rural electrification or telephone systems, the purchase of major equipment that in themselves provide an essential service to rural residents, and the purchase of facilities necessary to improve or prevent a loss of service.
- Community services or community-based social, recreational or cultural services.
- Transportation infrastructure and support.
- Hydroelectric generating facilities.
- Natural gas distribution systems.
- Acquisition of land and site preparation for industrial parks.

Facilities for public use. As found in the current Community Facilities regulation, to be eligible for Community Facility funding, all facilities would have to be for public purposes. These facilities would have to be installed to serve any user within the service area who desires service and can be feasibly and legally served. In addition, the lender would have to determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (e.g., gas distribution systems) would be remedied by the owner on, or before, completion of the project. Under the proposed rule, inequities are defined

as unjustified variations in availability, adequacy, or quality of service. However, user rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions would not necessarily constitute inequities.

Leased space. As proposed, a facility would remain eligible for community facility funding provided it has less than 25 percent of its floor space occupied by ineligible organizations or activities. The ineligible organization and the ineligible commercial activity, however, must be related to and enhance the primary purpose for which the facility is being established by the borrower. This eligible purpose is being included in the proposed rule to incorporate existing Agency practice.

Facility location. As found in the current Community Facilities regulation, another requirement to be eligible for community facility funding is that facilities must be located in rural areas. Two exceptions to this requirement are proposed. These are for:

- Utility services, such as natural gas or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.
- Telecommunication projects. For these projects, the part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

Demonstration of community support. Instead of meeting the cash equity criterion for determining project eligibility under subpart A, a community facility may instead demonstrate community support, which the Agency will accept in lieu of cash equity. If a facility meets the other criteria in proposed § 5001.6(c)(2) or § 5001.12(c)(2)(ii)(B), as applicable, and this demonstration of community support, then the project is eligible under this program. The Agency is allowing the use of a community support criterion in lieu of cash equity because community support is often a better predictor of project success.

Under the proposed rule, community support would be evidenced in the form of a certification of support for each project or facility from any affected local government body. A certificate of support would have to be obtained from each affected local government within the service area of the facility, except for essential community facilities owned by a local public body or a Federally-recognized Indian tribe serving local residents or tribal members. The certificate of support would have to be signed by an authorized official of the local government, and should include sufficient information to determine that a community facility will provide needed services to the community and will have no adverse impact on other community facilities providing similar services. The organization would be required to provide sufficient information to affected local governments as may be needed to obtain the certificate of support.

While the current Community Facilities guaranteed loan regulation requires projects to have significant ties to the community, requiring a demonstration of this community support provision in the regulation incorporates existing Agency practice for evaluating and approving loan guarantee applications for Community Facilities.

Unauthorized Projects and Purposes

Under the proposed rule, the projects and purposes identified in the current Community Facilities guaranteed loan program are carried over into this proposed rule, except for new combined sanitary and storm water sewer facilities. These types of combined facilities are excluded from the regulatory language because the Agency does not see such facilities ever receiving approval from other regulatory agencies rather than an indication that such facilities are now eligible for community facilities guaranteed loans.

In addition to the unauthorized projects and purposes identified in subpart A, loans guaranteed with Community Facility funding can not be used to finance the following:

- Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development;
- Facilities that are 25 percent or more for the purpose of housing Federal or State agencies;
- Community antenna television services or facilities;
- Telephone systems;
- Facilities that are not modest in size, design, and cost; and
- Finder's and packager's fees.

Borrower Eligibility

To be eligible for a community facility guaranteed loan, a prospective borrower must meet the eligibility criteria specified in subpart A of the proposed rule. In addition, subpart B for the Community Facilities program (see proposed § 5001.101(c)) provides two additional requirements, where applicable, as follows:

- YMCA, YWCA, Girl Scouts, and Boy Scouts are eligible applicant organizations (this provision incorporates current Agency practice), and
- A private not-for-profit essential community facility (other than utilities) must have significant ties with the local rural community to be eligible. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. This provision and the conditions associated with, as discussed below, are found in the current Community Facilities regulation.

The proposed rule identifies two conditions under which ties with the local rural community can be evidenced. These conditions, which are not inclusive, are:

- Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community, and
- Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

Credit not available elsewhere. As found in the current Community Facilities regulation and as proposed, to be eligible, the prospective borrower would have to be found by the Agency as being unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

Additional Application Documentation Requirements

Feasibility study. The Agency may require a feasibility study by a qualified independent consultant. As defined in the proposed rule, the feasibility study is essentially the same as found in the current Community Facilities regulation. However, the current Community Facilities guaranteed loan program makes the feasibility study a prerequisite, while the proposed rule does not.

Additional Guarantee- and Loan-Related Requirements

Funding limit. Under the proposed rule, the principal amount of a community facility loan guaranteed under this section would not be allowed to exceed $50 million. The current Community Facilities guaranteed loan program does not have a specified funding limit. Community Facility

projects in excess of $50 million are likely to require a level of support or patronage beyond the local rural community that the Agency is concerned may be insufficient in order to sustain the project over the life of the loan. Therefore, consistent with the Agency's approach for the management of risk under the proposed rule, the Agency is proposing to limit the maximum size loan for Community Facility projects.

Maximum percent of guarantee. The maximum loan guarantees issued to lenders approved under this part with community facility funding are specified in Table 1.

TABLE 1.—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR COMMUNITY FACILITIES GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million (percent)	Over $10* million (percent)
Without preferred lender status	Low documentation	80	na	na
	Full documentation	90	90	90
With preferred lender status	Low documentation	90	na	na
	Full documentation	90	90	90

na = not applicable.
* Per proposed § 5001.101(e)(1), the maximum guaranteed loan amount is $50 million.

These maximum loan guarantees are the same as found in the current Community Facilities regulation except that, under the proposed rule, the maximum guarantee is 10 percentage points lower for low documentation applications seeking a loan guarantee of $5 million or less from lenders who do not have preferred lender status.

Fees. Any guarantee fee and renewal fee charged for community facility guaranteed loans will be established in a **Federal Register** notice that the Agency will publish annually, as provided under subpart A of the proposed rule. Under the current Community Facilities program, a guarantee fee is charged, but a renewal fee is not.

Parity lien requirements. Whenever both a community facility guaranteed loan and a community facility direct loan are utilized to finance a single project, the Agency will require a parity lien, unless the lender cannot meet its regulatory requirements. This is a new provision for the Community Facilities program. This parity requirement ensures that when community facility direct and guaranteed loans are used on the same project, there is an opportunity for both to be adequately and independently secured, which is in the financial interest of the Agency.

Water and Waste Disposal Facilities (§ 5001.102)

This section identifies program specific requirements for water and waste disposal projects seeking loan guarantees. The lender and prospective borrower must comply both with subpart A provisions and the provisions in this section when seeking a water or waste disposal loan guarantee. The program specific provisions for water and waste disposal projects follow.

Project Eligibility

Project eligibility for water and waste disposal facilities under the proposed rule are similar to the requirements found in the current water and waste disposal regulations. The proposed rule requires such facilities to be an eligible project for public use with demonstrated community support or with cash equity, as specified in the regulation. The location requirement for a water and waste disposal facility under the proposed rule is equivalent to that under the current regulation.

While the proposed rule streamlines the current regulatory language that identifies the types of projects and costs that are eligible, its requirements are generally intended to be consistent with the types of projects and costs currently eligible for water and waste disposal guaranteed loans. This includes considering the various other types of improvements necessary for the successful operation or protection of such facilities, as found in 7 CFR 1779.24(b) and (c), and considering the use of funds towards those items listed in 7 CFR 1779.234(e) when they are a necessary part of the project. Overall, the intent of the proposed rule is to allow more flexibility, but to maintain the current intent of the program as to the types of projects and costs eligible for water and waste disposal guaranteed loans.

Eligible projects and costs. To be eligible for a water and waste disposal guaranteed loan, a project would have to meet the requirements in proposed § 5001.6 in subpart A and be for one of the types of projects or costs shown below.

- A water or waste disposal facility. Such facilities include, but are not limited to, drinking water, sanitary sewage, solid waste disposal, and storm wastewater disposal. In addition, public improvements necessary for the successful operation or protection of such facilities are included. Improvements could include, for example, relocating buildings, roads, fences, or utilities.
- Payment of other utility connection charges as provided in service contracts between utility systems.
- Refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan.

Facilities for public use. As proposed and as found in the current Water and Waste Disposal regulation, to be eligible for water and waste disposal funding, facilities would also have to be for public purposes. These facilities would have to be installed to serve any user within the service area who desires service and can be feasibly and legally served. In addition, the lender would have to determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (e.g., gas distribution systems) would be remedied by the owner on, or before, completion of the project. Under the proposed rule, inequities are defined as unjustified variations in availability, adequacy, or quality of service. However, user rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions would not necessarily constitute inequities.

Demonstration of community support. Instead of meeting the cash equity criterion for determining project eligibility under subpart A, a water and waste disposal project may instead demonstrate community support, which the Agency will accept in lieu of cash equity. If a project meets the other criteria in proposed § 5001.6(c)(2) or § 5001.12(c)(2)(ii)(B), as applicable, and demonstrates community support, then the project is eligible under this program.

Demonstration of community support would be required as discussed earlier in this preamble for the Community Facilities program. While the current Water and Waste Disposal guaranteed loan regulation requires projects to have significant ties to the community, this community support provision in the regulation incorporates current Agency practice for evaluating and approving loan guarantee applications for Community Facilities.

Unauthorized Projects and Purposes

Under the proposed rule, the projects and purposes identified in the current Water and Waste Disposal guaranteed loan program are carried over into this proposed rule.

In addition to the unauthorized projects and purposes identified in subpart A, loan guarantees with water and waste disposal funding would not be allowed to finance any of the following:

- Facilities that are not modest in size, design, and cost;
- Loan or grant finder's fees;
- The construction of any new combined storm and sanitary sewer facilities;
- Any portion of the cost of a facility that does not serve a rural area;
- That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;
- Rental for the use of equipment or machinery owned by the applicant;
- For other purposes not directly related to operating and maintenance of the facility being installed or improved; or
- The payment of a judgment which would disqualify an applicant for a loan under proposed § 5001.102(c)(2).

Borrower Eligibility

Consistent with the current Water and Waste Disposal guaranteed loan program, to be eligible for a water and waste disposal guaranteed loan, a prospective borrower not only must meet the eligibility criteria specified in subpart A of the proposed rule, but the borrower eligibility criteria specified in subpart B for the water and waste disposal program (see proposed § 5001.102(c)). Specifically, these criteria specify that the prospective borrower must be a particular type of entity and must not have credit available elsewhere, as discussed below.

Eligible entity. Under the proposed rule, a prospective borrower would have to meet one of the following types of entities to be eligible for a water and waste disposal guaranteed loan:

- A public body, such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;
- An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or
- An Indian tribe on a Federal or State reservation or any other Federally-recognized Indian tribe.

Credit not available elsewhere. As found in the current Water and Waste Disposal regulation, to be eligible, the prospective borrower would have to be found by the Agency as being unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

Additional Application Documentation Requirements

Feasibility study. The Agency may require a feasibility study by a qualified independent consultant. As defined in the proposed rule, the feasibility study is essentially the same as found in the current Water and Waste Disposal regulation. However, the current Water and Waste Disposal regulation makes the feasibility study a prerequisite, while the proposed rule does not.

Preliminary engineering report (PER). As required under the current Water and Waste Disposal guaranteed loan program, applications for water and waste disposal facilities would have to be submitted, with two copies of a preliminary engineering report (PER), under the proposed rule. The PER is a document normally prepared by the owner's consulting engineer that describes the owner's present situation, analyzes alternatives, and proposes a specific course of action from an engineering and environmental perspective.

Preliminary engineering reports would be required to conform to customary professional standards. If a preliminary review by the Agency is desired, the PER may be submitted to the Agency prior to the rest of the application material. To assist in their preparation, PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. The proposed rule does not include the same specifics for content as found in the current Water and Waste Disposal regulation. It is the Agency's intent that specific content requirements, which would be consistent with current Agency practices for these reports, would be available through a handbook or other means available from State offices.

Financial reports. Under the proposed rule and consistent with the current Water and Waste Disposal guaranteed loan program, all lenders would be required to obtain and analyze financial statements as required by the Loan Agreement. A Rural Development approved lender that does not have preferred lender status would be required to submit a copy of the analysis to the Agency within 120 days of receipt of the financial statements. A Rural Development approved lender with preferred lender status would be required to provide evidence that it has such analysis on file, but would not be required to submit a copy to the Agency unless specifically requested.

Additional Guarantee- and Loan-Related Requirements

Maximum percent of guarantee. The maximum loan guarantees issued to lenders approved under this part with Water and Waste Disposal funding are specified in Table 2.

TABLE 2.—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR WATER AND WASTE DISPOSAL FACILITY GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million	Over $10 million (percent)
Without preferred lender status	Low documentation	80	na	na
	Full documentation	90	90	90
With preferred lender status	Low documentation	90	na	na
	Full documentation	90	90	90

na = not applicable.

These maximum loan guarantees are the same as found in the current Water and Waste Disposal regulation except that, under the proposed rule, the maximum guarantee is 10 percentage points lower for low documentation applications seeking a loan guarantee of $5 million or less from lenders who do not have preferred lender status.

Fees. Any guarantee fee or renewal fee charged for Water and Waste Disposal guaranteed loans will be established in a **Federal Register** notice that the Agency will publish annually, as provided under subpart A of the proposed rule. Under the current Water and Waste Disposal program, a guarantee fee is charged, but a renewal fee is not.

Business and Industry (§ 5001.103)

This section identifies program specific requirements for business and industry projects seeking loan guarantees. The lender and prospective borrower must comply both with subpart A provisions and the provisions in this section when seeking a business and industry loan guarantee. The program specific provisions for business and industry projects follow.

Project Eligibility

To be eligible for a business and industry guaranteed loan, a project would have to meet the requirements in proposed § 5001.6 in subpart A and the following requirements found in proposed § 5001.103(a) in subpart B. The same types of projects eligible under the current B&I guaranteed loan program are eligible under this proposed rule.

Eligible Projects. As proposed, to be eligible for business and industry funding, the project would have to meet one of the following types of projects or purposes:

- Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;
- Business conversion, enlargement, repair, modernization, or development;
- Purchase and development of land, easements, rights-of-way, buildings, or facilities;
- The purchase of equipment, leasehold improvements, machinery, supplies, inventory, start up costs, permanent working capital, pollution control and abatement, or feasibility studies;
- Transportation services incidental to industrial development;
- Agricultural production, with advance written approval from the Agency, when it is not eligible for Farm Service Agency farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products;
- The purchase of membership, stocks, bonds, debentures, or cooperative stock (as discussed further below);
- Commercial fishing, aquaculture, commercial nurseries, forestry, hydroponics, or the growing of mushrooms;
- Interest during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier;
- Refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan;
- Providing takeout of interim financing when the lender submits a complete preapplication or application in which the interim financing is proposed, prior to extending any portion of the interim loan;
- Fees and charges for professional services and routine lender fees and the Agency guarantee fee;
- Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments;
- Educational, training, or community facilities;
- Housing development sites with certain restrictions;
- Community antenna television services or facilities;
- Assistance to industries adjusting to terminated Federal agricultural programs or increased foreign competition; or
- Assisting cooperative organizations.

As proposed, ''permanent working capital'' is defined as ''liquid assets available to support a business' long-term operations and growth.'' It is the Agency's position that ''permanent working capital'' does not include lines of credit providing temporary financing for seasonal financial requirements.

Purchase of cooperative stock. Under the proposed program and consistent with the current B&I guaranteed loan program, loans may be made to individual farmers or ranchers for the purchase of cooperative stock provided the entity that receives the proceeds from the stock sale is a farmer or rancher cooperative established for the purpose of processing agricultural commodities; not for electricity or other financial investments. Proceeds from the stock sale would be allowed for recapitalizing existing cooperatives, developing new processing facilities or product lines, and expanding an existing production facility. In addition, the cooperative would be allowed to contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

Unauthorized projects and purposes. Consistent with those found in the current B&I guaranteed loan regulations, the proposed rule identifies specific projects and purposes that would be ineligible for a business and industry guaranteed loan. These are:

- Businesses housed in private homes, except when the pro-rata value of the owner's living quarters is deleted from the value of the project;
- Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees; and

• Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

• Interim financing.

• Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

• Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

• The guarantee of lease payments.

• The guarantee of loans made by other Federal agencies.

• Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

Borrower Eligibility

To be eligible for a business and industry guaranteed loan, a prospective borrower not only must meet the eligibility criteria specified in subpart A of the proposed rule, but the borrower eligibility criteria specified in subpart B for the business and industry program (see proposed § 5001.103(c)). The requirements for borrower eligibility under the proposed rule are consistent with those in the current B&I guaranteed loan regulations. Specifically, these criteria require that the borrower be:

• A cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or not-for-profit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual; and

• Engaged in or proposing to engage in a business.

Qualifying businesses include manufacturing, wholesaling, retailing, providing services, or other activities that provide employment; improve the economic or environmental climate; promote the conservation, development, and use of water for aquaculture; or reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

Additional Application Process Requirements—Obligation of Funds

Under the current B&I guaranteed loan regulations, the Agency uses a scoring system to prioritize applications. Under the proposed rule, the Agency would only use a scoring priority system to allocate funds, which would give a priority to encourage economic development in communities that are suffering economic hardships, if funds are insufficient to cover all approved applications. The Agency would establish the scoring criteria each fiscal year and provide the criteria in a notice that would be published in the **Federal Register**.

Additional Application Documentation Requirements

Audited financial statements. As found in the current B&I guaranteed loan regulations, if the proposed guaranteed loan exceeds $3 million, the Agency may require audited financial statements to be submitted annually when the Agency is concerned about the borrower's credit risk.

Feasibility study. As found in the current B&I guaranteed loan regulations, the Agency may require a feasibility study by a qualified independent consultant for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. Under the proposed rule, the Agency is clarifying that, if the Agency requires a feasibility study of a cooperative, the feasibility study would determine the viability of the business and not the individual farm operators.

Certification of Non-Relocation and Market Capacity. As found in the current B&I guaranteed loan regulations, if the loan will exceed $1 million and will increase direct employment by more than 50 employees, the lender must provide the Agency with information on non-relocation and market capacity using a form approved by the Agency.

Additional Lender Responsibilities—Origination—Collateral

Under the proposed rule and as found in the current B&I guaranteed loan regulations, when a business and industry guaranteed loan is used for the purchase of cooperative stock, the lender must secure the loan, at a minimum, with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal or corporate guarantee of the borrower.

Additional Guarantee- and Loan-Related Requirements

Conditional Commitment for Guarantee. Under the proposed rule and as found in the current B&I guaranteed loan regulations, when a business and industry guaranteed loan is used for the purchase of cooperative stock, the Conditional Commitment for Guarantee would require the cooperative to provide the lender with all required Federal, State, and local permits and other clearances involving the environmental aspects for review and approval.

Issuance of Loan Note Guarantee. Under the proposed rule and as found in the current B&I guaranteed loan regulations, if, for the purchase of cooperative stock, the lender requests the Agency to the issue the Loan Note Guarantee before the cooperative becomes operational, the lender would be required to certify to the Agency that the cooperative has all of the required Federal, State, and Local permits and other clearances involving the environmental aspects for review and approval.

Funding limits. Under the proposed rule and consistent with the current B&I guaranteed loan program, the maximum principal amount of a business and industry loan guaranteed that would be allowed is $25 million, except that the maximum principal amount of a business and industry guaranteed loan for a cooperative organization for rural projects processing value added commodities would be $40 million.

The proposed rule would also limit the total principal amounts of business and industry guaranteed loans made to cooperative organizations for a fiscal year that are in excess of $25 million to no more than 10 percent of the business and industry loans guaranteed for the fiscal year.

Lastly, the principal amount of a business and industry guaranteed loan for the purchase of cooperative stock would be limited to no more than $600,000.

Fees. Any guarantee fee and renewal fee charged for B&I guaranteed loans

will be established in a **Federal Register** notice that the Agency will publish annually, as provided under subpart A of the proposed rule. Under the current B&I program, a guarantee fee and a renewal fee are charged.

As provided in proposed § 5001.103(g)(4) and consistent with the current B&I regulations, the maximum guarantee fee that could be charged would be 2 percent. The guarantee fee would be allowed to be reduced to 1 percent if the borrower is a high impact business and is located in an area of long term population decline and job deterioration as a result of persistent economic hardship, significant economic loss from a Presidentially-declared disaster, or a fundamental structural economic change. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The Agency will announce the limit in a notice published in the **Federal Register**. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year would be 2 percent.

Maximum percent of guarantee. The maximum loan guarantees issued to lenders approved under this part with Business and Industry funding are specified in Table 3.

TABLE 3.—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR BUSINESS AND INDUSTRY GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million (percent)	Over $10 million* (percent)
Without preferred lender status	Low documentation	70	na	na
	Full documentation	80	70	60
With preferred lender status	Low documentation	80	na	na
	Full documentation	80	70	60

na = not applicable.
*Per proposed § 5001.103(g)(3), the maximum guaranteed loan amount is $25 million except for a cooperative producing a value added commodity for which the maximum is $40 million.

These maximum loan guarantees are the same as found in the current B&I guaranteed loan regulation except that, under the proposed rule, the maximum guarantee is 10 percentage points lower for low documentation applications seeking a loan guarantee of $5 million or less from lenders who do not have preferred lender status.

Renewable Energy Systems and Energy Efficiency Improvements (§ 5001.104)

This section identifies program specific requirements for renewable energy system or energy efficiency improvement projects seeking loan guarantees. The lender and prospective borrower must comply both with subpart A provisions and the provisions in this section when seeking a renewable energy system or energy efficiency improvement loan guarantee. The program specific provisions for renewable energy systems and energy efficiency improvement projects follow.

Project Eligibility

To be eligible for a renewable energy system and energy efficiency improvement guaranteed loan, a project would have to meet the requirements in proposed § 5001.6 in subpart A and the following requirements found in proposed § 5001.104 in subpart B.

Eligible projects. As proposed, a renewable energy system or energy efficiency improvement project would have to be for the purchase, installation, expansion, and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements where the technology used is replicable and either pre-commercial or commercially available. These two criteria are found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation (7 CFR part 4280, subpart B).

Borrower Eligibility

To be eligible for a renewable energy systems and energy efficiency improvements guaranteed loan, a borrower must meet not only the eligibility criteria specified in subpart A of the proposed rule, but the borrower eligibility criterion specified in subpart B for the renewable energy systems and energy efficiency improvements program (see proposed § 5001.104(b)). Specifically, this criterion, which is in the current Renewable Energy Systems and Energy Efficiency Improvements regulation, requires that the borrower be an agricultural producer or rural small business.

Additional Application Process Requirements—Obligation of Funds

Under the current Renewable Energy Systems and Energy Efficiency Improvements regulation, the Agency uses a scoring system to prioritize applications. Under the proposed rule, the Agency would only use a scoring priority system to allocate funds to encourage development of promising pre-commercial and commercially available alternative energy sources that are currently unable to obtain financing from commercial lending sources if funds are insufficient to cover all approved applications. The Agency would establish the scoring criteria on a periodic basis as changes are made and provide the criteria in a notice that would be published in the **Federal Register**.

Additional Application Documentation Requirements

In addition to the application requirements specified in subpart A, applications would be required to contain the following, as applicable:

Certifications. The lender would be required to certify in the application that the project is able to demonstrate technical merit and the prospective borrower is a small agricultural producer or rural small business. This provision implements two requirements found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation.

Technical Report. For renewable energy systems projects seeking a loan guarantee of more than $200,000, a satisfactory technical report must be provided that demonstrates that the project is commercially viable and can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner. To determine the overall technical merit of the renewable energy system, the lender must submit its proposal to an approved

Department of Energy (DOE) laboratory and obtain a DOE technical report. A Rural Development approved lender that does not have preferred lender status must submit the DOE technical report with its application. A preferred lender may instead certify in the application that a DOE technical report, deemed satisfactory by a DOE energy laboratory, has been obtained prior to the request for guarantee in lieu of submitting the technical report with the application.

This provision under the proposed rule differs from the current Renewable Energy Systems and Energy Efficiency Improvements regulation in that the proposed rule does not apply to renewable energy systems seeking a loan guarantee of $200,000 or less or to any energy efficiency improvement project and does not specify the contents of the technical report.

Due to the variety of potential projects, the content of these technical reports will be negotiated with the lender/borrower and further guidance will be provided through an agency handbook or other agency documents.

Energy assessment/audit. For energy efficiency improvement projects, an energy assessment, with adequate and appropriate evidence of energy savings expected when the system is operated as designed, must be provided. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit is required. Preferred lenders may certify in the application that an energy assessment or audit, as applicable, has been obtained prior to the request for guarantee in lieu of submitting the assessment or audit with the application. These provisions are the same as found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation.

Feasibility study. Under the proposed rule and consistent with the current Renewable Energy Systems and Energy Efficiency Improvements regulation, lenders are required to obtain feasibility studies for projects seeking a loan guarantee of greater than $200,000. To be acceptable, the feasibility study would have to be conducted by a qualified independent consultant.

Financial statements. Consistent with the current Renewable Energy Systems and Energy Efficiency Improvements regulation, but applied only to lenders without preferred lender status, applications from Rural Development approved lenders without preferred lender status must include financial statements for the lesser of the past 3 years or the business life of the applicant. If the proposed guaranteed loan exceeds $3 million, the Agency may require audited financial statements annually when the Agency is concerned about the borrower's credit risk.

Additional Servicing Requirements—Post-Construction Requirements

Once the project has been constructed, the lender would be required to provide the Agency annual reports from the borrower on the performance characteristics and results of the projects. For renewable energy system projects, these reports would be provided commencing in the first full calendar year after construction is completed and continuing for 3 full years. For Energy Efficiency Improvement projects, these reports would be provided commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years.

The requirement to submit these reports is consistent with that found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation. However, due to the variety of potential projects, the proposed rule does not specify a comprehensive list of the report contents. Instead, the proposed rule identifies minimum content requirements with additional content to be negotiated between the Agency and the lender/borrower, which must be clearly articulated before the loan note guarantee is executed. Further guidance will be provided through an agency handbook or other agency documents.

Additional Guarantee- and Loan-Related Requirements

Conditions precedent to issuance of loan note guarantee. In addition to the requirements specified in proposed § 5001.33, prior to the issuance of the loan note guarantee for renewable energy systems and energy efficiency improvements loans, the following conditions would have to be demonstrated:

- All planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications;
- The project conforms with applicable Federal, State, and local codes; and
- Costs have not exceeded the amount approved by the lender and the Agency.

The above conditions are the same as those found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation.

Funding limits. Consistent with the current Renewable Energy Systems and Energy Efficiency Improvements regulation, the amount of assistance, which would be based on guaranteed loans, direct loans, and grants provided under the proposed program, available to an eligible project under the Renewable Energy Systems and Energy Efficiency program will not exceed 50 percent of total eligible project costs. Eligible project costs are only those costs specified by the Agency, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement. The eligible project costs, which are the same as those found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation, are identified in proposed § 5001.104(f)(2)(i) through (xi).

The proposed rule, however, is not including the minimum and maximum funding limits specified in the current Renewable Energy Systems and Energy Efficiency Improvements regulation. Currently, the Renewable Energy Systems and Energy Efficiency Improvements program requires a minimum guaranteed loan request of $5,000 and limits the maximum guaranteed loan amounts to the same borrower to $10 million.

Fees. Any guarantee fee and renewal fee charged for Renewable Energy Systems and Energy Efficiency Improvements guaranteed loans will be established in a **Federal Register** notice that the Agency will publish annually, as provided under subpart A of the proposed rule. Under the current Renewable Energy Systems and Energy Efficiency Improvements program, a guarantee fee and a renewal fee are charged.

Maximum percent of guarantee. The maximum loan guarantees issued to lenders approved under this part with Renewable Energy Systems and Energy Efficiency Improvements funding are specified in Table 4.

TABLE 4.—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount			
		$600,000 or less (percent)	Over $600,000 up to and including $5 million (percent)	Over $5 million up to and including $10 million	Over $10 million (percent)
Without preferred lender status	Low documentation	75	70	na	na
	Full documentation	85	80	70	60
With preferred lender status	Low documentation	85	80	na	na
	Full documentation	85	80	70	60

na = not applicable.

These maximum loan guarantees are the same as found in the current Renewable Energy Systems and Energy Efficiency Improvements regulation except that, under the proposed rule, the maximum guarantee is 10 percentage points lower for low documentation applications seeking a loan guarantee of $5 million or less from lenders who do not have preferred lender status.

The maximum percent guarantees for each of the four programs for lenders who have preferred lender status under the proposed rule are the same as the current programs. For those lenders that do not have preferred lender status, however, the maximum percent guarantees are 10 percentage points less than for those lenders with preferred lender status. Under the current four programs, no such distinction is made.

III. Significant Differences From Current Regulations

The purpose of this section is to discuss significant differences between the proposed rule and the current regulations.

A. Project Eligibility—Metric Floor Criteria

All four current programs identify the types of projects that are eligible for guaranteed loans. However, none identify project eligibility criteria that specifically address project risk. One of the new features included in the proposed rule is the requirement for all projects to meet a minimum set of criteria (referred to as the metric floor criteria) that address the potential risk associated with a project. As discussed earlier in this preamble, by incorporating risk-based eligibility criteria, the Agency seeks to mitigate its project based risk.

B. Application Documentation

Under the proposed rule, the amount of supporting documentation required would, in general, depend on certain conditions associated with the application. These conditions are:

- Whether the project application is for a startup business or an existing business. (If the project is a startup business, then full supporting documentation must be submitted with the application.)
- Whether the lender submitting the application has preferred lender status. (If the lender has preferred lender status, the lender has the opportunity to submit an application with a reduced level of supporting documentation.)
- For lenders that do not have preferred lender status, whether the project meets certain criteria. (If it meets these criteria, then reduced documentation is permitted with the application.)
- The size of the loan guarantee being requested. (The loan guarantee being requested must be below certain sizes in order for its application to be submitted with the lower amount of supporting documentation.)

The proposed rule applies the same set of criteria across all four programs, bringing an overall consistency to delivery. To address statutory intent, it also provides documentation requirements that are specific to some of the programs. These program-specific requirements include documentation such as feasibility studies, technical reports, certifications, and energy assessments and audits.

Compared to the proposed rule, the amount of documentation required among the four current programs varies more widely from program to program. The program-specific requirements are similar, but not necessarily identical, to those currently found within the four programs. For example, currently, the Renewable Energy Systems and Energy Efficiency Improvement Projects guaranteed loan program requires technical reports on all projects, with required documentation levels differing based on a project size of more or less than $200,000. Under the proposed rule, technical reports will only be required on projects greater than $200,000. Another difference is that technical reports for energy efficiency improvement projects would not be required under the proposed rule. However, an energy assessment or audit, depending on the size of the energy efficiency improvement project, would be required.

C. Lender Eligibility

The proposed rule sets up criteria for lender participation that are different from the existing programs. The current programs generally make eligible regulated and supervised lenders that possess the capability to service the loan being requested, and then list the types of lender that fit the description. The Business and Industry program and the Renewable Energy System and Energy Efficiency Improvements program (by incorporating the B&I provisions) go one step further in identifying additional requirements that must be met for lenders that are not regulated or supervised.

Under the proposed rule, two categories of lenders are created—regulated or supervised lenders and other lenders. Regulated or supervised lenders would be eligible if they are in good standing with their regulators. This criterion is not found under the current programs. In addition, regulated or supervised lenders that do not have an existing portfolio with the Agency would be required to file an application, along with a copy of their policies and procedures for loan origination and servicing, to the Agency to be considered for participation. Under the current programs, such lenders are not required to submit such an application or their loan origination and servicing policies and procedures. Lastly, the proposed rulemaking does not list eligible lenders by lender type. The Agency does not believe that it is necessary to continue listing specific types of lenders.

The second category of lender under the proposed rule—lenders that are not

regulated or supervised lenders—would be required to submit an application to the Agency, along with information to document their capabilities and experience and including a copy of their loan origination and servicing policies and procedures and certificate(s) of good standing from the States in which they intend to conduct business. For the most part, this is very similar to the current B&I guaranteed loan program.

D. Negligent Loan Origination

As proposed, the Agency is making clear that negligent loan origination will be considered in determining whether or not to reduce loss claims payable under the loan guarantee to the lender when a loan is in default. The Agency believes that negligent loan origination may not have been articulated as clearly as it should have been in the previous programs. Therefore, the Agency recognizes that there may be some confusion within the lending community as to whether negligent loan origination could result in a reduction in the guarantee. In order to clarify this situation, the Agency is including in the proposed rule a definition of negligent loan origination and making explicit that negligent loan origination can be used to reduce loss claims payable under the guarantee held by the lender when a loss has occurred.

E. Criteria for Becoming a Preferred Lender

The current B&I guaranteed loan program has a provision for lenders to become certified preferred lenders. The other three programs do not have a similar provision.

Under the proposed rule, any Rural Development approved lender may apply for preferred lender status regardless of the program in which the lender wishes to participate. The criteria for becoming a preferred lender focus on lender experience, history of losses, and instances of negligent origination and servicing. These criteria are somewhat narrower and more stringent than those in the current B&I guaranteed loan program for qualifying as a certified preferred lender.

F. Percent Guarantee

The maximum percent guarantees for each of the four programs for lenders who have preferred lender status under the proposed rule are the same as the current programs, except for loans over $10 million under the Renewable Energy Systems and Energy Efficiency Improvement Projects program. For that program, the proposed rule would limit the maximum percent guarantees for loans over $10 million to 60 percent compared to the current maximum of 70 percent. This change is being made for consistency in the guaranteed percentage for projects with similar risk profiles between this program and the Business and Industry program. For those lenders that do not have preferred lender status, the maximum percent guarantees are 10 percentage points less than for those lenders with preferred lender status. Under the current four programs, no such distinction is made.

The Agency is implementing this distinction in an effort to encourage more lenders to qualify under a higher standard as ''Preferred'' lenders. This allows the Agency to better manage institutional risk and lower Agency loss exposure by improving the quality of lenders who participate in these programs and by reducing the size of the loan guarantee to lenders that do not qualify for preferred lender status.

G. Tangible Balance Sheet Equity Versus Cash Equity

Under the current B&I guaranteed loan program, one of the eligibility criteria for projects is based on meeting certain tangible balance sheet equity requirements. The new rule proposes to use, instead, cash equity. The Agency is proposing this change because of difficulties in applying the tangible balance sheet equity criteria, and because the private sector is moving away from the use of tangible balance sheet equity as a qualifying factor. The Agency believes that requiring cash equity will result in greater consistency with the lending industry, clarified equity expectations, and stronger guarantee applications.

H. Oversight and Monitoring—Default Reports

Under the proposed rule, lenders would be required to submit information on each loan in default, including delinquent loans, on a monthly basis. This is more frequent than under the four current programs. The Agency believes this increase in frequency is necessary to provide the Agency with the most current information on the status on loans in default within its outstanding loan guarantee portfolio, thereby allowing the Agency to improve risk management and reduce its loss exposure.

I. Preapplications

Under the proposed rule, lenders have the option of submitting a preapplication to obtain Agency input. Three of the four programs currently allow preapplications, but preapplications are not currently part of the renewable energy systems and energy efficiency improvement project guaranteed loan program.

IV. Request for Comments

The Agency is interested in receiving comments on all aspects of the proposed rule. In particular, the Agency is seeking comments in the areas listed below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

A. Project Financial Metric Criteria (Proposed § 5001.6(c))

The Agency is seeking to establish minimum financial metric criteria that each project must first meet in order to be eligible under the new program. The Agency is seeking comments on the proposed section as follows:

- Are these three criteria reasonable and appropriate to help mitigate project risk? If not, what other criteria should the Agency consider and why?
- Are the values proposed for the criteria reasonable? If not, what value(s) should the Agency consider and why?

B. Other Lender Criteria (Proposed § 5001.9(b))

The Agency is seeking to mitigate institutional risk by establishing an initial set of three criteria for lenders who are not regulated or supervised. These criteria address minimum net worth, liquid assets, and line(s) of credit. The Agency is seeking comments on these eligibility criteria for these ''other'' lenders as follows:

- Are these three criteria reasonable and appropriate to help manage and mitigate institutional risk? If not, what other criteria should the Agency consider and why?
- Are the values proposed for the criteria reasonable? If not, what value(s) should the Agency consider and why?

C. Preferred Lender Status Criteria (Proposed § 5001.9(c)(1)(i) Through (iii))

To further mitigate institutional risk, the Agency is proposing to designate approved lenders as ''preferred lenders'' if they meet three criteria. These criteria address the lender's experience in commercial lending, government guaranteed commercial lending, financing, or other activity under similar loan programs; the lender's annual losses depending on how long the lender has been in business; and instances of negligent loan origination or servicing of Federal Government loans. The Agency is seeking comments on these eligibility criteria for obtaining ''preferred lender'' status as follows:

- Are these three criteria reasonable and appropriate to designate approved lenders as ''preferred lenders''? If not,

what other criteria should the Agency consider and why?

• Are the values proposed for the criteria reasonable? If not, what value(s) should the Agency consider and why?

D. Low Documentation Application Content and Criteria (Proposed § 5001.12(b) and (c))

The Agency is proposing that applications be submitted with either full supporting documentation or low supporting documentation, with criteria proposed for determining when a lender may submit a low documentation application. The Agency is seeking comments on the following areas:

• Proposed § 5001.12(b) identifies five supporting documents (as found in proposed § 5001.12(a)(2) through (a)(6)) that need to be submitted with the application and eight supporting documents (as found in proposed § 5001.12(a)(7) through (a)(14)) that do not need to be submitted, but which the lenders must certify that they possess and used in the analysis of the project. Is this a reasonable and appropriate ''split'' between the documentation to be submitted versus the documentation to be certified to? If not, what would you recommend and why?

• Proposed § 5001.12(c)(2)(ii)(A) through (E) proposes five project criteria that must be met in order for lenders that do not have preferred lender status to submit low documentation applications. Are these reasonable and appropriate criteria? If not, what other criteria should the Agency consider and why? Are the values proposed for the criteria reasonable? If not, what value(s) should the Agency consider and why?

• Proposed § 5001.12(c)(2)(i) proposes to set the guaranteed loan value for submitting a low documentation application at $5 million; that is, if the guaranteed loan value is less than $5 million, a low documentation application may be submitted. As stated earlier in the preamble, the Agency is proposing to limit the guaranteed loan value in order to offset Agency loss exposure. The Agency is seeking comment on (1) whether this is an appropriate value, (2) whether the value should vary depending on the program (e.g., a different threshold value for community facilities versus renewable energy systems) and (3) whether an alternative method (e.g., using an annual average loan value; the median loan value) should be used.

• As proposed in subpart B for each of the four programs, the Agency is further proposing to reduce the maximum loan guarantee by 10 percentage points for low documentation applications submitted by approved lenders who do not have preferred lender status. As stated earlier in the preamble, the Agency is proposing this reduction in maximum loan guarantee in order to offset Agency loss exposure. The Agency is seeking comment on (1) whether this is an appropriate value, (2) whether the value should vary depending on the program, and (3) whether the reduction should be applied to preferred lenders.

E. Reporting Frequency (Proposed § 5001.4(b))

The Agency is seeking comments on the frequency for periodic reports and for default reports as proposed in § 5001.4(b)(2). For periodic reports, the Agency is interested in comments on whether more frequent reporting (i.e., monthly) would be useful to the Agency and what increase level of lender burden would be associated with more frequent reporting. For default reports, if you propose an alternative frequency, please address how the alternative frequency would allow the Agency to maintain up-to-date information on the status of the guaranteed loans in default or explain why the Agency's proposed information requirements are onerous, in order to adequately manage and mitigate its guaranteed loan portfolio risk and loss exposure.

List of Subjects

7 CFR 1779

Guaranteed loans, Loan programs, Waste treatment and disposal, Water supply.

7 CFR 3575

Community facilities, Guaranteed loans, Loan programs.

7 CFR 4279 and 4280

Loan programs—Business and industry—Rural development assistance, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

7 CFR Part 5001

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural Development, Rural areas, Water and waste disposal.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapters XVII, XXXV, and XLII of title 7 of the Code of Federal Regulations are proposed to be amended and Chapter L is proposed to be established as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1779—[REMOVED]

1. Part 1779 is removed and reserved.

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3575—[REMOVED]

2. Part 3575 is removed and reserved.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4279—GUARANTEED LOANMAKING

3. The authority citation for part 4279, continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B of Part 4279 [Removed and Reserved]

4. Subpart B of part 4279 is removed and reserved.

PART 4280—LOANS AND GRANTS

5. The authority citation for part 4280, continues to read as follows:

Authority: 7 U.S.C. 8106.

Subpart B of Part 4280 [Removed and Reserved]

6. Subpart B of part 4280, is removed and reserved.

7. Chapter L consisting of parts 5000 through 5099 is established and a new part 5001 is added to read as follows:

CHAPTER L—RURAL DEVELOPMENT, DEPARTMENT OF AGRICULTURE

PART 5001—GUARANTEED LOANS

Subpart A—General Provisions

Sec.

5001.1 Purpose.
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Basic Eligibility Provisions

5001.6 Project eligibility.
5001.7 Unauthorized projects and purposes.
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5001.10 [Reserved]

Basic Guarantee Application Provisions

5001.11 Guarantee application process.
5001.12 Guarantee application content.
5001.13–5001.14 [Reserved]

Basic Lender Provisions

5001.15 Lender responsibilities—General.

5001.16 Lender responsibilities—Origination.
5001.17 Lender responsibilities—Servicing.
5001.18–5001.24 [Reserved]

Basic Borrower Provisions

5001.25 Borrower responsibilities.
5001.26–5001.29 [Reserved]

Basic Guarantee and Loan Provisions 5001.30

General.
5001.31 Guaranteed loan requirements.
5001.32 Conditional commitment for guarantee.
5001.33 Conditions precedent to issuance of Loan Note Guarantee.
5001.34 Issuance of the guarantee.
5001.35 Alterations to loan instruments.
5001.36 Reorganizations.
5001.37 Sale or assignment of guaranteed loan.
5001.38 Termination of Loan Note Guarantee.
5001.39–5001.100 [Reserved]

Subpart B—Program Specific Provisions

5001.101 Community Facilities Program.
5001.102 Water and Waste Disposal Facilities Program.
5001.103 Business and Industry Program.
5001.104 Renewable Energy Systems and Energy Efficiency Improvements Program.
5001.105–5001.200 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1926(a)(1); 7 U.S.C. 1932(a); 7 U.S.C. 8106.

Subpart A—General Provisions

§ 5001.1 Purpose.

This part regulates the making, guaranteeing, holding, servicing, and liquidating of Rural Development guaranteed loans.

§ 5001.2 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this part.

Agency. The Rural Housing Service or successor for the programs it administers; the Rural Utilities Service or successor for the programs it administers; and the Rural Business—Cooperative Service or successor for the programs it administers.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Applicant. The entity that is seeking a loan guarantee under this part.

Arm's length transaction. A transaction between ready, willing, and able disinterested parties who are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment guarantee agreement. A signed, Agency-approved agreement between the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Assurance agreement. A signed, Agency-approved agreement between the Agency and the lender that assures the Agency that the lender is in compliance with and will continue to be in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and Agency regulations promulgated there under.

Biomass. Any organic material, excluding paper that is commonly recycled and unsegregated solid waste, that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste; wood residues; plants, aquatic plants and grasses; natural fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases.

Borrower. The entity that borrows money from the lender, including any party or parties liable for the guaranteed loan except guarantors.

Business plan. A comprehensive document that clearly describes the applicant's ownership structure and management experience including, if applicable, discussion of a parent, affiliates, and subsidiaries; a discussion of how the applicant will operate the proposed project, including, at a minimum, a description of the business and project, the products and services to be provided, pro forma financial statements for a period of 2 years, including balance sheet, income and expense, and cash flows, and the availability of the resources necessary to provide those product and services.

Collateral. The asset(s) pledged by the borrower in support of the loan.

Commercially available. A system that has a proven operating history of viability of at least one year, specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Community support. Sufficient evidence of the area to be served that there is enough demand and support for the service or facility to make the project economically viable.

Conditional commitment for guarantee. An Agency-approved form to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements contained in the commitment as set forth by the Agency.

Conflicts of interest. Conflicts of interest include, but are not limited to, distribution or payment of guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the lender or borrower or an immediate family member of such an individual when such individual will retain any portion of the ownership of the lender or borrower.

Cooperative organization. Any entity that is not legally chartered as a cooperative and that is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets, provided those members are not employees of the organization.

Debt coverage ratio. The ratio obtained when dividing the net operating income by a business's annual debt service. The annual debt service equals the annual total of all interest and principal paid for all loans on a business.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other related documents evidencing the loan.

Delinquent loan. A loan for which a scheduled loan payment has not been received by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Eligible project costs. Those expenses approved by the Agency for the project.

Energy assessment. A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures, estimates overall costs and expected energy savings from the funded improvements, and dollars saved per year and provides an estimate of the anticipated weighted-average payback period in years.

Energy audit. A report conducted by a Certified Energy Manager or Professional Engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The report will provide detailed project costs and

savings information with a high level of confidence sufficient for major capital investment decisions similar to but in more detail than an energy assessment.

Energy efficiency improvement. A product or process installed in a facility, or building, that reduces energy consumption.

Essential community facility. The physical structure financed or the resulting service provided to primarily rural residents that combined or severally must:

(i) Perform or fulfill a function customarily provided by a local unit of government;

(ii) Be a public improvement needed for the orderly development of a rural community;

(iii) Not include a project that benefits a single individual or group of single individuals as opposed to a class within a community;

(iv) Not include commercial or business undertakings (except for limited authority for industrial parks);

(v) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a not-for-profit corporation; and

(vi) Be located in a rural area.

Existing business. A business that has been in operation for at least one full year. Mergers or changes in business name or legal type of currently operating businesses are considered to be existing businesses as long as the business purpose has not changed significantly.

Feasibility study. An analysis of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of its expectation for success.

Future recovery. Funds collected by lender after final loss claim.

Guaranteed loan. A loan made and serviced by a lender for which the Agency has issued a Loan Note Guarantee.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. The person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities.

Immediate family. Individuals who are closely related by blood or by marriage, or within the same household, such as a spouse, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism.

Lender. The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this part.

Lender's agreement. The Agency-approved signed agreement between the Agency and the lender setting forth the lender's loan responsibilities under an issued Loan Note Guarantee.

Lender's analysis. The analysis and evaluation of the credit factors associated with each guarantee application to ensure loan repayment through the use of credit document procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Loan agreement. The Agency-approved agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. The Agency-approved agreement containing the terms and conditions of the guarantee of an identified loan.

Loan-to-value ratio. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Local government. A county, municipality, town, township, village, or other unit of general government below the State level. The term also includes tribal governments when tribal lands are within the service area.

Market value. The amount for which property would sell for its highest and best use at a voluntary sale in an arm's length transaction.

Negligent loan origination.

(i) The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of unguaranteed loans; or

(ii) The failure of the lender to perform its origination responsibilities in accordance with the origination policies and procedures in use by the lender at the time of the loan.

(iii) The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing.

(i) The failure of a lender to perform those services that a reasonably prudent lender would perform in servicing and liquidating its own portfolio of unguaranteed loans; or

(ii) The failure of the lender to perform its servicing responsibilities in accordance with its current servicing policies and procedures.

(iii) The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Permanent working capital. Liquid assets available to support a business's long-term operations and growth.

Person. Any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

Post-application. The date that the Agency receives an essentially completed application. An ''essentially completed'' application is an application that contains all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Pre-commercial technology. Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

Preliminary engineering report. A document normally prepared by the owner's consulting engineer that describes the owner's present situation, analyzes alternatives, and proposes a specific course of action from an engineering and environmental perspective. For further details see RUS Bulletins 1780–2, –3, –4, and –5.

Promissory Note. A legal instrument that a borrower signs promising to pay a specific amount of money at a stated time or on demand. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt where appropriate.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or can not, meet obligations to protect or preserve collateral.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian tribe on a Federal or State reservation or other Federally recognized Indian tribe or an organization controlled by any of the above.

Regulated or supervised lender. A lender that is subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions.

Renewable energy. Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

Renewable energy system. A system that produces or produces and delivers usable energy from a renewable energy source.

Report of loss. An Agency-approved form used by lenders when reporting a loss under an Agency guarantee.

Rural or rural area.

(i) For purposes of providing Business and Industry, or Renewable Energy/Energy Efficiency loan guarantees, Rural and Rural area are defined as any area of a State other than a city, town, or Census Designated Place that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area.

(ii) For the purpose of providing Community Facilities loan guarantees, the terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area with a population of not more than 20,000 inhabitants according to the latest decennial census.

(iii) For the purpose of providing Water and Waste Disposal loan guarantees, Rural or Rural area is defined as any area not in a city, town, or unincorporated area with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

(iv) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. For Puerto Rico, Census Designated Place (CDP), as defined by the U.S. Census Bureau, will be used as the equivalent to city or town. The appropriate population limit by applicable program will apply to the population of CDP.

Small agricultural producer. An agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System (NAICS) found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other not-for-profit entities are excluded.

Startup business. A business that is a newly opened establishment that has been in operation for less than one full year. Newly-formed entities building ground-up facilities, even if there are affiliated businesses doing the same kind of business, are new businesses.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State Bond Banks and State Bond Pools. An entity authorized by the State to issue State debt instruments and utilize the funds received to finance projects that qualify for a guaranteed loan under this part.

Substantive change. Any change in the purpose of the loan, the financial condition of the borrower, or the collateral, that might jeopardize loan performance.

Total project cost. The sum of all costs associated with a completed project.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

Unincorporated area. A Census Designated Place.

Water and waste disposal facility. A physical structure or series of structures used to provide water and waste disposal services. Such structures include, but are not necessarily limited to, those for rural drinking water, sanitary sewage, solid waste disposal, and storm wastewater disposal.

(b) *Abbreviations.* The following are applicable to this part:

RUS—Rural Utilities Service.

SBA—Small Business Administration.

§ 5001.3 Agency authorities.

(a) *Exception authority.* Except as specified in paragraphs (a)(1) through (4) of this section, the applicable Administrator may, on a case-by-case basis, make exceptions to any requirement or provision of this part, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially declared disaster, or when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable law.

(1) *Applicant and borrower eligibility.* No exception to applicant or borrower eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

(3) *Rural area definition.* No exception to the definition of rural area, as defined in § 5001.2, can be made.

(4) *Term length.* No exception to the maximum length of the loan term, as specified in § 5001.31(c), can be made.

(b) *Appeal rights.* A person may seek a review of an Agency decision under this part from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 5001.4 Oversight and monitoring.

(a) *General.* The Agency will conduct oversight and monitoring of all lenders involved in any manner with any guarantee under this program to ensure compliance with this Part including ensuring lenders continue to meet the criteria for being an approved lender or a preferred lender. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders. In addition, the Agency will review all approved and preferred lenders for eligibility at least every two years.

(b) *Reports and notifications.* The Agency will require lenders to submit to the Agency reports and notifications to facilitate the Agency's oversight and monitoring. These reports and notifications include, but are not necessarily limited to:

(1) Periodic reports regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of the lender since the last periodic report to be submitted semiannually.

(2) If a loan goes into default, the lender shall provide a monthly default report in a form approved by the Agency.

(3) Notification within 5 days of:

(i) any loan agreement violation by any borrower, including when a borrower is 30 days past due or is otherwise in default; and

(ii) any permanent or temporary reduction in interest rate.

§ 5001.5 Forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this part may be obtained through the Agency.

Basic Eligibility Provisions

§ 5001.6 Project eligibility.

To be eligible for a guaranteed loan under this part, at a minimum, a project must meet each of the requirements specified in paragraphs (a) through (d) of this section.

(a) The project must benefit a rural area.

(b) The project must meet the ownership, control, and revenue requirements specified in subpart B of this part.

(c) The project must meet the following financial metric criteria:

(1) A debt coverage ratio of 1.0 or higher;

(2) A cash equity of 10 percent for guarantees on loans to existing businesses and 20 percent cash equity for guarantees on loans to startup businesses as determined using Generally Accepted Accounting Principles, or, as specified in Subpart B, community support; and

(3) A loan-to-value ratio of no more than 1.0.

(d) For projects that are determined by a service area, boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

§ 5001.7 Unauthorized projects and purposes.

Loans guaranteed under this part must not be used for any projects other than those authorized in subpart B of this part. In addition, loan proceeds must not be used for:

(a) Investment or arbitrage, or speculative real estate investment.

(b) Racetracks, golf courses, water parks, ski slopes, or similar recreational facilities listed in the annual Notice of Funds Availability.

(c) Any business deriving more than 10 percent of its annual gross revenue from gambling activity.

(d) Prostitution or businesses deriving income from activities of a prurient sexual nature.

(e) Any line of credit, lease payment, or loan made by other Federal agencies.

(f) Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(g) Any facility used primarily for the purpose of housing Federal or State agencies.

(h) Finders', packagers', or loan brokers? fees.

(i) Any business deriving income from the sale of illegal drugs, drug paraphernalia, or any other illegal product.

(j) Rental for the use of equipment or machinery owned by the applicant.

(k) The payment of a judgment.

(l) Any project resulting in a conflict of interest.

(m) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development and limited sections of essential community facilities when the activity in the leased space is related to and enhances the primary purpose for which the facility is being established by the borrower.

(n) Any project located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(o) Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(p) Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a **Federal Register** notice.

§ 5001.8 Borrower eligibility.

(a) *Eligible entities.* To be eligible, a prospective borrower must meet the requirements specified in paragraphs (a)(1) and (2) of this section and in subpart B to this part, as applicable.

(1) *Citizenship.* Individual borrowers must be citizens of the United States (U.S.), or reside in the U.S. after legal admittance for permanent residence. Entities other than individuals must be at least 51 percent owned by persons who are U.S. citizens or are legally admitted permanent residents residing in the U.S.

(2) *Legal authority and responsibility.* Each borrower must have, or obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A borrower will be considered ineligible for a guarantee due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, is delinquent on Federal debt, or is debarred or suspended from receiving Federal assistance.

§ 5001.9 Lender eligibility and designation.

Only lenders approved by the Agency are eligible to participate in the guaranteed loan programs described in this part.

(a) *Regulated and supervised lenders.* Any regulated or supervised lender who is not otherwise debarred or suspended by the Federal government is eligible to participate in the guaranteed loan programs described in subpart B to this part.

(1) The requirements for a regulated or supervised lender that does not have an existing portfolio of guaranteed loans with the Agency to be eligible to participate are identified in paragraph (a)(1)(i) of this section. The requirements for a regulated or supervised lender that has an existing portfolio of guaranteed loans with the Agency to be eligible to participate are identified in paragraph (a)(1)(ii) of this section.

(i) A regulated or supervised lender that does not have an existing portfolio of guaranteed loans with the Agency must apply for lender approval to the Agency in the State in which it is chartered. The lender must also submit with the application a copy of its current written policies and procedures for loan origination and servicing. A lender must be in good standing with its regulator to be approved for participation.

(ii) A regulated or supervised lender that has an existing portfolio of guaranteed loans with the Agency is considered ''proved'' for participation and is not required to submit an application for lender approval. Such lender, however, is required, as specified by the Agency, to certify that it is in good standing with its regulator and submit copies of its current written policies and procedures for loan origination and servicing.

(2) If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any State in which it is authorized to do business. Approval for participation constitutes approval to participate in all guaranteed loan programs described in this part.

(3) Approved status is maintained as long as the lender remains in good standing with its regulator, in conformance with this part, or until otherwise notified by the Agency.

(b) *Other lenders.* Any lender not eligible in paragraph (a) of this section that wishes to originate or service a new loan under this part, who is not otherwise debarred or suspended by the Federal government, may apply for approved status, as specified in paragraph (b)(1) of this section, provided it has a minimum net worth of $2.5 million; liquid assets of at least $500,000; and an Agency-approved line of credit that totals $5 million or more.

(1) *Application for lender approval.* The lender must submit an application to the Rural Development State Office in the State in which the lender is chartered providing the following information:

(i) Evidence showing that the lender has the necessary capital, resources, and funding capacity to successfully meet its responsibilities;

(ii) Copies of any license, charter, or other evidence of legal authority to engage in the proposed loan making and servicing activities;

(iii) Certificate(s) of good standing from the States in which they intend to conduct business; and

(iv) Description of its lending history and experience, including:

(A) evidence of demonstrated expertise in loan origination, making, securing, servicing, and collecting loans; length of time in the commercial lending business; experience with government guaranteed lending, particularly within any of the subject programs; the range and volume of lending and servicing activity; the current status of the loan portfolio; the lender's commercial loan fee structure; and the level of experience of the lender's management, lending, and servicing staff;

(B) copies of the lender's credit evaluation policy and procedures documents, including evidence of the criteria stated in § 5001.16(b); the lender's loan origination and servicing policies and procedures, including delineating ratio requirements and minimum reserves, delineating collection, loan document compliance, post-closing financial statement analysis, verification of payment of taxes and insurance, and maintenance of liens; and audited financial statements not more than 1 year old;

(C) documented sources of funds for funding and closing loans; and

(D) office location(s) and proposed lending area(s).

(2) *Agency review.* The Agency will review the application and request additional clarification or information if necessary. If approved, the lender may sign a Lender's Agreement with the Agency. If the Lender's Agreement is executed by the lender and the Agency, the lender may submit an application for guarantee in any State in which it is authorized to do business. Approved status is maintained as long as the lender meets or exceeds minimum Agency requirements.

(c) *Lender designation.* A lender that meets the criteria specified in paragraph (a) or (b) of this section will be designated as a ''Rural Development Approved lender'' under this part. A Rural Development approved lender may submit to the Agency at any time, including when submitting its application for lender approval, an application for designation as a Preferred lender. No Rural Development approved lender will be afforded preferred lender status until approved by the Agency.

(1) The criteria the Agency will use to determine if a Rural Development approved lender qualifies for preferred lender status are:

(i) Current level of experience in commercial lending, government guaranteed commercial lending, financing, or other activity under similar loan programs;

(ii) If the lender has been making commercial loans for 5 or more years, has had no annual losses in the last 5 years greater than 1 percent of its outstanding commercial loan portfolio or if the lender has been making commercial loans for less than 5 years, has had no losses for the length of time the lender has been making commercial loans; and

(iii) Having no more than one instance of Federal government negligent loan origination or servicing.

(2) If approved as a Preferred lender, the lender has preferred lender status in each State.

(3) Preferred lender status is maintained as long as the lender continues to meet each of the criteria under which it was approved as specified in paragraph (c)(1) of this section. Maintenance of preferred lender status will be based on paragraphs (c)(1)(i), (c)(1)(ii)(A), and (c)(1)(iii) for all lenders who have been making commercial loans for 5 years or more, including those lenders who received Preferred lender status when having less than 5 years of commercial loan experience.

§ 5001.10 [Reserved]

Basic Guarantee Application Provisions

§ 5001.11 Guarantee application process.

(a) *Beginning the process.* Any lender may submit a pre-application or a full application to begin an application for guarantee.

(1) *Pre-application.* Based on the information in the pre-application, the Agency will make an informal assessment of the eligibility of the prospective borrower and project. The Agency will provide written informal comments regarding the pre-application's strengths and weaknesses. The Agency's assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

(2) *Guarantee application.* For each guarantee request, the lender must submit to the Agency an application that is in conformance with § 5001.12.

(b) *Guarantee application evaluation.* All loan guarantee applications will be evaluated according to this part.

(1) The Agency will notify the lender in writing of its decision.

(2) In the evaluation of the application, the Agency may require the lender to obtain additional assistance in those areas where the lender does not have the requisite expertise to originate or service the loan.

§ 5001.12 Guarantee Application Content.

All guarantee applications must contain the information specified in either paragraph (a) or (b) of this section, as determined under paragraph (c), and as specified in subpart B of this part.

(a) *Full documentation applications.* Full documentation applications must contain the following:

(1) Agency-approved application forms;

(2) Lender's analysis and credit evaluation (conforming to § 5001.16(b));

(3) Environmental information required by the Agency to conduct its environmental reviews (as specified in § 5001.16(h));

(4) Technical reports and energy audits (as specified in subpart B);

(5) A copy of Form 10–K, ''Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934,'' for companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations;

(6) Proposed loan agreement between the lender and borrower;

(7) Energy assessments (as specified in subpart B);

(8) Appraisals (as specified in § 5001.16(c));

(9) Business plan, unless the information is contained in the feasibility study;

(10) Feasibility study (as specified in subpart B);

(11) If the application is for 5 or more residential units or for for-profit nursing homes or assisted-living centers, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3);

(12) Preliminary engineering report (as specified in subpart B);

(13) Current credit reports or equivalent on the prospective borrower and any other person liable for the debt, except for public bodies; and

(14) If the guaranteed loan is $1 million or more, the most recent audited financial statements of the borrower or if the guaranteed loan is less than $1 million, the most recent audited or unaudited financial statements of the borrower.

(15) If the lender is not yet a Rural Development approved lender, the application for lender approval specified in § 5001.9(a) or (b), as applicable.

(b) *Low documentation applications.* Low documentation applications must contain:

(1) The information specified in paragraphs (a)(1) through (6) of this section; and

(2) Certification that the lender possesses and has reviewed the information specified in paragraphs (a)(7) through (14) of this section and has identified and reported to the Agency any significant risks that would jeopardize the repayment of the loan.

(3) If the lender is not yet a Rural Development approved lender, the application for lender approval specified in § 5001.9(a) or (b), as applicable, must also be submitted.

(c) *Determination of documentation level.*

(1) *Startup business.* All applications for startup businesses must be full documentation applications.

(2) *Existing business.*

(i) Rural Development approved lenders that have preferred lender status may submit either a full or low documentation application for a loan guarantee request of $5 million or less. Only a full documentation application will be acceptable for a loan guarantee request of greater than $5 million.

(ii) Rural Development approved lenders that do not have preferred lender status must submit full documentation applications unless the project meets the criteria specified in paragraphs (c)(2)(ii)(A) through (E) of this section. If the project meets each of these criteria, as applicable, the lender may submit either a low or full documentation application.

(A) Debt coverage ratio of 1.25 or higher.

(B) Cash equity of at least 25 percent of eligible project costs or, as specified in Subpart B, community support.

(C) A minimum FICO (Fair Isaac and Company) credit score of 680 or equivalent industry credit score for each individual who signs the promissory note or guarantees repayment of the loan.

(D) A loan-to-value ratio of no more than 0.8.

(E) Loan guarantee portion of the loan at or below $5 million.

§§ 5001.13–5001.14 [Reserved]

Basic Lender Provisions

Lender responsibilities—General.§ 5001.15

(a) Lenders must ensure that proposals for facilities seeking a guarantee under this part comply with all Federal, State, and local laws and regulatory rules that are in existence and that affect the project, the borrower, or lender activities.

(b) Any lender involved in any manner with any guarantee under this part must cooperate fully with all oversight and monitoring efforts of the Agency or its representatives.

(c) Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this part.

§ 5001.16 Lender responsibilities—Origination.

(a) *General.* The lender is responsible for originating all loans in accordance with their current written policies and procedures and with the requirements of this part. Where a lender's current written policies and procedures address a corresponding requirement in this part, the lender must comply with whichever is more stringent. The Agency may require, at its discretion, an independent credit risk analysis (e.g., a credit rating or assessment) on the loan without consideration of the guarantee.

(b) *Credit evaluation.* For all applications for guarantee, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part and with the current written policies and procedures of the lender submitting the application. Where a lender's current written policies and procedures address a corresponding requirement in this part, the lender must comply with whichever is more stringent. An acceptable credit evaluation must:

(1) Use credit documentation procedures and an underwriting process that are consistent with generally accepted commercial lending practices, and the lender's own policies, procedures, and lending practices, and

(2) Include an analysis of the credit factors associated with each guarantee application to ensure loan repayment, including consideration of each of the following five elements.

(i) *Credit worthiness.* Those financial qualities that generally impel the prospective borrower to meet its obligations as demonstrated by its credit history.

(ii) *Cash flow.* A prospective borrower's ability to produce sufficient cash to repay the loan as agreed.

(iii) *Capital.* The financial resources that the prospective borrower currently has and those it is likely to have when payments are due. The prospective borrower must be adequately capitalized.

(iv) *Collateral.* The assets pledged by the prospective borrower in support of the loan. Adequacy will be based on market value. For the purchase of cooperative stock, the lender must at least secure the loan with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal or corporate guarantee of the borrower.

(v) *Conditions.* The general business environment and status of the prospective borrower's industry.

(c) *Appraisals.* Real property collateral will be appraised by the lender in accordance with the appropriate guidelines contained in the current Standards 1 and 2 of the Uniform Standards of Professional

Appraisal Practices or successor standards.

(1) All appraisals used to establish the fair market value of the real property must not be more than 1 year old, except as otherwise specified in subpart B of this part.

(2) All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral.

(d) *Personal and corporate guarantees.* Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loan making purposes.

(1) Agency-approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning greater than a 20 percent interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute an Agency-approved unconditional guarantee form. When warranted by an Agency assessment of potential financial risk, Agency-approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

(2) Exceptions to the requirement for personal guarantees must be requested by the lender and concurred by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

(e) *Design requirements.* The lender must ensure that all projects are designed utilizing accepted architectural and engineering practices, taking into consideration any Agency comments when the facility is being designed, and conform to applicable Federal, State, and local codes and requirements. The lender must also ensure that the planned project will be fully constructed, within the original budget, to facilitate completion of the loan purpose and will be suitable, once completed, for the borrower's needs in accordance with the borrower's loan application.

(f) *Monitoring requirements.* The lender must monitor the progress of construction and ensure that construction conforms to applicable Federal, State, and local code requirements and proceeds in accordance with the approved plans, specifications, and contract documents. The lender must also ensure that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(g) *Compliance with other Federal laws.* Lenders must comply with other applicable Federal laws including Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964. With regard to the Civil Rights Act of 1964, data must be made available to conduct compliance reviews in accordance with 7 CFR 1901.204 of this title or successor regulation; initial reviews will be conducted after the Assurance Agreement is signed and all subsequent reviews every 3 years thereafter for loans; and the last review will occur 3 years after the date of loan closing.

(h) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with subpart G of either 7 CFR part 1940 or 7 CFR part 1794 or successor regulations, including the provision of all required Federal, State, and local permits;

(2) complied with any mitigation measures required by the Agency; and

(3) not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment.

(i) *Conflicts of interest.* The lender must report to the Agency all appearances of conflicts of interest.

§ 5001.17 Lender's responsibilities—Servicing.

(a) *General.* The lender is responsible for servicing the loan in accordance with the Lender's Agreement, this part, and their current written policies and procedures. Where a lender's current written policies and procedures address a corresponding requirement in this part or in the Lender's agreement, the lender must comply with whichever is more stringent. The lender must ensure that the borrower has obtained, and will maintain for the life of the loan, all necessary insurance coverage appropriate to the proposed project. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(b) *Certification.* The lender will certify in the Lender's Agreement that it will service the guaranteed loan according to Agency requirements and the lender's current written servicing policies and procedures and that, where the lender's current written policies and procedures address corresponding requirements of this part, it will comply with whichever is more stringent. When applicable, the lender will require an audit of the borrower in accordance with Office of Management and Budget requirements.

(c) *Collateral inspection and release.* The lender must inspect the collateral as often as necessary to properly service the loan. The Agency may require the lender to obtain prior Agency approval of any release of any collateral. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases in which the Agency determines that it may be adversely affected by the release of the collateral. The appraisal will be at the expense of the borrower and must meet the requirements of § 5001.16(c). In all cases, the sale or release of collateral must be based on an arm's length transaction.

(d) *Transfers and assumptions.*

(1) *General.* Any time that a third party assumes a loan guaranteed under this part, it shall be processed and approved by the Agency as if it were a new loan guarantee.

(2) *Processing transfers and assumptions.* The lender may release the transferor (including any guarantor) from liability, regardless of the amount of the loan being transferred or assumed.

(i) Loan terms cannot be changed unless previously approved in writing by the Agency with the concurrence of the holder and transferor (including guarantor if it has not been released from personal liability). Any new loan term cannot exceed those authorized in this part as measured from the date the loan was initially guaranteed.

(ii) In the case of a transfer and assumption of less than the outstanding balance, the lender (if holding the guaranteed portion) may file an estimated Report of Loss with respect to the difference.

(3) *Transfer fees.* The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of funds availability.

(e) *Mergers.* The Agency may withdraw the guarantee when a borrower participates in a merger.

(f) *Subordination of lien position.* A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. Agency concurrence requires that the Agency's financial interest will be enhanced; collateral will remain adequate to secure the loan; the lien to which the guaranteed loan is subordinated will be for a fixed dollar limit and that lien priorities remain for the portion of the loan that was not subordinated; and subordination to a revolving line of credit does not exceed 1 year.

(g) *Repurchases from holder(s).* The holder may make written demand on the lender or the Agency to repurchase the unpaid guarantee portion of the loan in the case of borrower default or failure of the lender to pay the holder its pro-rata share. When either the lender or the Agency determines that repurchase is necessary to adequately service the loan, the holder must sell the guaranteed portion to the requesting entity.

(1) *Repurchases by lender.* The lender must respond to the holder's demand within 30 days and will notify the Agency in writing of its decision, including notifying the Agency in writing of all repurchases it makes. When repurchased, the lender will accept an assignment without recourse from the holder upon repurchase. All repurchases must be for an amount equal to the holder's interest in the unpaid principal balance of the guaranteed portion and accrued interest less the lender's servicing fee and cover the principal and interest on the guaranteed loan accruing only up to 90 days after the date of the demand by the holder.

(2) *Repurchases by Agency.* When the Agency repurchases the loan, the holder must submit a specific written demand to the Agency, along with appropriate documentation. The Agency will be subrogated to all rights of the holder and, subject to satisfactory documentation, will purchase the unpaid principal and interest of the guaranteed portion to date of repurchase less the lender's servicing fee within 30 days after receipt of the demand. The lender may not charge the Agency any fees unless provided for in the Assignment Guarantee Agreement. The lender shall use a form approved by the Agency to send the guaranteed loan payments to the Agency on all loans repurchased by the Agency from holders. Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee and does not waive any of the Agency's rights against the lender, borrower, or guarantor.

(h) *Additional expenditures and loans.* The lender will not make additional expenditures or new loans to a borrower with an outstanding loan guaranteed under this part without obtaining prior written Agency approval.

(i) *Lender failure.* In the event a lending institution fails, the Agency will provide instruction to the successor entity on a case-by-case basis. Such instructions may include that the Agency may determine to service the entire loan or the guaranteed portion of the loan. In the event no successor entity can be determined, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

(j) *Delinquent loans.* The lender must service delinquent loans in accordance with the Lender's Agreement, its current servicing standards, and reasonable and prudent lending standards. If a borrower is delinquent more than 30 days, the lender must coordinate with the Agency and the borrower to implement appropriate curative actions to resolve the problem. Any curative action that affects the return to the holder must receive the holder's concurrence. Any change in the repayment schedule must be limited to the remaining life of the collateral. Any loan performing in accordance with a curative action will no longer be delinquent.

(k) *Protective advances.* Protective advances are allowed only when they are necessary to preserve the value of the collateral and must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved. Protective advances will not include attorneys' fees or advances in lieu of additional loans. The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than $200,000 or 10 percent of the guaranteed loan, whichever is less.

(l) *Liquidation.* The lender may liquidate a loan when one or more incidents of default or third party actions occur that the borrower can not or will not cure or eliminate within a reasonable period of time. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the security instruments to the Agency.

(1) *Liquidation by the lender.* The lender must develop, in consultation with the Agency, a liquidation plan to determine the best course of action. This plan must include all aspects of liquidation, including but not limited to reports to the Agency, protection of collateral, loss payment, transmission of proceeds to the Agency, and future recovery. The lender must submit its liquidation plan to the Agency at least 30 days before implementing the plan. The Agency must be notified of any changes to or deviations from the plan.

(2) *Compromise settlement and release of personal guarantors.* A compromise settlement may be considered at any time, except as provided in subpart B to this part. Before a guarantor is released from liability, the Agency must concur with the lender. Upon agreement, the lender may proceed to effect a settlement compromise.

(m) *Litigation.* In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender or the Agency with respect to the loan, and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(n) *Loss calculations and payment.* Losses shall be calculated by determining the total guaranteed loan amount including principal, protective advances, and accrued interest. From this amount will be deducted prior lien amounts owed through the settlement date, the net value of collateral, and other funds that can be applied to the debt. The maximum loss allowed is the lower of the percent of loss guarantee time the foregoing or the sum of principal advances and accrued interest. The amount due the lender is adjusted to take into account protective advances and interest.

(1) During the course of any reorganization plan, the lender will request and revise estimated loss payments using Agency-approved forms. The estimated loss claim, as well

as any revisions to this claim, will be accompanied by documentation to support the claim.

(2) In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if so directed by the Agency. The Agency and the lender will share the appraisal fee equally.

(3) Final settlement of liquidation will be made with the lender after the collateral is liquidated (unless otherwise designated as a future recovery) or after settlement and compromise of all parties has been completed. The Agency retains the right to recover losses paid under the guarantee from any liable party.

(i) If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.

(ii) When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan.

(iii) Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, the lender must prepare a final report of loss and submit it to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before Agency approval of any final loss report, the lender must account for all funds, disposition of the collateral, and costs incurred, and must provide any other information necessary for successful completion of the liquidation.

(iv) After a final loss has been paid by the Agency, any future funds recovered by the lender will be pro-rated between the Agency and the lender based on the original percentage of guarantee even if the Loan Note Guarantee has been terminated.

(v) In a bankruptcy, the lender will submit an estimated loss claim based on the final orders of the bankruptcy court's direction. The Agency will pay the lender the estimated final loss based on these directions.

(4) The lender shall submit with each loss claim the current version of its written policies and procedures for origination and servicing.

§§ 5001.18–5001.24 [Reserved]

Basic Borrower Provisions

§ 5001.25 Borrower responsibilities.

(a) *Federal, State, and local regulations.* Borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the project including, but not limited to

(1) Land use zoning;

(2) Health, safety, and sanitation standards as well as design and installation standards; and

(3) Protection of the environment and consumer affairs.

(b) *Permits, agreements, and licenses.* Borrowers must obtain all permits, agreements, and licenses that are applicable to the project.

(c) *Insurance.* The borrower is responsible for maintaining all hazard, flood, liability, worker compensation, and personal life insurance, when required, on the project.

(d) *Access to borrower's records.* Upon request by the Agency, the borrower will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the borrower pertaining to any Agency guaranteed loan. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the Agency.

§ 5001.26–5001.29 [Reserved]

Basic Guarantee and Loan Provisions

§ 5001.30 General.

(a) *Underwriting.* All loans guaranteed by the Agency must be underwritten in accordance with the credit evaluation requirements specified in § 5001.16(b).

(b) *Conditions of guarantee.* A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement.

(1) The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The guaranteed portion will be paid first and given preference and priority over the unguaranteed portion.

(2) The lender will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(3) The holder of a guaranteed portion shall have all rights of payment, as defined in the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations.

(4) The lender will receive all payments of principal and interest on the entire loan and will promptly remit to each holder a pro-rata share, less any lender servicing fee.

(5) No loan guaranteed by the Agency under this part will be conditioned on any requirement that the borrower accept or receive electric service from any particular utility, supplier, or cooperative.

(c) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation by the lender or holder, as appropriate, when the lender or holder has actual knowledge, participates in, or condones such fraud or misrepresentation.

(1) A note that provides for the payment of interest on interest will not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest is void.

(2) The guarantee will not be enforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent loan origination or servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee.

(3) When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender. When in the hands of a holder, the Loan Note Guarantee or Assignment Guarantee Agreement shall not cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

(4) The Agency will guarantee payment as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(d) *Soundness of guarantee.* All loans guaranteed under this part must be

financially sound and feasible, with reasonable assurance of repayment.

(e) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all payments of the lender under the Loan Note Guarantee to the extent of the portion purchased. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender shall not represent a Conditional Commitment of Guarantee as a guarantee. The Agency reserves the right to collect from the lender any payments made to the holder that would not have been payable to the lender had they been the holder.

(f) *Reduction of loss claims payable.* Negligent loan origination or servicing will result in reduction of loss claims payable under the guarantee to the lender if any losses have occurred as the result of such negligence. The extent of the reduction, which could be a total reduction, of the loss claims payable, will depend on the extent of the losses occasioned as the result of the negligent loan origination and servicing.

(g) *Write-downs.* Debt write-downs for an existing borrower where the same principals retain control of and decision-making authority for the business are prohibited.

§ 5001.31 Guaranteed loan requirements.

(a) *Interest rates.* Interest rates may be fixed or variable or a combination of both, as long as they are legal. Variable interest rates must be tied to an acceptable published index and the lender must incorporate the provision for adjustment of payment installments into the Note. When combined fixed and variable rates are used, the lender will provide the Agency with the overall effective interest rate for the entire loan.

(1) *Negotiated rates.* Interest rates, interest rate caps, and incremental adjustment limitations will be negotiated between the lender and the borrower.

(2) *Different rates on guaranteed and unguaranteed portion of the loan.* If the lender and borrower agree, the interest rate on the guaranteed portion of a loan may differ from the rate on the unguaranteed portion provided:

(i) The rate on the unguaranteed portion is equal to or below the market rate and does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and

(ii) the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion unless the rate on the guaranteed portion is fixed and the unguaranteed portion is variable.

(b) *Interest rate changes.* Any change in the interest rate between issuance of the Conditional Commitment for Guarantee and issuance of the Loan Note Guarantee must be approved in writing by the Agency and shown as an amendment to the Conditional Commitment for Guarantee, and are subject to the restrictions specified in paragraphs (b)(1) and (2) of this section.

(1) *Reductions.* The borrower, lender, and holder (if any) may collectively effect a permanent or temporary reduction in the interest rate on the guaranteed loan at any time during the life of the loan by their written agreement, subject to the conditions specified in paragraphs (b)(1)(i) through (iii) of this section. The lender must keep sufficient records to allow the Agency to calculate any loss at the reduced interest rate. The lender must notify the Agency of all permanent interest rate reductions, as specified in § 5001.4(b)(3)(ii).

(i) After a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate.

(ii) In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records that adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(2) *Increases.* Increases in interest rates are not permitted except when the increase results from normal fluctuations in approved variable interest rates, or the increase returns the rate to the rate prior to the temporary reduction.

(c) *Term length.* The loan term will be based on the use of proceeds, the useful economic life of the assets being financed, and the borrower's repayment ability. In no event may the term exceed 40 years.

(d) *Loan schedule and repayment.* Repayment will be structured in accordance with this section and the Loan Agreement, and will be due and payable in accordance with the Note. Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed. Lenders must ensure that the principal balance of a guaranteed loan is properly amortized within the prescribed loan maturity.

(e) *Maximum loan amounts.* The maximum amount that may be guaranteed will be determined on a program-by-program basis and will be published each year in the **Federal Register**.

(f) *Maximum percent of guarantee.* The maximum guarantee is specified in subpart B for each guaranteed loan program covered by this part.

(g) *Fees.* Each year, the Agency will establish, and publish in a **Federal Register** notice, the guarantee fee and renewal fee for each guaranteed loan program. A guarantee fee and a renewal fee will be assessed on each loan, as specified in the **Federal Register** notice. Both the guarantee fee and the renewal fee are nonrefundable.

(1) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender at the time the Guarantee is issued. The fee may be passed on to the borrower.

(2) *Renewal fee.* As applicable, the renewal fee is assessed annually, is based on a fixed fee rate established at the beginning of the loan, and will be calculated on the unpaid guaranteed principal balance as of close of business on December 31 of each year. The fee will be billed to the lender and may be passed on to the borrower.

(h) *Lender fees.* The lender may levy reasonable, routine, and customary charges and fees for the guaranteed loan provided they are similar to those charged other applicants for the same type of loan for which a non-guaranteed borrower would be assessed. Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note.

§ 5001.32 Conditional commitment for guarantee.

Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment for Guarantee to the lender containing conditions under which the Guarantee will be issued. The lender must complete and sign the Acceptance of Conditions and return a copy to the Agency. The lender may propose alternate conditions for Agency consideration.

§ 5001.33 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will be issued once all of the conditions

specified in the Conditional Commitment for Guarantee have been met and each of the following has occurred:

(a) Payment of the appropriate guarantee fee;

(b) The lender has advised the Agency of any plans to sell or assign any part of the loan as provided in the Lender's Agreement; and

(c) The lender has certified that the prospective borrower has obtained all necessary insurance appropriate to the proposed project.

§ 5001.34 Issuance of the guarantee.

The Agency, at its sole discretion, will determine if the conditions within the Conditional Commitment for Guarantee have been met. The Agency, at its sole discretion, will determine whether or not to issue the guarantee.

(a) *Loan closing.* At loan closings, the lender must provide the lender's certifications, guarantee fee, and, if applicable, secondary market sale document.

(b) *Issuance.* Upon the lender's compliance with requirements of the Conditional Commitment for Guarantee, the Agency will issue the Loan Note Guarantee and Assignment Guarantee Agreement.

(c) *Refusal to execute Loan Note Guarantee.* If the Agency determines that it can not execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(d) *Replacement of Loan Note Guarantee or Assignment Guarantee Agreement.* If the Loan Note Guarantee or Assignment Guarantee Agreement has been lost, stolen, destroyed, mutilated, or defaced, the Agency may issue a replacement to the lender or holder upon receipt from the lender of a notarized certificate of loss and an indemnity bond acceptable to the Agency. If the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia, an indemnity bond is not required.

§ 5001.35 Alterations of loan instruments.

Under no circumstances shall the lender alter or approve any alterations of the Loan Note Guarantee or any other loan instrument without the prior written approval of the Agency.

§ 5001.36 Reorganizations.

(a) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet program eligibility requirements and be approved by the Agency prior to the issuance of the Conditional Commitment for Guarantee. Once the Conditional Commitment for Guarantee is issued, no substitution of borrower(s) or change in the form of legal entity will be approved, except that a change in the legal entity may be approved when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

(b) *Transfer of lender prior to issuance of the Loan Note Guarantee.* Prior to issuance of a Loan Note Guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee to a new eligible lender, provided the present lender makes the request in writing and no substantive changes have occurred in the borrower, project, loan agreement, or Conditional Commitment for Guarantee. The new lender must be approved under this part and must execute a new application for guarantee in conformance with this part.

(c) *Substitution of lender after issuance of the Loan Note Guarantee.* After the issuance of a Loan Note Guarantee, the lender shall not be substituted without the prior written approval of the Agency. A substitution of the lender must be requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence. The Agency may approve the substitution of a lender if the new lender is Rural Development approved; agrees in writing to acquire title to any unguaranteed portion of the loan held by the original lender; and assumes all original loan requirements and lender responsibilities. The Agency will not pay any loss or share in any costs with a lender who is not in compliance with this section.

§ 5001.37 Sale or assignment of guaranteed loan.

(a) *General.* The lender may sell all or part of the guaranteed portion of the loan, subject to the conditions specified in paragraphs (a)(1) through (6) of this section.

(1) Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement.

(2) The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain sufficient interest to perform its duties under this part.

(3) The lender must not sell or participate any amount of the guaranteed, or non-guaranteed, portion of the loan to the borrower or members of the borrower's immediate family, the borrower's officers, directors, stockholders, other owners, or a parent, subsidiary, or affiliate.

(4) Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency.

(5) If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, the loan must not be in default.

(6) The lender may retain all or part of the unguaranteed portion of the loan. However, if the lender does not have preferred lender status, the lender is required to retain a minimum of 5 percent of the total loan amount in its portfolio. The amount required to be retained must be of the unguaranteed portion of the loan and can not be participated. Lenders may sell the remaining amount of the unretained amount of the loan only through participation.

(b) *Termination of lender servicing fee.* The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan.

§ 5001.38 Termination of Loan Note Guarantee.

Each Loan Note Guarantee issued under this part will terminate automatically upon:

(a) Full payment of the guaranteed loan; or

(b) full payment of any loss obligation or negotiated loss settlement except for future recovery provisions and payments made as a result of the Debt Collection Improvement Act (DCIA). After final payment of claims to lenders and/or holders, the Agency will retain all funds received as the result of the DCIA; or

(c) written request from the lender to the Agency that the guarantee will terminate 30 days after the date of the request, provided that the lender holds all of the guaranteed portion, and the original Loan Note Guarantee is returned to the Agency to be canceled.

§§ 5001.39–5001.100 [Reserved]

Subpart B—Program-Specific Provisions

§ 5001.101 Community Facilities Program.

(a) *Project eligibility.* To be eligible for a Community Facility guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) through (4) of this section and in § 5001.6.

(1) *Eligible projects.* All loans guaranteed with community facility funding shall be for:

(i) Essential community facilities;

(ii) community services or community-based social, recreational or cultural services;

(iii) transportation infrastructure and support;

(iv) hydroelectric generating facilities or supplemental and supporting structures for rural electrification only with advance written approval from the Agency;

(v) natural gas distribution systems;

(vi) acquisition of land and site preparation for industrial parks; or

(vii) refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan.

(2) *Facilities for public use.* All facilities financed under the provisions of this section shall be for public purposes.

(i) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(ii) The lender will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (*e.g.*, gas distribution systems) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

(3) *Leased space.* A facility will remain eligible for CF funding provided it has less than 25 percent of its floor space occupied by ineligible organizations or activities. The ineligible organization and the ineligible commercial activity must be related to and enhance the primary purpose for which the facility is being established by the borrower.

(4) *Facility location.* Facilities must be located in rural areas, except:

(i) For utility services such as natural gas or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) For telecommunication projects, the part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(5) *Demonstration of community support.* A project may demonstrate community support in lieu of the cash equity required under § 5001.6(c)(2) or § 5001.12(c)(2)(ii)(B), as applicable.

(i) Evidence of community support in the form of a certification of support for each project or facility from any affected local government body is required.

(ii) With the exceptions of essential community facilities owned by a local public body or a Federally-recognized Indian tribe serving local residents or tribal members, a certificate of support must be obtained from each affected local government within the service area of the facility. The certificate of support must be signed by an authorized official of the local government.

(iii) The certificate of support should include sufficient information to determine that a community facility will provide needed services to the community and will have no adverse impact on other community facilities providing similar services. The organization is required to provide sufficient information to affected local governments as may be needed to obtain the certificate of support.

(b) *Unauthorized projects and purposes.* Loan funds may not be used to finance:

(1) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development;

(2) Facilities that are 25 percent or more for the purpose of housing Federal or State agencies;

(3) Community antenna television services or facilities;

(4) Telephone systems;

(5) Facilities that are not modest in size, design, and cost; and

(6) Finder's and packager's fees.

(c) *Borrower eligibility.* In addition to the requirements specified in subpart A of this part, the following requirements also apply where applicable:

(1) YMCA, YWCA, Girl Scouts, and Boy Scouts are eligible applicant organizations.

(2) A private not-for-profit essential community facility (other than utilities) must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(3) *Credit not available elsewhere.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

(d) *Additional application documentation requirements—feasibility study.* A feasibility study by a qualified independent consultant may be required by the Agency.

(e) *Additional guarantee- and loan-related requirements.*

(1) *Funding limit.* The principal amount of a Community Facility loan guaranteed under this section may not exceed $50 million.

(2) *Maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Community Facilities funding are specified in the table to paragraph (e).

TABLE TO PARAGRAPH (E).—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR COMMUNITY FACILITIES GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million (percent)	Over $10* million (percent)
Without preferred lender status	Low documentation	80	na	na
	Full documentation	90	90	90
With preferred lender status	Low documentation	90	na	na
	Full documentation	90	90	90

na = not applicable.
* Per § 5001.101(e)(1), the maximum guaranteed loan amount is $50 million.

(3) *Parity lien requirements.* Whenever both a Community Facilities guaranteed loan and a Community Facilities direct loan are utilized to finance a single project, the Agency will require a parity lien, unless the lender can not meet its regulatory requirements.

§ 5001.102 Water and Waste Disposal Facilities Program.

(a) *Project eligibility.* To be eligible for a Water and Waste Disposal Facilities guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) through (3) of this section and in § 5001.6.

(1) *Eligible projects and costs.* All loans guaranteed with Water and Waste Disposal funding shall be for:

(i) A water or wastewater disposal facility;

(ii) payment of other utility connection charges as provided in service contracts between utility systems; or

(iii) refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan.

(2) *Facilities for public use.* All facilities financed under the provisions of this section shall be for public purposes.

(i) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(ii) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

(3) *Demonstration of community support.* A project may demonstrate community support in lieu of the cash equity required under § 5001.6(c)(2) or § 5001.12(c)(2)(ii)(B), as applicable. Demonstration of community support shall be made as specified in § 5001.101(a)(5)(i) through (iii).

(b) *Unauthorized projects and purposes.* Loan funds may not be used to finance:

(1) Facilities that are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility that does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

(6) Rental for the use of equipment or machinery owned by the applicant;

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved; or

(8) The payment of a judgment which would disqualify an applicant for a loan under § 5001.102(c)(2).

(c) *Borrower eligibility.* To be eligible for a Water and Waste Disposal Facilities guaranteed loan, a prospective borrower must meet the criteria specified in paragraphs (c)(1) and (2) of this section and in § 5001.8(a)(1) and (2).

(1) *Eligible entity.* The prospective borrower must be one of the following types of entities:

(i) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(iii) An Indian tribe on a Federal or State reservation or any other Federally-recognized Indian tribe.

(2) *Credit not available elsewhere.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time.

(d) *Additional application documentation requirements.*

(1) *Feasibility study.* A feasibility study by a qualified independent consultant may be required by the Agency.

(2) *Preliminary engineering report (PER).* Two copies of the PER are to be submitted. Preliminary engineering reports must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. The PER may be submitted to the Agency prior to the rest of the application material if a preliminary review by the Agency is desired.

(3) *Financial reports.* Lenders are required to obtain and analyze financial statements as required by the Loan Agreement. Rural Development approved lenders that do not have preferred lender status must submit a copy of the analysis to the Agency within 120 days of receipt of the financial statements. Rural Development approved lenders that have preferred lender status must provide evidence that they have such an analysis in their file, but are not required to submit a copy to the Agency unless specifically requested.

(e) *Additional guarantee- and loan-related requirements—maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Water and Waste Disposal Facility

funding are specified in Table to paragraph (e).

TABLE TO PARAGRAPH (E).—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR WATER AND WASTE DISPOSAL FACILITY GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million (percent)	Over $10 million (percent)
Without preferred lender status	Low documentation	80	na	na
	Full documentation	90	90	90
With preferred lender status	Low documentation	90	na	na
	Full documentation	90	90	90

na = not applicable.

§ 5001.103 Business and Industry Program.

(a) *Project eligibility.* To be eligible for a Business and Industry guaranteed loan, the project must meet the criteria specified in paragraph (a) of this section and in § 5001.6.

(1) All loans guaranteed with Business and Industry funding shall be for:

(i) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;

(ii) business conversion, enlargement, repair, modernization, or development;

(iii) the purchase and development of land, easements, rights-of-way, buildings, or facilities;

(iv) the purchase of equipment, leasehold improvements, machinery, supplies, inventory, start up costs, permanent working capital, pollution control and abatement, or feasibility studies;

(v) transportation services incidental to industrial development;

(vi) agricultural production, with advance written approval from the Agency, when it is not eligible for Farm Service Agency farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products;

(vii) the purchase of membership, stocks, bonds, or debentures or, as allowed under paragraph (a)(2) of this section, cooperative stock;

(viii) commercial fishing, aquaculture, commercial nurseries, forestry, hydroponics, or the growing of mushrooms;

(ix) interest during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier;

(x) refinancing any loan. Except for the refinancing of Agency direct loans, refinancing of other loans will be limited to a minority portion of the guaranteed loan;

(xi) providing takeout of interim financing when the lender submits a complete preapplication or application in which the interim financing is proposed, prior to extending any portion of the interim loan;

(xii) fees and charges for professional services and routine lender fees and the Agency guarantee fee;

(xiii) tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments;

(xiv) educational, training, or community facilities;

(xv) housing development sites with certain restrictions;

(xvi) community antenna television services or facilities;

(xvii) assistance to industries adjusting to terminated Federal agricultural programs or increased foreign competition; or

(xviii) assisting cooperative organizations.

(2) *Purchase of cooperative stock.* Loans may be made to individual farmers or ranchers for the purchase of cooperative stock. The entity to receive the proceeds from the stock sale must be a farmer or rancher cooperative established for the purpose of processing agricultural commodities. Proceeds from the stock sale may be used to recapitalize an existing cooperative, to develop a new processing facility or product line, or to expand an existing production facility. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(b) *Unauthorized projects and purposes.*

(1) Businesses housed in private homes, except when the pro-rata value of the owner's living quarters is deleted from the value of the project.

(2) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees.

(3) Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(4) Interim financing.

(5) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

(6) Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(7) The guarantee of lease payments.

(8) The guarantee of loans made by other Federal agencies.

(9) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. § 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct

from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(c) *Borrower eligibility.* In addition to the criteria specified in § 5001.8(a)(1) and (2), a prospective borrower must meet both of the criteria specified in paragraphs (c)(1) and (2) of this section to be eligible for a Business and Industry guaranteed loan.

(1) A borrower must be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or not-for-profit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual.

(2) A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

(i) Provide employment;

(ii) Improve the economic or environmental climate;

(iii) Promote the conservation, development, and use of water for aquaculture; or

(iv) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

(d) *Additional application process requirements—obligation of funds.* If funds are insufficient to cover all approved applications, the Agency will use a scoring priority system to allocate funds, which will give a priority to encourage economic development in communities that are suffering economic hardships. The Agency will establish the scoring criteria each fiscal year and provide them in a notice in the **Federal Register**.

(e) *Additional application documentation requirements.*

(1) *Audited financial statements.* If the proposed guaranteed loan exceeds $3 million, the Agency may, at its sole discretion, require audited financial statements to be submitted annually when the Agency is concerned about the borrower's credit risk.

(2) *Feasibility study.* A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. If a feasibility study of a cooperative is required, the feasibility study will determine the viability of the business and not the individual farm operators.

(3) *Certification of Non-Relocation and Market Capacity.* If the loan will exceed $1 million and will increase direct employment by more than 50 employees, a form approved by the Agency concerning non-relocation and market capacity.

(f) *Additional Lender Responsibilities—Origination—Collateral.* At a minimum, for the purchase of cooperative stock, the lender must secure the loan with a lien on the stock acquired with loan funds, an assignment of any patronage refund, and the full and unconditional personal or corporate guarantee of the borrower.

(g) *Additional guarantee- and loan-related requirements.*

(1) *Conditional Commitment for Guarantee.* For the purchase of cooperative stock, the Conditional Commitment for Guarantee shall require the cooperative to provide the lender with all required Federal, State, and local permits and other clearances involving the environmental aspects for review and approval.

(2) *Issuance of Loan Note Guarantee.* If, for the purchase of cooperative stock, the lender requests the issuance of the Loan Note Guarantee before the cooperative becomes operational, the lender must certify to the Agency that the cooperative has all of the required Federal, State, and local permits and other clearances involving the environmental aspects for review and approval.

(3) *Funding limits.* The principal amount of a Business and Industry loan guaranteed under this section may not exceed $25,000,000, except that the principal amount made to a cooperative organization and guaranteed under this section may not exceed $40,000,000 for rural projects processing value added commodities.

(i) The total amount of Business and Industry loans made to cooperative organizations and guaranteed for a fiscal year under this section with principal amounts that are in excess of $25,000,000 may not exceed 10 percent of the business and industry loans guaranteed for the fiscal year.

(ii) The principal amount of a Business and Industry loan made under this section for the purchase of cooperative stock may not exceed $600,000.

(4) *Guarantee fee.* The maximum guarantee fee that may be charged is 2 percent. The guarantee fee may be reduced to 1 percent if the borrower is a high impact business and is located in an area of long term population decline and job deterioration as a result of persistent economic hardship, significant economic loss from a Presidentially-declared disaster, or a fundamental structural economic change. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The limit will be announced by publishing a notice in the **Federal Register**. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year will be 2 percent.

(5) *Maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Business and Industry funding are specified in Table to paragraph (g).

TABLE TO PARAGRAPH (G).—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR BUSINESS AND INDUSTRY GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount		
		$5 million or less (percent)	Over $5 million up to and including $10 million (percent)	Over $10 million * (percent)
Without preferred lender status	Low documentation	70	na	na
	Full documentation	80	70	60
With preferred lender status	Low documentation	80	na	na
	Full documentation	80	70	60

na = not applicable.

* Per § 5001.103(g)(3), the maximum guaranteed loan amount is $25 million except for a cooperative producing a value added commodity for which the maximum is $40 million.

5001.104 Renewable Energy Systems and Energy Efficiency Improvements Program.

(a) *Project eligibility.* To be eligible for a Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan, the project must meet the criteria specified in paragraphs (a)(1) and (2) of this section and in § 5001.6.

(1) The project shall be for the purchase, installation, expansion and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements project; and

(2) The project shall be for technology that is

(i) pre-commercial or commercially available, and

(ii) replicable.

(b) *Borrower eligibility.* To be eligible for a renewable energy systems and energy efficiency improvements guaranteed loan, a prospective borrower must be an agricultural producer or rural small business and must meet the criteria specified in § 5001.8(a)(1) and (2).

(c) *Additional application process requirements—obligation of funds.* If funds are insufficient to cover all approved applications, the Agency will use a scoring priority system to allocate funds to encourage development of promising pre-commercial and commercially available alternative energy sources that are currently unable to obtain financing from commercial lending sources. The Agency will establish the scoring criteria on a periodic basis and publish it in the **Federal Register**.

(d) *Additional application documentation requirements.* Applications must also contain the following, as applicable:

(1) *Certifications.* The lender must certify in the application that the project is able to demonstrate technical merit and that the prospective borrower is a small agricultural producer or rural small business.

(2) *Technical report.* For renewable energy systems projects seeking a loan guarantee of more than $200,000, a satisfactory technical report that demonstrates that the project is commercially viable and can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner must be provided. To determine the overall technical merit of the renewable energy system, the lender must submit its proposal to an approved Department of Energy (DOE) laboratory and obtain a DOE technical report. A Rural Development approved lender that does not have preferred lender status must submit the DOE technical report with its application. A Preferred lender may instead certify in the application that a DOE technical report, deemed satisfactory by a DOE energy laboratory, has been obtained prior to the request for guarantee in lieu of submitting the technical report with the application.

(3) *Energy assessment/audit.* For energy efficiency improvement projects, an energy assessment, with adequate and appropriate evidence of energy savings expected when the system is operated as designed, must be provided. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit is required. Rural Development approved lenders with preferred lender status may certify in the application that an energy assessment or audit, as applicable, has been obtained prior to the request for guarantee in lieu of submitting the assessment or audit with the application.

(4) *Feasibility study.* Lenders are required to obtain a feasibility study for each project seeking a loan guarantee of greater than $200,000. To be acceptable, the feasibility study must be conducted by a qualified independent consultant.

(5) *Financial statements.* Applications from Rural Development approved lenders without preferred lender status must include financial statements for the lesser of the past 3 years or the business life of the applicant. If the proposed guaranteed loan exceeds $3?million, the Agency may require audited financial statements annually when the Agency is concerned about the borrower's credit risk.

(e) *Additional servicing requirements—post-construction reporting requirements.* Once the project has been constructed, the lender must provide to the Agency annual reports from the borrower on the performance characteristics and results of the projects.

(1) *Schedule.* For renewable energy system projects, these reports are to be provided commencing in the first full calendar year after construction is completed and continuing for 3 full years. For energy efficiency improvement projects, these reports are to be provided commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years.

(2) *Contents.* Reports for renewable energy system projects must contain, at a minimum, information on output and sales and/or energy savings. Reports for Energy Efficiency Improvement projects must contain, at a minimum, information on energy savings. Additional information to be included in these reports will be negotiated between the Agency and the lender/borrower prior to the execution of the loan note guarantee.

(f) *Additional guarantee- and loan-related requirements*—(1) *Conditions precedent to issuance of loan note guarantee.* In addition to the requirements specified in § 5001.33, for renewable energy systems and energy efficiency improvements loans, all planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications; the project conforms with applicable Federal, State, and local codes; and costs have not exceeded the amount approved by the lender and the Agency.

(2) *Funding limits.* The amount of a Renewable Energy Systems and Energy Efficiency loan guarantee, including any grants and direct loans made under this program, that will be made available to an eligible project will not exceed 50 percent of total eligible project costs. Eligible project costs are only those costs associated with the items identified in paragraphs (f)(2)(i) through (xi) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(i) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(ii) Post-application construction or improvements, except residential.

(iii) Energy audits or assessments.

(iv) Permit and license fees.

(v) Professional service fees, except for application preparation.

(vi) Feasibility studies and technical reports.

(vii) Business plans.

(viii) Retrofitting.

(ix) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(x) Permanent working capital.
(xi) Land acquisition.
(3) *Maximum percent of guarantee.* The maximum loan guarantees issued to a Rural Development approved lender with Renewable Energy Systems and Energy Efficiency Improvements funding are shown in Table to paragraph (f).

TABLE TO PARAGRAPH (F).—MAXIMUM LOAN GUARANTEE PERCENTAGES FOR RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GUARANTEED LOANS

Type of rural development approved lender	Type of application	Guaranteed loan amount			
		$600,000 or less (percent)	Over $600,000 up to and including $5 million (percent)	Over $5 million up to and including $10 million (percent)	Over $10 million (percent)
Without preferred lender status	Low documentation	75	70	na	na
	Full documentation	85	80	70	60
With preferred lender status	Low documentation	85	80	na	na
	Full documentation	85	80	70	60

na = not applicable.

§§ 5001.105–5001.200 [Reserved]

Dated: August 30, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 07–4349 Filed 9–13–07; 8:45 am]

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Federal Register

Friday,

September 14, 2007

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 0612242886–7464–03; I.D. 041307D]

RIN 0648–AU68

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 80 (hereinafter the ''Program'') primarily allocates several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. The Program establishes a limited access privilege program (LAPP) for the non-AFA trawl catcher/processor sector. This action is necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable law.

DATES: Effective on October 15, 2007, except amendments to § 679.2, the definition of ''non-AFA trawl catcher/processor,'' § 679.20(a)(7)(ii)(A)(*8*), § 679.20(a)(7)(iii)(B), § 679.64(a)(1)(i)(A), § 679.64(a)(1)(iii), § 679.64(a)(1)(v), § 679.64(a)(1)(vi), § 679.64(a)(2), and § 679.64(a)(3) that are effective on January 1, 2008; and amendments to § 679.7(m), § 679.27(j), and § 679.50(c)(6) that are effective on January 20, 2008.

ADDRESSES: Copies of Amendment 80, the final Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov.* The proposed rule to implement Amendment 80 also may be accessed at this Web site.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address, and by e-mail to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov.*

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

The Council took final action to recommend Amendment 80 on June 9, 2006. The Council submitted Amendment 80 for review by the Secretary of Commerce (Secretary) in April 2007, and a notice of availability of the FMP amendment was published in the **Federal Register** on April 30, 2007 (72 FR 21198), with comments on the FMP amendment invited through June 29, 2007. NMFS received one comment specific to Amendment 80. That comment has been addressed in the Response to Comments section below. On May 30, 2007, NMFS published a proposed rule to implement the Program (72 FR 30052). The public comment period on the proposed rule ended on July 29, 2006. NMFS received 25 letters commenting on the proposed rule, including the letter submitted during the Amendment 80 comment period. These letters contained a total of 82 unique comments. These comments are addressed in the Response to Comments section of this rule below. The Secretary approved Amendment 80 on July 26, 2007.

The Program allocates several BSAI non-pollock trawl groundfish species among trawl fishery sectors and facilitates the formation of harvesting cooperatives in the non-AFA trawl catcher/processor sector. The Program meets the broad goals of (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the groundfish retention standard (GRS) to all non-AFA trawl catcher/processor vessels; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) establishing a LAPP for the non-AFA trawl catcher/processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvested species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

I. Development of the Program

A. History of Bycatch and Discard Reduction Efforts in the BSAI

The Council has long recognized the need to reduce bycatch, minimize waste, and improve utilization of fish resources to the extent practicable in order to provide the maximum benefit to present and future generations of fishermen, associated fishing industry sectors, communities, and the Nation as a whole. The Council has recommended and NMFS has approved and implemented numerous measures to reduce discards and bycatch of groundfish species over the past several years.

The Council recommended and NMFS approved and implemented management measures to establish retention and utilization standards for pollock and Pacific cod under Amendment 49 to the FMP (62 FR 63880; January 3, 1998). More recently, in June 2003, the Council recommended Amendment 79 to the FMP to improve retention of groundfish species by implementing the GRS. The Secretary approved Amendment 79 on August 31, 2005, and NMFS published regulations to implement the GRS on April 6, 2006 (71 FR 17362). The GRS will be effective on January 20, 2008.

Amendment 79 authorizes the GRS as a tool for further increasing the retention and utilization of groundfish and responding to bycatch reduction goals described in the MSA National Standards (16 U.S.C. 1851(a)). The GRS balanced the requirements for conservation and management of the groundfish fisheries under the MSA with the requirements to minimize bycatch under National Standard 9 and minimize economic burdens under National Standard 7 to the extent practicable (minimize costs and avoid unnecessary duplication). The GRS currently applies to catcher/processor vessels using trawl gear that are greater than or equal to 125 ft (38.1 m) length

overall (LOA) and not specifically defined as catcher/processors listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA. These catcher/processors are commonly referred to as non-AFA trawl catcher/processors or head and gut catcher/processors.

The Council's analysis of groundfish retention rates in the BSAI groundfish fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. This analysis also noted that non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA contributed the majority of the harvest and discarded catch by the non-AFA trawl catcher/processor fleet. Given the smaller, but still considerable, proportion of overall bycatch and discard of groundfish by non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA to the overall bycatch and discard of groundfish by all non-AFA trawl catcher/processors, and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 ft (38.1 m) LOA, non-AFA trawl catcher/processor vessels that are less than 125 ft (38.1 m) LOA were excluded from the GRS. The GRS requires each non-AFA trawl catcher/processor greater than or equal to 125 ft (38.1 m) LOA to retain specific groundfish species at a specified annual minimum rate. The annual minimum retention rate is lowest in 2008, the first year the GRS is effective, and is gradually increased to a maximum retention rate for 2011 and in all years thereafter. This graduated approach to increasing the minimum GRS rate was designed to facilitate industry compliance with the GRS by providing vessel operators several years to modify and adapt fishing operations.

Amendment 80 and the implementing regulations continue initiatives by the Council and NMFS to reduce bycatch and discard of fish species in the BSAI non-pollock trawl groundfish fisheries. The Program (1) extends the application of the GRS to non-AFA trawl catcher/processor vessels of all sizes by including catcher/processor vessels less than 125 ft (38.1 m) LOA; and (2) reduces the amount of halibut and crab bycatch, known as prohibited species catch (PSC), that may be taken while non-AFA trawl catcher/processors are groundfish fishing in the BSAI. These measures improve the utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the objectives of the MSA National Standards 5, 7, and 9.

The Program facilitates this improved retention and utilization of groundfish resources through specific economic incentives provided by a LAPP. It is anticipated that the LAPP will improve retention and utilization of fishery resources by allocating specific amounts of certain non-pollock groundfish species, halibut PSC, and crab PSC to non-AFA trawl catcher/processors; and facilitates the formation of cooperatives that will receive exclusive harvest privileges for a portion of these fishery resources. The ways in which the use of exclusive harvest privileges will improve the retention and utilization of fishery resources by non-AFA trawl catcher/processors are described in Parts C and D of this section.

B. Legislation Affecting the Program

Congress granted NMFS additional specific statutory authority to manage BSAI groundfish fisheries under the FMP. Eligibility to participate in the Program and allocation of groundfish resources under the Program are affected by several pieces of recent legislation.

- Section 219 of the Consolidated Appropriations Act of 2005 (Pub. L. 108–447; December 8, 2004), referred to in this rule as the Capacity Reduction Program (CRP), which defined the non-AFA trawl catcher/processor sector [Amendment 80 sector] and implemented a capacity reduction program for several catcher/processor sectors;

- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241; July 11, 2006), referred to in this rule as the Coast Guard Act, which amended provisions of the Community Development Quota (CDQ) Program in the MSA; and

- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479, January 12, 2007), referred to in this rule as the MSRA, which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

These pieces of legislation directly dictate specific elements of the Program. The preamble of the proposed rule details the effects of the CRP, Coast Guard Act, and MSRA on the development of the Program and this rule; therefore, that discussion is not repeated here (see 72 FR 30052; May 30, 2007).

C. The Non-Pollock Trawl Groundfish Fisheries

One of the primary reasons for the relatively high discard rates of groundfish by non-AFA trawl catcher/processors is the nature of the fisheries in which those vessels participate. The non-AFA trawl catcher/processor sector primarily participates in non-pollock groundfish fisheries. The non-pollock groundfish fisheries are primarily comprised of groups of species that share similar habitat (e.g., flatfish fisheries such as rock sole, flathead sole, and yellowfin sole). Because these species occur together, they are typically harvested together. When a non-AFA trawl catcher/processor retrieves its net, very often multiple species of fish are present. If a vessel operator is targeting only one species of fish, and other species are retrieved along with the desired catch, the vessel operator may have an incentive to discard the less valuable species and retain only the higher value species. The multi-species nature of these fisheries makes it difficult for vessel operators to target only one species, and an economic incentive is created to discard less valuable fish.

NMFS establishes a total allowable catch (TAC) for each of the non-pollock groundfish fisheries based on the species' annual biomass with the goal of providing a conservatively managed sustainable yield. Harvesters compete for the TAC, resulting in a ''race for fish,'' wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim as large a share as possible of the available TAC. This race for fish increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerates the harvest rate for the more valuable species.

Because vessel operators are competing with each other for harvest of a common TAC, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower bycatch rates, or using gear modifications that may reduce bycatch but have lower harvest rates, if those actions would limit the ability of that vessel to effectively compete with other vessels. Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species before the TAC limit is

reached because all vessel operators are competing for a limited TAC.

Additionally, non-pollock groundfish fisheries are constrained by catch limits for non-target species, such as halibut, red king crab, Tanner crab (*Chionoecetes bairdi*), and snow crab (*C. opilio*). Halibut and crab are harvested in other fisheries and cannot be retained by vessels using trawl gear. NMFS establishes PSC limits for halibut in the entire BSAI, and red king crab, *C. opilio* crab, and *C. bairdi* crab in specific areas of the BSAI to limit the adverse impact of harvesting operations on the long-term productivity of those species. NMFS monitors these PSC limits, and may close or otherwise restrict trawl harvests if PSC limits are projected to be reached. Fishery closures due to reaching PSC limits can limit harvest of the groundfish TAC and reduce overall revenue to vessel operators and crew. As vessel operators seek to maximize harvest of TAC, they may accelerate fishing operations to maximize harvest before a crab or halibut PSC limit is reached. A ''race for PSC'' further exacerbates competition and the incentives to harvest rapidly, resulting in greater potential waste and higher discard rates of less valuable groundfish species.

The multi-species nature of non-pollock groundfish fisheries further limits the ability of a fisherman to specifically target valuable groundfish species as they race with their competitors. Vessel operators may discard considerable portions of their catch to maximize harvests of more valuable species even though the discarded species may still have considerable market value.

D. Limited Access Privilege Programs (LAPPs)

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) the Halibut and Sablefish individual fishing quota (IFQ) Program (58 FR 59375; November 9, 1993); (2) the AFA (67 FR 69692; December 30, 2002); (3) the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005); and (4) the Central Gulf of Alaska (GOA) Rockfish Program (71 FR 67210; November 20, 2006). An extensive discussion of LAPPs can be found in the EA/RIR/FRFA prepared for this action and in the National Research Council's publication *Sharing the Fish,* which was consulted and considered during the development of the Program.

A LAPP allows vessel operators to make operational choices to reduce discards of fish because the strong incentives to maximize catch in the minimum amount of time have been reduced. If a vessel operator receives an exclusive portion of the TAC for non-pollock groundfish species and the associated halibut and crab PSC, he knows that he need not compete with other harvesters. That vessel operator can then choose to fish in a slower and less wasteful fashion, use modified gear with a lower harvest rate but which reduces bycatch, coordinate with other vessel operators to avoid areas of high bycatch, process fish in ways that yield increased value but which are possible only by slowing the processing rate, or otherwise operate in ways that limit bycatch. The examples cited in this paragraph have been used by vessel operators in other LAPPs in the North Pacific, and NMFS anticipates non-AFA trawl catcher/processors would use similar techniques to reduce bycatch and improve the value of their product.

LAPPs can improve the profitability of fishing operators holding the exclusive harvest privilege. In most cases, LAPPs provide harvesters greater flexibility in tailoring their fishing operations to specific fisheries which can reduce operational costs. Additionally, vessel operators may reduce costs by avoiding costly improvements in vessel size or fishing power designed to outcompete other harvesters. Slower fishing rates can improve product handling and quality and increase the exvessel price of product. Vessel operators can also choose to consolidate less profitable fishing operations onto one vessel. Other potential advantages to the holders of exclusive harvest privileges have been analyzed during the development of past LAPPs.

LAPPs can increase the costs of entering the fishery substantially because the permits acquire value and must be purchased prior to entry. Consolidation can limit employment opportunities as well. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically requires greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and to ensure proper debiting of accounts. Participants in LAPPs may also use their excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These effects and others have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the LAPP fishery and by limiting the harvest of species in non-LAPP fisheries. Entry costs for any LAPP are likely to be higher than in other non-LAPP fisheries, and those costs limit the ability of those operators lacking the financial wherewithal to participate in these fisheries. A loan program for entry level participants has been authorized and established in the Halibut and Sablefish IFQ Program to assist entry into that LAPP, but fishery participants in other LAPPs must rely on other sources of financing. A loan program has not been authorized for the Program.

Based on extensive experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council adopted the Program to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to those holding the harvest privileges. The Program provides an incentive for non-AFA trawl catcher/processors to harvest certain species of non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited number of harvesters. The Program encourages participants to harvest more efficiently and less wastefully by allowing them to join other harvesters to form harvesting cooperatives that will receive an exclusive annual harvest privilege of specific groundfish species. Those participants that do not join a harvesting cooperative may fish in a limited access fishery. The principal benefits from the Program would be realized by harvesters that choose to join a cooperative.

E. LAPPs, GRS, and Reduced PSC

The Council also recognized that some of the compliance costs associated with the GRS, particularly for non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could be reduced under LAPP management. The Council recognized that if harvesters could apply the GRS to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative, owners of non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow other larger vessels to harvest the cooperative's exclusive allocation of fish without

incurring the compliance costs associated with monitoring the GRS. Non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA would still receive economic benefits from the cooperative's harvests but would not need to refit their vessels to meet the additional monitoring and enforcement (M&E) requirements and pay the additional costs to fish in the BSAI. Those vessels could continue to participate in other fisheries in the GOA. Furthermore, the catch associated with smaller non-AFA trawl catcher/processor vessels that are used to fish in the BSAI would be subject to the GRS, thereby further improving retention of groundfish and reducing discards of fish.

Additionally, for those non-AFA trawl catcher/processor vessels that do fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish under the GRS may be offset by increased profitability from those vessels because they are no longer operating in a race for fish. The Council considered these factors in recommending that the GRS be extended to all non-AFA trawl catcher/processors under the Program.

The Council also recognized that LAPP management under a cooperative allocation can encourage lower bycatch as described in Part D of this section. Because vessel operators in cooperatives are better able to target catch and can engage in voluntary agreements to avoid areas with higher PSC, the Council recommended an overall reduction in the amount of halibut and crab PSC that may be used by the non-AFA trawl catcher/processor sector. The Program incorporates this recommendation, furthering the Council's goals of reducing bycatch and discards of fishery species.

F. Program Overview

As noted earlier, the Council adopted the Program to meet the broad goals of (1) improving retention and utilization of fishery resources; (2) allocating fishery resources among BSAI trawl harvesters; (3) establishing a LAPP for the non-AFA trawl catcher/processors; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries implemented by the Program affects a wide range of fishing practices and regulations. The Program affects management of the non-AFA trawl catcher/processors, other BSAI trawl fishery participants, and other harvesters in the North Pacific. As such, the Program implements a complex suite of measures to ensure the goals of the Program are met and to minimize potential adverse impacts on affected fishery participants.

The rationale behind specific aspects of the Program are summarized below and described in detail in the preamble to the proposed rule (72 FR 30052; May 30, 2007).

1. Community Development Quota (CDQ) Program

The Program incorporates statutory mandates in the MSA as amended by Section 416 of the Coast Guard Act and the MSRA. The rule modifies the percentage of TAC for directed fisheries that are allocated to the CDQ Program, the percentage of halibut, crab, and non-Chinook salmon PSC allocated to the CDQ Program as prohibited species quota (PSQ), and includes other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law.

2. Amendment 80 Sector and Amendment 80 Vessels

Eligible Program participants are defined by applicable legislation and the Program. Applicable legislation is summarized in Part B of this section of this preamble. The Program incorporates statutory mandates in section 219 of the CRP which defines who is eligible to harvest fish in the non-AFA trawl catcher/processor sector for a defined list of non-pollock groundfish species. The Program defines the ''Amendment 80 sector'' as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The defined list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are ''Amendment 80 vessels.''

3. Amendment 80 Species

The Program allocates a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six species are the ''Amendment 80 species'' and include Aleutian Islands (AI) Pacific ocean perch (POP), BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These Amendment 80 species are allocated between the Amendment 80 sector and all other BSAI trawl fishery participants not in the Amendment 80 sector. These other trawl fishery participants include AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels. Collectively, this group of trawl fishery participants comprises the ''BSAI trawl limited access sector.''

Amendment 80 species are economically valuable and have historically been targeted by non-AFA trawl catcher/processors, but fisheries associated with these species have high rates of discard or waste relative to other groundfish fisheries. Other species, such as Alaska plaice, are occasionally harvested in the BSAI trawl fisheries, but these other species are a minor component of the overall biomass and value of non-pollock groundfish harvested, less subject to an intense race for fish, and are not allocated under the Program.

4. Allocations of TAC and PSC in the BSAI Trawl Fisheries

Each year, the Program will allocate an amount of Amendment 80 species available for harvest, called the initial total allowable catch (ITAC), and crab and halibut PSC to two defined groups of trawl fishery participants: (1) The Amendment 80 sector; and (2) the BSAI trawl limited access sector. Allocations made to one sector are not subject to harvest by participants in the other fishery sector except under a specific condition: fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested could be reallocated to Amendment 80 cooperatives.

The ITAC represents the amount of TAC for each Amendment 80 species that is available for harvest after allocations to the CDQ Program and the incidental catch allowance (ICA) have been subtracted from the TAC. The ICA is set aside for the incidental harvest of an Amendment 80 species while targeting other groundfish species in non-trawl fisheries (e.g., yellowfin sole incidental harvests in the hook-and-line Pacific cod fishery) and in the BSAI trawl limited access sector fisheries (e.g., rock sole incidentally harvested by AFA trawl catcher vessels in the Pacific cod fishery).

The Program will allocate crab and halibut PSC to the Amendment 80 and BSAI trawl limited access sectors to accommodate PSC use by these sectors based on past PSC use with specific consideration given to possible future requirements. As explained earlier, the Program further addresses the Council's goals of reducing bycatch and discard of groundfish species by reducing the total amount of crab and halibut PSC assigned to the Amendment 80 sector.

5. BSAI Trawl Limited Access Sector

The Program provides a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. The Program modifies the calculation of AFA sideboard limits for Amendment

80 species and crab and halibut PSC limits necessary to allow the efficient operation of AFA vessels. The Program also adjusts the maximum limit for red king crab bycatch in the Red King Crab Savings Subarea.

6. Amendment 80 Quota Share

The Program assigns Amendment 80 quota share (QS) for Amendment 80 species based on catch by Amendment 80 vessels. The Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. The Program establishes criteria for harvesters in the Amendment 80 sector to apply for and receive QS, initially allocate QS, and transfer QS.

The Program assigns Amendment 80 QS based on historic catch patterns of an Amendment 80 vessel during 1998 through 2004 and on the relative proportion of an Amendment 80 species harvested by an Amendment 80 vessel compared to all other Amendment 80 vessels.

The Program will assign Amendment 80 QS only to persons who submit a timely and complete application for Amendment 80 QS. In most cases, the Program will assign the Amendment 80 QS to the Amendment 80 vessel owner. In specific cases where an Amendment 80 vessel has been lost or is otherwise permanently ineligible to fish in U.S. waters, the Program will assign the Amendment 80 QS to the holder of the license limitation program (LLP) license originally assigned to that Amendment 80 vessel. Once Amendment 80 QS is assigned based on the historic catch patterns of an Amendment 80 vessel, it cannot be divided or transferred separately from that Amendment 80 vessel. If the Amendment 80 QS is assigned to the LLP license originally issued for that Amendment 80 vessel, it cannot be transferred separately from that LLP license.

7. Amendment 80 Cooperatives

Persons that receive Amendment 80 QS can join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders can form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative will receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that will be for the exclusive use by that cooperative for harvest in a given year. The Program establishes requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ to a cooperative, and transfers of CQ among cooperatives.

A cooperative will receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders. Each Amendment 80 cooperative will receive an annual CQ with an exclusive limit on the amount of crab and halibut PSC the cooperative can use while harvesting in the BSAI. This crab and halibut PSC CQ will be assigned to a cooperative proportional to the amount of Amendment 80 QS held by the members, and will not be based on the amount of crab or halibut PSC historically used by the cooperative members. This provision does not reward harvesters with high PSC rates with large amounts of PSC CQ. Instead, PSC CQ will be issued in proportion to the amount of Amendment 80 species CQ that are assigned to a cooperative for harvest.

The Program provides opportunities for Amendment 80 sector participants to trade harvest privileges among cooperatives to further encourage economically efficient fishing operations. An Amendment 80 cooperative will not be able to transfer CQ to the Amendment 80 limited access fishery or to the BSAI trawl limited access sector.

A cooperative structure may allow Amendment 80 vessel operators to manage PSC rates more efficiently. By reducing PSC through more efficient cooperative operations, such as through gear modifications, or by coordinating fishing operations to fish in areas with lower PSC use rates, Amendment 80 vessel operators also may increase the harvest of valuable targeted groundfish species and improve revenues that would otherwise be foregone if a fishery were closed due to reaching PSC limits.

The Program allows Amendment 80 cooperatives to receive a rollover of an additional amount of CQ, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector is projected to go unharvested. This rollover to Amendment 80 cooperatives is at the discretion of NMFS with consideration given to projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative will receive an additional amount of CQ that is based on the proportion of the Amendment 80 QS assigned to that Amendment 80 cooperative as compared with the amount of Amendment 80 QS assigned to all other Amendment 80 cooperatives.

Fishery participants in a cooperative can consolidate fishing operations on a specific Amendment 80 vessel or subset of Amendment 80 vessels, thereby reducing M&E and other operational costs. This will allow cooperative members to harvest fish in a manner more likely to be economically efficient and less wasteful.

8. Amendment 80 Limited Access Fishery

Amendment 80 QS holders that do not join an Amendment 80 cooperative can participate in the Amendment 80 limited access fishery. The Program will assign to the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and crab and halibut PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery will continue to compete with each other; will not realize the same potential benefits from consolidation and coordination; and will not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative. NMFS will manage the Amendment 80 limited access fishery similar to the way the fisheries were managed prior to implementation of the Program.

9. Use Caps

The Council considered the effect of consolidation resulting from the allocation of an excessive share of harvest privileges to Amendment 80 cooperatives. In response, the Program implements use caps to limit the amount of Amendment 80 QS a person can hold, the amount of CQ they can use, and the amount of ITAC an Amendment 80 vessel can harvest. These use caps moderate some of the potentially adverse effects of excessive consolidation of fishing operations on fishery participants, such as lost employment opportunities for fishing crew, while recognizing the desire to provide economic efficiencies to Amendment 80 QS holders.

10. GOA Sideboard Limits

GOA sideboard limits are catch limits that restrict the ability of participants eligible for this Program to expand their harvest efforts in the GOA. The Program is designed to provide certain economic advantages to participants. Program participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. Therefore, the Program limits the total

amount of catch in other groundfish fisheries that could be taken by Amendment 80 vessels, including harvests made in State of Alaska (State) waters that are open during Federal fishing seasons to allow the harvest of fish assigned to the Federal TAC—commonly known as the ''parallel'' groundfish fisheries. GOA groundfish and halibut PSC sideboards will limit the catch by Amendment 80 vessels to historic levels in the GOA.

Sideboards limit harvest of Pacific cod, pollock, and rockfish fisheries in the GOA, the eligibility of Amendment 80 vessels to participate in GOA flatfish fisheries, and the amount of halibut PSC that Amendment 80 vessels could catch when harvesting groundfish in the GOA. Sideboards apply to all Amendment 80 vessels, with a limited exemption for the F/V GOLDEN FLEECE.

11. M&E Provisions

M&E provisions are necessary for accurate catch accounting and compliance with the Program to ensure that Amendment 80 QS holders maintain catches within annual CQ and ITAC allocations in the BSAI and do not exceed sideboard limits in the GOA. The M&E measures established for the Program are similar to those currently required for compliance with Amendment 79, and mirror those in place for catcher/processor vessels participating in the Central GOA Rockfish Program (see regulations in § 679.84 for additional detail).

12. GRS Requirements

Under the Program, all non-AFA trawl catcher/processor vessels, which includes all Amendment 80 vessels regardless of size, are required to meet GRS requirements in the BSAI. For Amendment 80 vessels harvesting in the BSAI under the authority of an Amendment 80 cooperative, GRS requirements apply collectively to all vessels harvesting under the authority of the cooperative rather than on a vessel-specific basis. In other words, an Amendment 80 cooperative is required to meet the GRS on an aggregate basis for all vessels in the Amendment 80 cooperative. The Program modifies some of the GRS provisions scheduled for implementation on January 20, 2008 (71 FR 17362; April 6, 2006). Specifically, the Program modifies the GRS by extending the GRS to all non-AFA trawl catcher/processor vessel sizes and calculating the GRS for Amendment 80 vessels assigned to an Amendment 80 cooperative on an aggregate basis.

13. Economic Data Report (EDR)

The Program implements an economic data collection program to assess the impacts of Amendment 80 on various components of the fishery, including skippers and crew. The Program establishes a process for collecting and reviewing economic data generated under Amendment 80 by requiring the annual submission of an EDR from each Amendment 80 QS holder.

II. Summary of Regulation Changes in Response to Public Comments

This section provides a summary of the major changes made to the final rule in response to public comments on the proposed rule. All of the specific changes, and the reasons for making them, are described under the Response to Comments section below. The changes are described by their corresponding regulatory section. Additional changes to the proposed regulatory text made by NMFS and not in response to public comment are discussed under Section IV of the preamble.

Section 679.2

- NMFS modified the definitions of an ''Amendment 80 LLP license'' to remove a reference to a specific list of LLP licenses in Column C of Table 31 to Part 679, include LLP licenses that designate Amendment 80 vessels at any time after the effective date of the rule, and include an LLP license to which an Amendment 80 QS permit has been affixed (i.e., an Amendment 80 QS/LLP license).
- NMFS redefined the term ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'' as the term ''LLP license originally assigned to an Amendment 80 vessel.''

Section 679.7

- In § 679.7(o)(1), (o)(4), and (o)(5), NMFS made several modifications to (1) allow the receipt and processing of unsorted catch from the BSAI trawl limited access fishery onboard Amendment 80 vessels; (2) allow the use of Amendment 80 vessels to catch and process fish allocated to the CDQ Program; (3) prohibit Amendment 80 vessels assigned to one Amendment 80 cooperative from receiving and processing unsorted catch from Amendment 80 vessels assigned to another Amendment 80 cooperative or the Amendment 80 limited access fishery; and (4) prohibit Amendment 80 vessels assigned to the Amendment 80 limited access fishery from receiving and processing unsorted catch from Amendment 80 vessels assigned to any Amendment 80 cooperative.
- NMFS removed the prohibition at § 679.7(o)(2), added a prohibition at paragraph (o)(2)(i) to prohibit a person from designating any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license, and added a prohibition at paragraph (o)(2)(ii) to prohibit a person from failing to designate an Amendment 80 vessel on an Amendment 80 LLP license endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.
- In § 679.7(o)(3)(i), NMFS clarified that a person may not hold Amendment 80 QS assigned to an Amendment 80 vessel unless that person holds an Amendment 80 LLP license endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation that designates that Amendment 80 vessel.
- In § 679.7(o)(3), NMFS added a new paragraph (o)(3)(iii) to clarify that a person may not hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, after October 15 in the calendar year following the date of that vessel's loss or ineligibility.
- In § 679.7(o)(4), (o)(5), and (o)(6), NMFS clarified that (1) a valid copy of a CQ or Amendment 80 limited access permit must be maintained onboard an Amendment 80 vessel while fishing in the BSAI; and (2) M&E provisions established in the Program for Amendment 80 vessels fishing in the BSAI and GOA do not apply when an Amendment 80 vessel is used to directed fish for scallops using dredge gear.

Section 679.50

- In § 679.50(a)(8) and (c)(6), NMFS clarified that observer coverage requirements apply to any Amendment 80 vessel fishing for groundfish in the BSAI. This clarification is necessary to meet the clear intent of the Program to apply a specific standard of observer coverage to all Amendment 80 vessels when they are fishing for groundfish in the BSAI.
- NMFS modified § 679.50(c)(6) to clarify that observer coverage in the BSAI and GOA required under the

Program would not apply to Amendment 80 vessels while they are used to directed fish for scallops using dredge gear.

Section 679.91

• In § 679.91(a)(1), NMFS clarified that an Amendment 80 QS holder must designate each Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license on a timely and complete application for CQ. This relieves the requirement that all QS permits, LLP licenses, and associated Amendment 80 vessels held by a person had to be assigned to either one cooperative or the Amendment 80 limited access fishery, commonly referred to as the ''all-in'' provision.

• In § 679.91(a)(3), NMFS removed the restriction that a person could not fish in the Amendment 80 sector if they failed to submit a timely application by November 1 of the previous year. NMFS also revised this paragraph so that NMFS will assign an Amendment 80 QS permit, associated vessel, and LLP license to the Amendment 80 limited access fishery if they are not designated on a timely and complete application for CQ.

• In § 679.91(f)(2), NMFS revised this paragraph to state that NMFS ''may'' rather than ''will'' consider a range of factors before reallocating unharvested ITAC or unused PSC from the BSAI trawl limited access sector. This modification allows NMFS to manage these reallocations using the same flexible standards currently used for managing fishery resource allocations during a fishing season.

• In § 679.91(h)(1), NMFS eliminated the requirement that an Amendment 80 cooperative must accept any person wishing to join it.

• In § 679.91(h)(3)(vii), NMFS rephrased regulations that describe the fishing season applicable to cooperatives so that they reference existing trawl closure regulations at § 679.23.

• In § 679.91(h)(3)(xi) and (xii), NMFS rephrased regulations to make it clear that a person holding multiple QS permits, LLP licenses, and associated Amendment 80 vessels is not required to assign all of those permits, licenses, or vessels to only one cooperative or the Amendment 80 limited access fishery during a calendar year. This revision removes the ''all in'' requirement.

Section 679.92

• 679.92(b), NMFS clarified that GOA sideboard limits do not apply to Amendment 80 vessels while they are directed fishing for scallops using dredge gear.

• In § 679.92(c), NMFS removed the requirement that Amendment 80 vessels eligible to directed fish for flatfish in the GOA must use a specific LLP license designated in Table 39 to part 679 while fishing in GOA flatfish fisheries.

Section 679.93

• In § 679.93(c), NMFS clarified that M&E requirements in the BSAI established under the Program do not apply to Amendment 80 vessels that are directed fishing for scallops using dredge gear. A similar change is made in § 679.93(d) which applies to M&E requirements applicable to Amendment 80 vessels in the GOA.

• In § 679.93(e)(1)(i)(ii), (e)(2)(ii) and (e)(2)(iii), NMFS clarified that catch of Amendment 80 species or crab or halibut PSC in the BSAI would not be debited from a CQ account or the ITAC for the Amendment 80 limited access fishery if an Amendment 80 vessel was directed fishing for scallops using dredge gear.

• In § 679.93(e)(3) and (4), NMFS clarified that catch of groundfish or halibut PSC by Amendment 80 vessels fishing in the GOA do not apply to groundfish or halibut PSC sideboard limits in the GOA when an Amendment 80 vessel is directed fishing for scallops using dredge gear.

Tables

• In Table 31 to part 679, NMFS added a footnote noting the LLP license that is originally assigned to the F/V ENTERPRISE.

• In Table 39 to part 679, NMFS changed the title of the table and deleted column C to remove references to a list of specific LLP licenses that had to be used while directed fishing for flatfish in the GOA.

III. Response to Comments

Comments have been summarized and edited for consistency, clarity, and to avoid duplication.

Section 679.2

Comment 1: Amendment 80 is a vessel-based program. Catch history is assigned to Amendment 80 eligible vessels for the purposes of determining QS. The LLP license originally assigned to the eligible vessel becomes the LLP to which QS is assigned, if the vessel is sunk or otherwise becomes permanently ineligible. However, an LLP license originally assigned to an Amendment 80 vessel should not become an Amendment 80 LLP until vessel owner assigns it to an Amendment 80 vessel as part of an Amendment 80 QS application or until QS is assigned to that LLP license when the vessel is lost. Once QS is assigned to an Amendment 80 LLP license it should no longer be used outside the Amendment 80 sector. Clarify that, at the time of Amendment 80 QS application, each Amendment 80 vessel owner chooses the LLP license(s) which will be assigned to each Amendment 80 vessel by making the following four changes in the regulations:

1. Revise the definition of ''Amendment 80 LLP license'' under § 679.2 to remove the reference to the list of LLP licenses provided in Table 31 to part 679.

2. Revise the definition of ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'' under § 679.2 to ''LLP license originally assigned to an Amendment 80 vessel.''

3. Replace the phrase ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'' with ''LLP license originally assigned to an Amendment 80 vessel'' in § 679.4 paragraphs (o)(1)(ii), and (iv); and § 679.90 paragraphs (a)(2)(ii)(A), (a)(2)(ii)(C), (b)(4)(i)(E), (b)(4)(i)(H), (d)(2)(ii), (e)(4), (f)(3)(i)(B)(2), and (f)(3)(i)(E).

4. Revise the title of Column C in Table 31 to part 679 to read ''List of Amendment 80 Vessels and LLP Licenses Originally Assigned.''

The Council's motion, which serves as the basis of Amendment 80 to the FMP, clearly identified the Program as ''vessel-based'' and only referred to the ''first license assigned to'' an eligible vessel in terms of clarifying which LLP license QS could be affixed to in case of a total loss or permanent ineligibility of the vessel to participate in the fishery. At no time did the Council require any specific LLP be declared an Amendment 80 LLP until such time that (1) the owner of an Amendment 80 vessel decided to assign a specific LLP to a vessel as part of an Amendment 80 application, or (2) the owner of an inoperable vessel (e.g., a vessel with a total constructive loss) assigned the QS derived from that inoperable vessel assigned to the LLP license originally assigned to that vessel and had completed an application for Amendment 80 QS.

This interpretation of Council intent is supported by a review of the CRP. The CRP prohibited participation in the non-AFA trawl catcher/processor subsector (i.e., Amendment 80 sector) by vessels and owners that did not meet the requirements of the CRP, but in no way compels participation by eligible participants in that fishery or prohibits eligible participants from operating in other sectors or fisheries. The Council similarly defines the parameters of the

Amendment 80 sector, but does not compel the use of an LLP license in the sector and does not explicitly restrict the use of an LLP license that is eligible for use in the Amendment 80 sector outside of that sector if that license is not actually used in the Amendment 80 sector.

At this time, at least one LLP originally assigned to an Amendment 80 vessel is being used on a non-Amendment 80 vessel. The Amendment 80 vessel originally issued that LLP license is currently using a different LLP license to prosecute its non-AFA catcher/processor fisheries. In developing a vessel-based Program, it was not the Council's intent to disrupt the use of these (or any other) LLP licenses but rather to ensure that when an application for Amendment 80 QS is submitted, that it is accompanied by at least one LLP that is endorsed for use in fishing for groundfish in the Bering Sea and/or Aleutian Islands for that Amendment QS permit.

Response: NMFS agrees in part. NMFS modified the final rule as recommended by the commenter in points 1, 3, and 4. The Council motion, which serves as the basis of Amendment 80, describes how an LLP license can be used in the Program. After reviewing the draft EA/RIR/IRFA prepared for the proposed rule (see Section 1.11.6), the final EA/RIR (see **ADDRESSES**), and records of the Council action supporting the Program, NMFS concludes the following which support the recommended changes in points 1, 3, and 4 above:

- Amendment 80 and the Program clearly define the LLP license to which QS should be assigned in the event an Amendment 80 vessel suffers an actual total loss, constructive total loss, or permanent ineligibility to fish.
- In order to participate in the non-pollock groundfish fisheries using a trawl catcher/processor, as defined in the CRP, a person must own an Amendment 80 vessel and hold an LLP license endorsed for trawl gear with a catcher/processor designation in the BS or AI.
- The Council did not recommend that in all cases an LLP license originally issued to an Amendment 80 vessel must be defined as an Amendment 80 LLP license, or that an LLP license originally issued to an Amendment 80 vessel must be used within the Amendment 80 sector.
- Once an Amendment 80 LLP license is assigned for use in the Amendment 80 sector, it is not intended to be used to designate a non-Amendment 80 vessel and be used outside of the Amendment 80 sector.
- The Council's action supports the commenter's recommendation that a person must assign an LLP license endorsed for trawl catcher/processor activity to an Amendment 80 vessel.
- The Council did express concern about ''double-dipping,'' which is the process of using an LLP license endorsed for trawl catcher/processor gear and which originally designates an Amendment 80 vessel from being used onboard a non-Amendment 80 vessel in other groundfish fisheries, specifically those in the GOA. By allowing LLP licenses issued to an Amendment 80 vessel to be used outside of the Amendment 80 sector, there is the potential that the additional harvest opportunities offered by the use of that LLP license could lead to an increase in fishing effort in other non-LAPP fisheries.

In regards to point 2 of the comment, NMFS determined that a modification was needed, but not exactly as the commenter suggests. NMFS found that defining an LLP license as an ''Amendment 80 LLP license'' only if it is noted on an application for Amendment 80 QS would not address two situations. First, if an LLP license designates an Amendment 80 vessel after the application period for Amendment 80 QS has ended, it would not be considered an Amendment 80 LLP license under the commenter's proposal. Second, if an Amendment 80 QS permit is assigned to an LLP license originally issued to an Amendment 80 vessel, then that LLP license becomes an Amendment 80 QS/LLP permit. However, unless that Amendment 80 QS/LLP license designates an Amendment 80 vessel, it would not be considered an Amendment 80 LLP under the commenter's proposal. Allowing an LLP license meeting either of these criteria not to be defined as an Amendment 80 LLP license contravenes the clear intent of the Program. This intent is to ensure that once an LLP license is used in the Amendment 80 sector either to support fishing onboard an Amendment 80 vessel or has an Amendment 80 QS permit affixed to it, then that LLP license becomes an Amendment 80 LLP license and cannot be used to designate a non-Amendment 80 vessel.

Therefore, NMFS modified the definition of an ''Amendment 80 LLP license'' to include (1) LLP licenses designated on an application for Amendment 80 QS; (2) LLP licenses that designate an Amendment 80 vessel at any point after the effective date of this rule; and (3) any Amendment 80 QS/LLP permit.

With these changes in the definition of an Amendment 80 LLP license, NMFS is deleting the prohibition at § 679.7(o)(2) which limits a person from designating ''an Amendment 80 vessel on any LLP license other than an Amendment 80 LLP license.'' With the changes in the definition of an Amendment 80 LLP license, any time an LLP license designates an Amendment 80 LLP license it is defined as an Amendment 80 LLP license. This prohibition is no longer necessary with the removal of a defined list of Amendment 80 LLP licenses.

NMFS is adding two new paragraphs at § 679.7(o)(2)(i) and (o)(2)(ii) in response to the comment. The new paragraph at § 679.7(o)(2)(i) clarifies that persons are prohibited from designating any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license. This change is consistent with the commenter's recommendation, the final EA/RIR/FRFA, and Amendment 80.

The new paragraph at § 679.7(o)(2)(ii) adds a requirement that a person who holds Amendment 80 QS and who owns an Amendment 80 vessel also must hold an Amendment 80 LLP license endorsed for trawl catcher/processor activity in the Bering Sea subarea or Aleutian Islands subarea that designates that Amendment 80 vessel at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. This provision ensures that a person holding multiple trawl catcher/processor endorsed LLP licenses in the BS or AI maintains one LLP license on each vessel, so that each Amendment 80 vessel is designated on an LLP license even if that vessel is not fishing. This provision is necessary to meet the clear intent of the CRP, which requires that in order to participate in the Amendment 80 sector, a person must hold an LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation. However, this paragraph does not require that a person designate an Amendment 80 vessel on an Amendment 80 LLP license in the event that vessel has been lost or is no longer able to fish. If a vessel is no longer able to be used in the fishery, then it is not necessary to assign an LLP license to that vessel. Instead, a person who holds an LLP license that designated a lost or permanently ineligible vessel could designate that LLP license for use on another Amendment 80 vessel.

With these changes, several key components of the Program will be

improved. First, LLP licenses that were originally issued to an Amendment 80 vessel but are currently used outside of the Amendment 80 sector would not be defined as Amendment 80 LLP licenses until such time as they designate an Amendment 80 vessel, or the QS permit for an Amendment 80 vessel is affixed to that LLP license. This would allow existing business operations using these LLP licenses to continue without being adversely affected by the Program. Second, by requiring that each Amendment 80 LLP license designate an Amendment 80 vessel, NMFS ensures that the clear requirements for participation in the Amendment 80 sector are met, and reduces the potential that LLP licenses originally issued to Amendment 80 vessels will be used outside of the Amendment 80 sector in a manner that will increase fishing effort in other non-Amendment 80 sector fisheries.

NMFS had proposed listing Amendment 80 LLP licenses as a means of addressing two issues. First, it is clear that the Council intended that in the event an Amendment 80 vessel is lost or is permanently ineligible to fish, the QS assigned to that vessel may be assigned to the LLP license originally assigned to that vessel. Second, it is clear that in order to participate in the Amendment 80 sector, one must hold an LLP license endorsed for trawl catcher/processor activity in the BS or AI. In an effort to clarify the list of LLP licenses that would meet both of those requirements, NMFS had created a list of LLP licenses. However, in doing so, NMFS failed to account for those vessel operators that were using LLP licenses originally assigned to an Amendment 80 vessel on non-Amendment 80 vessels that are ineligible to participate in the Amendment 80 sector, or the fact that LLP licenses that were not issued to an Amendment 80 vessel are used by Amendment 80 vessels. This change corrects that oversight and is consistent with the Council's intent.

Comment 2: Section 679.2 defines the terms ''Amendment 80 fishery,'' ''Amendment 80 limited access fishery,'' ''Amendment 80 sector,'' and ''BSAI trawl limited access sector.'' These terms make the regulations difficult to understand. Improve the terminology to provide the reader a clearer and better understanding of these groups and sectors and how each is treated under the rule.

Response: As noted in the preamble to the proposed rule, NMFS used terminology that is consistent with the terms used by the Council in the development of this Program to reduce confusion. NMFS also provided additional explanation of the terms identified by the commenter in the preambles to the proposed and final rules. NMFS determined that sufficient explanation of the terms used has been provided and a change in terminology at this point would create significant confusion. NMFS did not modify the regulations based on this comment.

Section 679.4

Comment 3: Comment supports the Amendment 80 QS permit application requirements in the proposed rule and urges NMFS to retain those restrictions in the final regulations.

Response: NMFS notes the comment and that the proposed requirements have been retained in this final rule.

Comment 4: Sections 679.4(o)(1)(ii) and (iii) state that Amendment 80 QS permits may be issued to the owner of the Amendment 80 vessel or to the holder of an LLP license originally assigned to an Amendment 80 vessel. Under these provisions, an Amendment 80 vessel owner could transfer the LLP license originally issued for an Amendment 80 vessel, but retain the Amendment 80 vessel. As such, the owner of an Amendment 80 vessel would be issued QS.

Clarify what would happen to the disposition of QS that was originally issued to the vessel owner if the Amendment 80 vessel sinks and is a total loss. Will the QS automatically be reassigned to the holder of the LLP license originally issued for that vessel? This scenario is especially troubling if the QS permit derived from a sunken vessel is one of the nine QS permits required to form a cooperative. Is the cooperative still valid, even if an Amendment 80 vessel sinks and the associated QS permit is issued to a new owner outside the cooperative?

Response: NMFS modified the regulations at § 679.7(o)(3) based on this comment. The proposed regulations allowed an Amendment 80 QS permit to be assigned to the holder of the LLP license originally issued for an Amendment 80 vessel during the initial allocation of Amendment 80 QS (see § 679.90(d)(2)(ii)), or after the initial allocation of QS through a transfer process (see § 679.90(e)(4)) if that vessel suffers an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. The proposed regulations also prohibited a person from holding Amendment 80 QS assigned to a vessel unless that person is ''designated as the owner of that Amendment 80 vessel by an abstract of title or USCG [United States Coast Guard] documentation (see § 679.7(o)(3)(ii)).''

Based on the intent expressed by the Council in developing the Program, which is supported in the draft EA/RIR/IRFA prepared for the proposed rule and described in the preamble of the proposed rule, NMFS added a new prohibition in this final rule at § 679.7(o)(3)(ii) to clearly prohibit a person from holding an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 after October 15 in the calendar year following the date of that actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108.

By requiring divestiture of Amendment 80 QS by October 15 the first year after the loss, the vessel owner would have adequate time to initiate transfer before the application for CQ or application for an Amendment 80 limited access fishery is due for the following year. This deadline provides a vessel owner a minimum of nine and a half months, assuming a vessel is lost or becomes permanently ineligible on December 31 of the preceding year, to transfer the QS to the holder of the LLP license originally assigned to that Amendment 80 vessel under the provisions of § 679.90(e)(4). Therefore, if a vessel is lost or becomes ineligible in the middle of a year, the vessel owner could continue to hold the Amendment 80 QS for the following year. This reduces the potential disruptions that mid-year divestiture could cause to existing business arrangements. The October 15 deadline was chosen by NMFS because it is the same as the deadline to apply for QS. In addition, requiring divestiture by October 15 should provide any person who may receive the QS by transfer to the LLP license originally issued to the Amendment 80 vessel that has been lost or is now permanently ineligible 15 days to determine whether the resulting Amendment 80 QS/LLP license would be assigned to an Amendment 80 cooperative or limited access fishery.

If the owner of a lost or permanently ineligible vessel sought to retain Amendment 80 QS assigned to that vessel after October 15 in the calendar year following the loss or permanent ineligibility of the vessel, that person would be in violation of the prohibition and NMFS could begin proceedings to revoke the Amendment 80 QS permit. NMFS notes that this prohibition does not require NMFS to automatically reissue the Amendment 80 QS permit to

the holder of the LLP license originally issued to the Amendment 80 vessel. NMFS assumes that should an Amendment 80 vessel be lost or become permanently ineligible, and the LLP license originally assigned to that Amendment 80 vessel was held by someone other than the vessel owner, the two parties would reach a mutually beneficial arrangement and the QS would be transferred under the transfer provisions at § 679.90(f) and affixed to that LLP license.

With these changes, NMFS has addressed the questions raised by the commenter. First, the prohibition at § 679.7(o)(3)(ii) makes clear that a vessel owner cannot continue to hold Amendment 80 QS assigned to a vessel in the event of a vessel's loss or permanent ineligibility after a specific deadline. Second, if an Amendment 80 QS permit assigned to an Amendment 80 vessel can no longer be held by the owner of a lost or permanently ineligible vessel after a specific date, that person is in violation of the regulations, is no longer a valid Amendment 80 QS holder, and cannot use that Amendment 80 vessel-related QS permit in an Amendment 80 cooperative or Amendment 80 limited access fishery after that date. Therefore that person and the Amendment 80 QS permit that used to be held by that person will not be considered as one of the Amendment 80 QS permit holders for purposes of meeting the minimum number of Amendment 80 QS permits necessary to form an Amendment 80 cooperative under the regulations at § 679.91(h)(3)(ii). The Amendment 80 QS permit could be transferred to the LLP license originally assigned to that Amendment 80 vessel under the regulations at § 679.90(f). Once the Amendment 80 QS permit is transferred to the LLP license originally issued to that Amendment 80 vessel, the person holding that Amendment 80 QS/LLP license will be eligible to be a member of an Amendment 80 cooperative.

This regulation is necessary to be consistent with the intent of the Program. Regulations at § 679.90(a)(2)(i)(A) clarify that a person is eligible to receive QS as the owner of an Amendment 80 vessel if that person, among other criteria, can demonstrate that they own an Amendment 80 vessel through an abstract of title or USCG documentation. This raises the question of whether a person can continue to demonstrate ownership of an Amendment 80 vessel that suffers an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 through an abstract of title or USCG documentation, and therefore hold QS as a vessel owner?

Regulations pertaining to vessel documentation at 46 CFR 67.7 require that any vessel of five net tons or more used in fishing activities on navigable waters of the United States or in the Exclusive Economic Zone (EEZ), or used in coastwise trade must be documented through the USCG unless the vessel is exempt from documentation. All Amendment 80 vessels are greater than five net tons, are used in fishing activities in the EEZ, and do not meet the criteria for an exemption for USCG documentation. Therefore, all Amendment 80 vessels must have USCG documentation.

However, regulations pertaining to vessel documentation at 46 CFR part 67 do not prohibit a vessel that has suffered an actual total loss or constructive total loss from being documented. Additionally, even if an Amendment 80 vessel is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, a vessel could be documented with an endorsement for use in a non-fishery related trade.

Additionally, even though all Amendment 80 vessels must be documented under 46 CFR part 67, there do not appear to be any regulations that prohibit a person from also holding a title of abstract to a vessel that has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

The construction of the proposed rule and vessel documentation regulations at 46 CFR part 67 create the potential that a person could demonstrate ownership of an Amendment 80 vessel through a title of abstract or USCG documentation even if that vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108. In such a case, a person could still be considered the owner of an Amendment 80 vessel and not violate the prohibition in the proposed rule under § 679.7(o)(3)(ii).

The potential for a person to continue to hold Amendment 80 QS assigned to an Amendment 80 vessel if that vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to fish contravenes the clear intent of the Council when designing the Program. The Council did not recommend that owners of vessels that have suffered an actual total loss, constructive total loss, or are permanently ineligible to be used in a fishery should be able to continue to hold QS that is assigned to that Amendment 80 vessel.

The Council contemplated that Amendment 80 QS would transfer to the LLP license originally issued for that Amendment 80 vessel. Section 1.11.6 of the final EA/RIR/FRFA prepared for the final rule specifically contemplates that ''catch history,'' a term synonymous with Amendment 80 QS, could be transferred should a vessel suffer an actual total loss, constructive total loss, or become permanently ineligible to be used in a fishery. ''The [CRP] legislation is ''steel based'' (*i.e.*, linked to the hull), allowing the catch history of sunk or lost vessel to be transferred to the originating license. This would allow the catch history to stay in the fishery and be used on another eligible vessel, rather than being extinguished.'' Furthermore, Section 1.11.13.5 of the final EA/RIR/FRFA prepared for the final rule notes that catch history is affixed to the LLP license originally issued for an Amendment 80 vessel in the event of its loss. It reads, ''In the event of a total actual loss or constructive loss of a vessel, or permanent inability of a vessel to be used in the Program, the catch history *will* [emphasis added] be attached to the license that arose from that vessel.''

The preamble to the proposed rule contemplates that Amendment 80 QS would need to be transferred in the event an Amendment 80 vessel is lost. The preamble to the proposed rule (72 FR 30077) states that ''[t]he Program would ensure that an Amendment 80 QS permit resulting from the legal landings of an Amendment 80 vessel could be used even if an Amendment 80 vessel were lost or became permanently ineligible to fish in U.S. waters. Under certain conditions, NMFS would issue an Amendment 80 QS permit to the holder of the Amendment 80 LLP license originally assigned to an Amendment 80 vessel rather than the Amendment 80 vessel owner.'' The preamble to the proposed rule also states that ''[t]his provision is intended to allow a person to continue participation in the Amendment 80 sector if otherwise qualified. During the development of the Program, this provision was considered as a means for meeting the overall intent of the Program to allow a person to use QS under specific conditions without contravening the intent of the CRP.''

The preamble to the proposed rule also envisioned that a QS permit could be revoked by NMFS if a vessel is lost or becomes permanently ineligible to fish. Specifically, the preamble to the proposed rule detailed this situation when describing the definition of the

LLP license originally assigned to the F/V ENTERPRISE. Although the example provided in the preamble describes the potential of QS being extinguished in the event that the F/V ENTERPRISE suffered an actual total loss, constructive total loss, or became permanently ineligible, the example is relevant to all other Amendment 80 vessels. It reads, ''Because the F/V ENTERPRISE did not give rise to an LLP license, if NMFS were to permit a QS permit to be transferred only to the LLP license originally issued to an Amendment 80 vessel, the QS permit issued to the owner of the F/V ENTERPRISE could not be assigned to any LLP license. If the F/V ENTERPRISE was lost or became permanently ineligible to fish in U.S. waters, the QS issued to the owner of the F/V ENTERPRISE could be extinguished'' (72 FR 30078).

The changes made in § 679.7(o)(3)(iii) meet the clear intent of the Program and are consistent with the proposed rule. The regulations at § 679.4(o)(1)(ii) and (iii) do not need to be modified. The regulations at § 679.4(o)(1)(ii) and (iii) refer to permitting requirements and do not address limitations on holding QS.

Comment 5: Remove the prohibition at § 679.7(o)(1)(ii), (o)(4)(i), and (o)(5)(i) limiting the receiving and processing Amendment 80 species from the BSAI trawl limited access fishery or the Amendment 80 limited access fishery. The following are the primary concerns with the prohibition:

- The prohibition on the processing or receiving of Amendment 80 species from the BSAI trawl limited access sector or the Amendment 80 limited access sector was not recommended by the industry and was not part of the Council's recommendation to NMFS.
- These prohibitions are contrary to the FMP and the overall goals of the Program to promote bycatch reduction and improved utilization. NMFS cannot add regulations that contravene the FMP unless the Secretary of Commerce disapproves the action.
- The prohibition was not analyzed in the EA/RIR/IRFA, nor by the Council and therefore should be removed. Specifically, this prohibition could adversely affect small entities as defined under the Regulatory Flexibility Act.
- The prohibition violates National Standard 9 and Executive Order 12866.
- NMFS has sufficient observation, recordkeeping and reporting requirements, and auditing systems in place to independently account for cooperative catch and deliveries from the BSAI limited access sector or Amendment 80 limited access sector.
- NMFS also has the tools necessary to monitor the GRS without limiting vessel activity during a weekly reporting period.
- Neither the preamble nor the regulations should suggest or add a prohibition that would limit an Amendment 80 vessel to operating as either a mothership, stationary floating processor, or as a fishing vessel on a week-by-week basis (see, for example, 72 FR 30073).

Amendment 80 vessels have historically received and processed Amendment 80 species caught by catcher vessels in the BSAI and they have done so in conjunction with their own fishing during the same weekly reporting period. Prohibiting this activity will not only impact the Amendment 80 sector, but it will severely limit catcher vessels within the BSAI limited access sector from harvesting certain Amendment 80 species. For species such as Pacific cod, catcher vessels have existing shoreside business relationships that will continue, but for the remaining Amendment 80 species, such as yellowfin sole, there is limited or no shoreside capacity for processing. The proposed prohibition is inconsistent with the goal of improving the accuracy of the catch accounting system and reducing discards as catcher vessels will be forced to deliver Amendment 80 species to facilities with less than 200 percent observer coverage and no GRS requirements.

The distance of Amendment 80 species fisheries in relation to shoreside processors may limit catcher vessels' ability to deliver a quality product. Amendment 80 cooperative vessels have the flexibility to act as motherships and travel to locations where the fisheries occur. Amendment 80 vessels also have existing markets and capacity for producing high quality products from Amendment 80 species. The proposed prohibition against delivering BSAI limited access and Amendment 80 limited access fish to Amendment 80 vessels in cooperatives has significant impacts on small business entities, AFA and non-AFA catcher vessels, and Amendment 80 vessels that may choose to act as catcher vessels in the future.

Each Amendment 80 vessel will carry two NMFS-certified observers who will sample 100 percent of the hauls and deliveries made to the vessel. In addition, each haul and delivery will be independently weighed on a certified flow scale. Recordkeeping and reporting regulations require that hauls made by a vessel be recorded separately from deliveries made to the vessel in the Daily Cumulative Production Logbook (DCPL) and in the Weekly Production Report (WPR) submitted to NMFS. The proposed regulations actually provide monitoring and enforcement requirements for vessels that receive ''unsorted catch'' (See § 679.27(j)(7)).

Corroborating the vessel logbook information should not be difficult. Two observers will be onboard and there will always be one observer on shift to independently witness a catcher vessel delivery. Observers record unsorted codend deliveries differently than catch the vessel made itself. Observers record a delivering vessel's name and ADF&G number that NMFS can use to verify a delivery was made from the BSAI limited access sector or Amendment 80 limited access sector. Observer data are reported daily to the Observer Program and the Regional Office and, in conjunction with vessel logbook information, this should be sufficient for determining on a haul by haul basis whether catch should be debited against a cooperative's CQ, the BSAI limited access sector, or the Amendment 80 limited access sector.

For vessels in a cooperative, the GRS will be monitored at the cooperative level and it does not need to be met until the end of the year, therefore in-season audits of product would serve little value for enforcement with respect to monitoring the GRS. Observer data and vessel logbook data are adequate for GRS monitoring and enforcement and there is no reason to separate product in the hold or to limit a vessel's activity by weekly reporting period.

Response: NMFS agrees in part and has modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances. This revision will allow the one entity that NMFS has identified as currently receiving unsorted catch from a catcher vessel in the BSAI trawl limited access fishery to continue to do so. This revision will accommodate potential future growth in the use of Amendment 80 vessels as mothership vessels for vessels in the BSAI trawl limited access fishery.

NMFS made the following modifications:

- Modified § 679.7(o)(1)(i) to prohibit the use of any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector. This removed the reference to processing and receiving catch.
- Modified § 679.7(o)(1)(ii) to prohibit the use an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited

access sector. This removed the proposed references to processing and receiving catch.

• Deleted the prohibition at § 679.7(o)(1)(iii). This removes limitations on using an Amendment 80 vessel to catch, process, or receive catch of Amendment 80 species assigned to other fisheries.

• Modified § 679.7(o)(4)(i) to prohibit the use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to an Amendment 80 cooperative for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to that Amendment 80 cooperative during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to a cooperative can be used to catch CQ assigned to that cooperative.

• Add a new prohibition at § 679.7(o)(4)(ii) to prohibit the use of an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative for that calendar year. This provision prohibits an Amendment 80 vessel from receiving or processing catch from Amendment 80 vessels in other Amendment 80 cooperatives or in the Amendment 80 limited access fishery, but it does not limit the ability of Amendment 80 vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

• Renumber § 679.7 paragraphs (o)(4)(ii), (iii), and (iv) as § 679.7(o)(4)(iii), (iv), and (v) respectively.

• Modify § 679.7(o)(5)(i) to prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to the Amendment 80 limited access fishery for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access sector during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to the Amendment 80 limited access fishery can be used to catch Amendment 80 species ITAC assigned to the Amendment 80 limited access fishery.

• Add a new prohibition at § 679.7(o)(5)(ii) to prohibit the use of an Amendment 80 vessel assigned to the Amendment 80 limited access fishery for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to the Amendment 80 limited access fishery for that calendar year. This provision prohibits an Amendment 80 vessel assigned to the Amendment 80 limited access fishery from receiving or processing catch from Amendment 80 vessels in Amendment 80 cooperatives, but it does not limit the ability of such vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

• Renumber § 679.7 paragraphs (o)(5)(ii) and (iii) as § 679.7(o)(5)(iii) and (iv) respectively.

These modifications narrow the focus of these prohibitions so that limitations on the harvesting activities of Amendment 80 vessels are distinct from the limitations on receiving and processing catch. A direct result of these restructured prohibitions is that NMFS is no longer indirectly prohibiting an Amendment 80 vessel from catching, processing, or receiving fish allocated to the CDQ Program (see response to comment 6 for additional detail). These more narrowly defined prohibitions will permit the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector, accommodate existing delivery and processing patterns, and ensure adequate catch accounting. The following table summarizes the limitations on the delivery of unsorted catch that the suite of revised prohibitions will impose on Amendment 80 vessels.

Can unsorted catch (codends) from . . .	be received and processed by an Amendment 80 vessel assigned to . . .	Yes	No
An Amendment 80 vessel in a cooperative	Another Amendment 80 cooperative		X
An Amendment 80 vessel in a cooperative	The same Amendment 80 cooperative	X	
An Amendment 80 vessel in the Amendment 80 limited access fishery.	An Amendment 80 cooperative		X
An Amendment 80 vessel in the Amendment 80 limited access fishery.	The Amendment 80 limited access fishery	X	
The BSAI trawl limited access sector	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	
Non-Amendment 80 non-trawl fisheries (e.g., longline Pacific cod).	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	

The preamble to the proposed rule stated the following reasons for the proposed prohibitions on receiving and processing unsorted catch from the BSAI trawl limited access sector onboard an Amendment 80 vessel: (1) Uncertainty over whether the Council intended to allow unrestricted delivery of unsorted catch; (2) concern over the unintended consequences of allowing Amendment 80 vessels to receive catch from non-Amendment 80 vessels; (3) concern for GRS compliance; and (4) concern over ensuring proper catch accounting.

In light of comment 5, NMFS reviewed the rationale for the proposed prohibitions, examined the administrative record, and developed additional analysis on the economic impacts of these proposed prohibitions. NMFS has included that analysis in the FRFA, and the RIR incorporates by reference the information and analyses contained in the FRFA.

NMFS analyzed observer data from 2003 through 2006, a time frame chosen for analysis because it represents recent processing patterns. During each year of the 2003 through 2006 time period, only one Amendment 80 vessel received catch from a non-Amendment 80 vessel. The Amendment 80 vessel received unsorted catch from the same non-Amendment 80 catcher vessel in each year. The specific amounts of unsorted catch delivered cannot be provided due to limitations on the release of confidential data. Based on information available to NMFS, including information provided by a public comment, it appears that the non-Amendment 80 vessel and the Amendment 80 vessel are owned by the same entity.

The entity that is engaged in delivering and processing unsorted catch onboard an Amendment 80 vessel would not be defined as a small entity under Small Business Administration (SBA) standards based on the information available to NMFS concerning the predicted annual ex-vessel revenue from this entity, and the

definition of a small entity in the harvesting sector used by NMFS. It does appear that the proposed prohibitions would have limited the ability of this one non-small entity to continue to deliver and process unsorted catch from its non-Amendment 80 catcher vessel onboard its Amendment 80 vessel.

This analysis indicates that the practice of delivering unsorted catch from non-Amendment 80 vessels to Amendment 80 vessels is not as widespread as suggested by some commenters. Although industry participants may wish to engage in such practices in the future, the proposed prohibitions do not appear to adversely affect any known small entities as that term is currently defined under SBA standards. Although the specific amount of catch being delivered from catcher vessels to Amendment 80 vessels cannot be released, that catch represents a small proportion of the overall catch in the BSAI. Based on the above, previous concerns that permitting this practice would create a significant shift in processing patterns away from existing shore-based processors do not appear to be supported, particularly if current rates of delivery of unsorted catch from the BSAI trawl limited access sector to the Amendment 80 sector continue.

NMFS also re-examined its ability to track catch for purposes of GRS compliance if unsorted catch from numerous sources were delivered to Amendment 80 vessels. The preamble to the proposed rule specifically requested public comment to assist NMFS in determining if there were measures that could provide adequate catch accounting and permit this practice. Subsequent review of the GRS program in consultation with the NOAA Office of Law Enforcement (OLE) and industry participants indicates that current monitoring and enforcement practices for GRS compliance are not adversely affected by the receipt and processing of unsorted catch from multiple vessels aboard the same vessel, provided the weight of each codend (i.e., delivery of unsorted catch) is adequately reported when delivered and vessel operators comply with DCPL and WPR requirements. NMFS anticipates that GRS compliance will be monitored by reviewing annual groundfish catch and retention for each Amendment 80 cooperative or for each Amendment 80 vessel that is assigned to the Amendment 80 limited access fishery. Therefore, combining unsorted catch from multiple sources onboard a single Amendment 80 vessel would not undermine GRS M&E requirements.

Finally, NMFS determined that, although Council intent is not clear regarding the regulation of catch assigned to one group of fishery participants to be received and processed by another group of fishery participants, the Council did not expressly indicate its intent to limit the delivery of unsorted catch. NMFS indicated that Council intent was not clear in the preamble to the proposed rule (72 FR 30052; May 30, 2007), and again at two public workshops on May 23, 2007 (72 FR 27798), and on June 18, 2007 (72 FR 31548), both of which were attended by numerous participants in the Amendment 80 and BSAI trawl limited access sectors, and a member of the Council. Further, NMFS provided a review of the proposed rule to the Council at its June 2007 meeting, specifically highlighting this issue and requesting that the Council provide comments if the proposed rule contravened Council intent. At the June 2007 Council meeting, the Council did not indicate that it either intended or did not intend to allow catch from the BSAI trawl limited access sector to be delivered to the Amendment 80 sector. The Council did not provide any comments during the public comment period for either the proposed rule or Amendment 80 to indicate that limitations on the receipt and processing of unsorted catch contained in the proposed rule contravened Council intent.

Based on the additional analysis NMFS conducted as a result of this comment and the lack of Council intent to the contrary as explained above, NMFS determined that most of the proposed prohibitions on the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector should not be included in this final rule. Therefore, NMFS modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances.

However, NMFS did not change the proposed rule to allow Amendment 80 vessels to deliver to other Amendment 80 vessels in specific circumstances described below because it would significantly complicate M&E of the Program and the analysis indicates that this prohibition will not affect any current fishing practices. As explained above, NMFS determined that maintaining this prohibition in the final rule is not contrary to Council intent. This prohibition is consistent with the language of Amendment 80, and the Council provided no indication that any of the proposed prohibitions were inconsistent with their intent.

NMFS also determined that this prohibition is necessary to adequately monitor and enforce the Program and meet the agency's obligations under the MSA. Properly accounting for and tracking catch may be complicated if: (1) Catch from a vessel assigned to an Amendment 80 cooperative is processed on an Amendment 80 vessel not assigned to that cooperative; or (2) catch from a vessel assigned to the Amendment 80 limited access fishery is processed on an Amendment 80 vessel not assigned to the Amendment 80 limited access fishery. Although NMFS will require two observers aboard each Amendment 80 vessel while fishing in the BSAI, as well as other M&E reporting standards, NMFS currently has limited mechanisms to review observer reports of catch weight and sample composition received and processed onboard an Amendment 80 vessel and the assignment of that catch to a specific cooperative or the Amendment 80 limited access fishery while an observer is at sea. Observer debriefing can resolve most questions and concerns that may arise, but observer debriefings typically take place several weeks after an observer has disembarked from a given vessel. Such corrections would occur well after catch has been attributed to a specific source, and would not be timely.

As an example, observer reports corrected after observer debriefings could indicate that unsorted catch from an Amendment 80 cooperative was incorrectly attributed to a specific cooperative and CQ was incorrectly debited from a CQ account. Not only does this affect the total CQ account balances, but if an amount of CQ has been transferred to another cooperative between the time of a given delivery of an unsorted catch and the receipt of a corrected observer report, NMFS would have limited means to correct the CQ account. This could result in debiting the CQ account of a third party that received the CQ that was transferred. Without significant and potentially costly programming changes to the catch accounting system used to track and assign catch and changes to observer reporting protocols, NMFS remains concerned about its ability to ensure that catch from various Amendment 80 allocations (i.e., CQ accounts for each Amendment 80 cooperative, and the ITAC of the Amendment 80 limited access fishery) received onboard an Amendment 80 vessel can be tracked with the degree of accuracy necessary to ensure that catch is properly debited in a timely and correct manner without potentially adversely affecting other Amendment 80 sector participants.

Changes in the catch accounting system and observer protocols could not be quickly and easily undertaken to allow catch from one Amendment 80 cooperative or the Amendment 80 limited access fishery to be received and processed by vessels assigned to another Amendment 80 cooperative. Further, NMFS is not required to adopt management measures that impose additional costs on the agency without adequate budgetary provisions. NMFS does not have funds currently available for substantial changes in catch accounting software and observer protocols for this specific purpose.

The Council and NMFS produced an extensive RIR in accordance with E.O. 12866 that examines a range of allocations and harvesting patterns and that has been appropriately supplemented with available additional information on this issue. The available data do not suggest that the delivery of unsorted catch between Amendment 80 vessels is currently occurring. Therefore, NMFS determined that maintaining this limitation would not adversely affect existing fishing operations, would not contravene the intent of the Program reduce discards and improve efficiency, or violate National Standard 9.

NMFS notes that the need to transfer unsorted catch between Amendment 80 vessels could be accommodated by Amendment 80 cooperatives choosing to transfer the underlying CQ, rather than the catch itself. Furthermore, NMFS notes that the prohibitions in § 679.7(o) do not restrict the ability of an Amendment 80 vessel assigned to a cooperative to deliver catch to another Amendment 80 vessel assigned to the same cooperative. Finally, the prohibitions in § 679.7(o) do not restrict the ability of Amendment 80 vessels assigned to the Amendment 80 limited access fishery to deliver catch to other Amendment 80 vessels participating in the Amendment 80 limited access fishery.

Comment 6: As written, it is not clear that Amendment 80 vessels can catch and process allocations made to the CDQ Program. Add an exception under § 679.7 paragraphs (o)(4)(i), (o)(4)(iv), and (o)(5)(i) to make it clear that Amendment 80 vessels are authorized to catch, process, or receive fish allocated to the CDQ Program provided they comply with regulations applicable to the CDQ Program. Prohibiting Amendment 80 vessels from participating in the CDQ fisheries was not discussed by the Council nor considered as part of this action. No analysis of the impacts of such an action was included in the EA/RIR.

Prohibiting any Amendment 80 vessel from harvesting those species on behalf of CDQ partners would be very disruptive to the CDQ Program and its beneficiaries. Certain Amendment 80 vessels have long-term relationships with their CDQ partners. Not only do these harvests contribute significantly to the revenues of these vessels, these relationships enable western Alaska communities to benefit from the harvest of Amendment 80 species.

Response: NMFS agrees. The prohibitions proposed in § 679.7 paragraphs (o)(4)(i), (o)(4)(iv), and (o)(5)(i) had the unintentional effect of prohibiting Amendment 80 vessels from catching, processing, and receiving catch allocated to the CDQ Program. As the commenter notes, Amendment 80 vessels have frequently contracted with various CDQ groups to harvest their allocations. NMFS did not intend to specifically exclude Amendment 80 vessels from continuing existing business practices. As noted in the response to comment 5, NMFS will be able to properly track and account for catch made by an Amendment 80 vessel that is catching fish allocated to the CDQ Program if that vessel is also used to catch fish assigned to the Amendment 80 sector. Therefore, it is not necessary to restrict an Amendment 80 vessel from also catching, processing, or receiving catch allocated to the CDQ Program. The changes made to the final rule as described in response to comment 5 would relieve the prohibition on an Amendment 80 vessel catching fish allocated to the CDQ Program at the same time that vessel is fishing for an Amendment 80 cooperative or in the Amendment 80 limited access fishery.

Comment 7: The commenter supports regulations at § 679.7(o) that prohibit an Amendment 80 vessel from taking deliveries of unsorted catch from the BSAI trawl limited access fishery. Allowing Amendment 80 vessels to receive catch from the BSAI trawl limited access sector would put them at a competitive advantage over existing processors.

Response: As explained in the response to comment 5, NMFS proposed the prohibitions in § 679.7(o) limiting the receipt and processing of Amendment 80 species in an effort to meet what was believed to be Council intent, and to ensure adequate accounting of catch. Other commenters have noted that nothing in the Program specifically prohibits the receipt and processing of catch by Amendment 80 vessels, and the Council did not explicitly intend to limit Amendment 80 vessels as NMFS had proposed. In addition, after a subsequent review of M&E measures described in the response to comment 5, NMFS has determined that NMFS can adequately track catch of fish from the BSAI trawl limited access fishery and ensure compliance with GRS requirements and catch accounting protocols. NMFS has revised § 679.7(o) to allow Amendment 80 vessels to receive and process catch from the BSAI trawl limited access sector.

NMFS notes that currently, at least one Amendment 80 vessel processes unsorted catch from catcher vessels although the amount of fish processed in this manner is relatively small compared to total BSAI processing activities. NMFS cannot predict the extent to which this practice might increase in the future, or whether this practice would have any adverse economic impact on existing processing operations. Numerous commenters from both the Amendment 80 and BSAI trawl limited access sectors noted that currently there are limited shore-based markets for Amendment 80 species and Amendment 80 vessels may provide the best processing market. NMFS does not intend to limit processing operations of Amendment 80 vessels at this time except as necessary to ensure adequate compliance with catch monitoring and enforcement standards. A review of processing operations by shore-based processors and Amendment 80 vessels could provide the basis for a future regulatory amendment should the Council identify and recommend additional changes to the Program to address potential conflicts that may arise.

Comment 8: Modify regulations to allow the F/V ALLIANCE to replace a vessel in the Alaska weathervane scallop fishery. Make the following changes to the regulatory text to permit the use of the F/V ALLIANCE in the scallop fishery without the M&E requirements and catch accounting standards generally applicable to Amendment 80 vessels:

- Modify § 679.7(o)(1)(iii) to prohibit the use of an Amendment 80 vessel in a directed groundfish fishery to catch, process, or receive any amount of Amendment 80 species, crab PSC, or halibut PSC in the BSAI for a calendar year if that Amendment 80 vessel is not assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery.
- Modify § 679.7(o)(6)(i) to prohibit the use of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive groundfish in the BSAI or adjacent waters opened by

the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

• Modify § 679.92(b)(1) to clarify that Amendment 80 vessels may not be used to catch more than the sideboard amounts of groundfish in the management areas specified in Table 37 to part 679 from January 1 through December 31 of each year; except that groundfish catches of Amendment 80 vessels using non-trawl gear in a non-groundfish fishery shall not be applied to the Amendment 80 sideboard limitations.

• Modify § 679.92(b)(2) to clarify that an Amendment 80 vessel fishing in a non-trawl non-groundfish fishery is not subject to the groundfish or halibut PSC sideboard limits in Tables 37 and 38 to part 679.

• Modify § 679.93(c) and (d) to clarify that catch monitoring standards for Amendment 80 vessels in the BSAI and GOA apply only when an Amendment 80 vessel is fishing in a ''directed groundfish fishery.''

• Modify § 679.93(e) to clarify that only the catch by Amendment 80 vessels fishing in a directed groundfish fishery should apply to CQ accounts, the Amendment 80 limited access fishery, or Amendment 80 GOA sideboard limits for purposes of accounting for Amendment 80 species, crab PSC, or halibut PSC.

The proposed regulations at § 679.50(c)(6) relating to observer coverage requirements for Amendment 80 vessels fishing in the BSAI and GOA would not apply to the F/V ALLIANCE if and when that vessel is used as a scallop vessel. The proposed observer coverage regulations in the BSAI at § 679.50(c)(6)(i) apply only to vessels using trawl gear and only for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. The observer coverage regulations at § 679.50(c)(6)(ii) applicable to Amendment 80 vessels fishing in the GOA require that such vessels must have onboard at least one NMFS certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. These paragraphs provide examples showing the clear intent to apply M&E requirements only to Amendment 80 vessels operating in the groundfish fisheries.

Further, although NMFS may be concerned about the possibility that Amendment 80 vessels could use non-trawl gear, such as longline gear to target Pacific cod, and possibly avoid certain M&E requirements such as observer coverage in the BSAI, NMFS should not apply M&E requirements applicable for monitoring the Program to non-groundfish fisheries generally. The objectives of the M&E requirements, which are described in Section 3.3.7 of the Amendment 80 EA, specify objectives necessary for monitoring groundfish catch to ensure compliance with regulations governing the groundfish fishery and provide an authoritative, timely, and unambiguous record of quota harvested. These concerns do not extend to the use of an Amendment 80 vessel while fishing under the authority of a non-groundfish fishery management plan, such as the scallop fishery, with its own M&E requirements.

Incidental catch of Amendment 80 species and PSC by the F/V ALLIANCE while fishing in the scallop fishery should not be debited against allocations to an Amendment 80 cooperative or the Amendment 80 limited access fishery to which the F/V ALLIANCE may be assigned while fishing in the BSAI. Likewise, additional catch by the F/V ALLIANCE of species subject to sideboard limits while fishing for scallops in the GOA should not be debited against GOA sideboard limits applicable to Amendment 80 vessels generally.

Response: NMFS agrees in part and has modified the final rule to relieve specific M&E and catch accounting regulations when an Amendment 80 vessel is using dredge gear while directed fishing for scallops. This change is not inconsistent with the Council's intent or the FMP. NMFS notes that the suite of M&E measures, catch accounting provisions, and sideboard measures described in the final EA/RIR/FRFA were specifically developed to ensure catch accounting by Amendment 80 vessels operating in groundfish fisheries. There is no indication that non-groundfish fisheries were intended to be subject to M&E and catch accounting measures developed under the Program.

The commenter provides a well-reasoned rationale for not applying specific M&E and catch accounting standards to a vessel that is engaged in a specific non-groundfish fishery. The commenter identifies one fishery, the scallop fishery, where one Amendment 80 vessel, the F/V ALLLIANCE, could be used. The number of potential entrants into the scallop fishery is limited by the Scallop LLP, substantial controls on gear use exist, and the scallop fishery is carefully monitored by the State of Alaska. Furthermore, most participants in the scallop fishery have established an industry-based private contractual agreement to coordinate fishing operations. It is reasonable to assume that fishing effort would not increase should the F/V ALLIANCE replace a vessel currently operating in the scallop fishery. Additionally, other non-Amendment 80 vessels could be used to replace vessels in the scallop fishery, therefore the specific use of the F/V ALLIANCE in the scallop fishery should not have any effect on the scallop fishery that would differ from the use of any other replacement vessel. It is reasonable to assume that relieving an Amendment 80 vessel of specific M&E and catch accounting provisions applicable under the Program when that vessel is used for scallop fishing would not have any effect on either the scallop fishery or the Amendment 80 fishery which is not already considered and analyzed.

However, the commenter also proposes relieving M&E and catch accounting standards on an Amendment 80 vessel when it is not ''directed groundfish fishing.'' By using this term, the commenter seems to suggest that M&E and catch accounting requirements should be relieved for any Amendment 80 vessel participating in any non-groundfish fishery such as the BSAI crab fishery, the halibut IFQ fishery, or while fishing for non-groundfish species such as grenadiers. NMFS determined that providing a general exemption from M&E, catch accounting, and sideboard limitations applicable under the Program for Amendment 80 vessels when not engaged in directed groundfish fishing could create the potential for Amendment 80 vessels to be used in non-groundfish fisheries in ways that cannot be easily anticipated. Furthermore, the commenter has specifically identified only one vessel and one fishery for which relief from Amendment 80 M&E and catch accounting regulations is specifically sought.

Based on these factors, and the lack of any other comments from any other Amendment 80 vessel owners supporting a broad relief from M&E and catch accounting standards for other non-groundfish fisheries, NMFS relieved these restrictions only when an Amendment 80 vessel is using dredge gear while directed fishing for scallops. Because dredge gear is the authorized gear for scallop fishing, and is not used in other non-groundfish fisheries, this regulatory construction narrows the

applicability of this M&E and catch accounting exemption. In the future, if other Amendment 80 vessel owners identify specific non-groundfish fisheries in which they wish to use their vessels, the Council can review and consider such requests through the Council process.

NMFS made the following changes to the regulatory text:

- Revised § 679.7(o)(4)(iii) as renumbered based on the response to comment 5 to clarify that an Amendment 80 vessel assigned to a cooperative must maintain a CQ permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.
- Revised § 679.7(o)(5)(iii) as renumbered based on the response to comment 5 to clarify that an Amendment 80 vessel assigned to the Amendment 80 limited access fishery must maintain an Amendment 80 limited access fishery permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.
- Modified § 679.7(o)(6)(i) to clarify that an Amendment 80 vessel is prohibited from failing to follow catch monitoring standards in the BSAI under § 679.93(a), (b), and (c) if the Amendment 80 vessels is using any gear but dredge gear while directed fishing for scallops.
- Modified § 679.7(o)(6)(ii) to clarify that an Amendment 80 vessel subject to a GOA sideboard limit under § 679.92(b) and (c) is prohibited from failing to follow catch monitoring standards in the GOA under § 679.93(a), (b), and (d) if the Amendment 80 vessel is using any gear but dredge gear while directed fishing for scallops.
- Modified § 679.92(b)(1) to clarify that GOA groundfish sideboard limits specified in Table 37 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.
- Modified § 679.92(b)(2) by renumbering part of (b)(2) as (b)(2)(i) and inserting a new paragraph, (b)(2)(ii), to clarify that halibut PSC sideboard limits in Table 38 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.
- Modified the introductory text to § 679.93(c) to note that catch monitoring requirements for Amendment 80 vessels in the BSAI apply to all Amendment 80 vessels except Amendment 80 vessels using dredge gear while directed fishing for scallops.
- Modified the introductory text to § 679.93(d) to note that catch monitoring requirements for Amendment 80 vessels in the GOA apply to all Amendment 80 vessels except Amendment 80 vessels using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(1)(i) to note that catch of Amendment 80 species by an Amendment 80 vessel assigned to an Amendment 80 cooperative is debited from that cooperative's CQ permit unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(1)(ii) to note that catch of Amendment 80 species by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery is debited from that ITAC for the Amendment 80 limited access fishery unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(2)(i) to note that use of crab and halibut PSC by an Amendment 80 vessel assigned to an Amendment 80 cooperative is debited from that cooperative's CQ permit unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(2)(ii) to note that use of crab and halibut PSC by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery is debited from the crab and halibut PSC limit for the Amendment 80 limited access fishery unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(3) to note that catch of Amendment 80 GOA sideboard species by an Amendment 80 vessel in the GOA is debited from the Amendment 80 sideboard limit except Amendment 80 sideboard species caught by Amendment 80 vessels using dredge gear while directed fishing for scallops.
- Modified § 679.93(e)(4)(iii) to note that use of halibut PSC by an Amendment 80 vessel in the GOA is debited from the Amendment 80 sideboard limit except halibut PSC used by Amendment 80 vessels using dredge gear while directed fishing for scallops.

Additionally, NMFS modified the observer coverage regulations based on the comments concerning the potential for an Amendment 80 vessel to use non-trawl gear in the BSAI and thereby avoid observer coverage requirements that are intended to ensure adequate catch accounting. NMFS did not anticipate, or intend, that an Amendment 80 vessel could avoid required observer coverage by choosing not to use trawl gear in the BSAI. NMFS had assumed that Amendment 80 vessels would continue to use trawl gear in the BSAI, and therefore applied observer coverage based on the use of that gear type. The commenter is correct in noting that nothing in the regulations would require an Amendment 80 vessel to use trawl gear to catch fish in the BSAI. NMFS notes that the commenter does not advocate relieving observer coverage requirements applicable to Amendment 80 vessels that may choose to use non-trawl gear, other than specifically for Amendment 80 vessels fishing in the scallop fishery.

Section 1.10.6 of the final EA/RIR/FRFA prepared for this action notes that NMFS must be able to ensure adequate catch accounting, particularly when monitoring at-sea discards and use of PSC, and notes the particular advantages offered by expanding observer coverage to ensure that all catch is properly observed. NMFS has modified section 1.10.6 of the final EA/RIR/FRFA to clarify that observer coverage requirements are applicable to Amendment 80 vessels regardless of the specific gear type used, with the specific exemption made for an Amendment 80 vessel using dredge gear while directed fishing for scallops.

Based on these factors, NMFS made several modifications in observer coverage regulations at § 679.50 to apply observer coverage standards to Amendment 80 vessels as necessary for adequate catch accounting, and clarify that specific observer coverage does not apply to Amendment 80 vessels that may be fishing in the scallop fishery. Specifically, NMFS made the following changes:

- Modified § 679.50(a)(8) to specify that observer regulations applicable to Amendment 80 vessels are found in § 679.50(c)(6).
- Modified § 679.50(c)(6)(i) to clarify that the observer standards in the BSAI apply to all Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and to catcher/processors not listed in § 679.4(l)(2)(i) and using trawl gear. This modification extends observer coverage to Amendment 80 vessels using any gear, such as longline gear in the Pacific cod fishery.
- Modified § 679.50(c)(6)(ii) to clarify that the observer standards in the GOA apply to all Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops, except for the F/V GOLDEN FLEECE.

Section 679.21

Comment 9: Section 679.21 of the proposed rule establishes halibut PSQ for the CDQ sector. No rationale exists in either the draft EA/RIR/IRFA or the proposed rule that justifies increasing CDQ halibut PSQ under the Program

while at the same time decreasing the halibut PSQ over time for the Amendment 80 sector. It is not clear why the CDQ Program should be granted this additional benefit of increased halibut PSQ. If the goal of the Program is, as stated, to reduce bycatch, then reducing halibut bycatch for the CDQ Program and the Amendment 80 sector is the only alternative consistent with that goal. There is no biological or practical rationale for this double standard. Failure to treat the two sectors equally without a sound scientific basis potentially violates MSA National Standards 2 and 9.

Response: The preamble to the proposed rule specifically addresses the rationale for increasing the allocation of halibut PSQ (72 FR 30062), and this rationale is further described in section 1.10.3 of the draft EA/RIR/IRFA prepared for the proposed rule. Generally, less than half of the halibut PSQ allocation to the CDQ Program has been used in any fishing year. However, CDQ groups have not traditionally harvested their full allocations of species such as rock sole, yellowfin sole, or other Amendment 80 species with higher halibut PSQ use rates. With the implementation of the Program, Amendment 80 vessels may have more flexibility to contract with CDQ groups to fully harvest the CDQ Program groundfish allocations, which may result in higher halibut bycatch.

The biological rationale for the increase in the halibut PSQ is to accommodate anticipated increased harvest of Amendment 80 species by the CDQ Program and the attendant increase in halibut PSC use. The adjustment to the halibut PSQ allocation does not increase the total amount of halibut PSC that is used in the BSAI, it merely reapportions the amount of halibut PSC that is available to accommodate anticipated halibut PSC use by the CDQ Program. The commenter's assertion that this reapportionment of halibut PSC somehow increases the overall bycatch of halibut is incorrect.

NMFS is not applying a ''double standard'' to halibut PSC use between the Amendment 80 sector and the CDQ Program. The Council considered that by increasing the allocation of Amendment 80 species to CDQ groups, it became increasingly likely that CDQ groups would have a greater economic incentive to harvest a greater proportion of their Amendment 80 species CDQ allocations. NMFS notes that the increase of halibut PSQ to the CDQ Program is roughly proportional to the increase in the allocation of groundfish species TACs to the CDQ Program overall. The amount of certain groundfish TACs allocated to the CDQ Program has increased from 7.5 percent to 10.7 percent excluding fixed gear sablefish, pollock, and other species not subject to allocation. Overall, the total amount of groundfish allocated to the CDQ Program has increased.

NMFS notes that halibut PSC is assigned to the CDQ Program for use in fixed gear fisheries and trawl fisheries. As described in the preamble to the proposed rule, the amount of halibut PSQ assigned to the CDQ Program that is derived from the allocation to trawl gear under the Program would increase from 276 mt to 326 mt. The Program does not increase the allocation of halibut PSQ that is derived from the allocation to fixed gear. This is consistent with the fact that the increase in groundfish allocations to the CDQ Program are likely to be harvested using trawl gear, and any PSC needed to harvest the increased allocations should be derived from the overall amount of PSC available for use by trawl gear. Overall, the amount of the total trawl PSC limit assigned to the CDQ Program will increase from 7.5 percent to 8.9 percent under the Program. This increase is relative, but not directly proportional to the increase in the amount of the groundfish allocations made to the CDQ Program.

As noted in the preamble to the proposed rule, NMFS anticipates that with the improved efficiencies that cooperative management could provide the Amendment 80 sector, it is likely that CDQ groups could more effectively partner with participants in the Amendment 80 sector to harvest the CDQ allocations. The increase in halibut PSQ is anticipated to provide adequate amounts of PSC for the CDQ Program without adversely affecting existing fishery participants. Specifically, section 1.11.5 provides a detailed description of current and historic PSC use and the use of PSC that would be anticipated as necessary to fully harvest allocations provided to the Amendment 80 and BSAI trawl limited access sectors given the allocation of PSC to the CDQ Program. These data do not indicate that PSC allocations are likely to constrain Amendment 80 or BSAI trawl limited access sector participants. Further, the Council recommended phasing in the increase in halibut PSQ in recognition of the fact that the CDQ groups may require several years before they develop harvesting capacity and markets necessary to fully harvest their increased allocation of Amendment 80 species, and therefore would not require an increased allocation of halibut PSQ immediately.

The allocations of halibut PSC to the Amendment 80 sector were reviewed in detail by the Council and are proportionate to the allocations of groundfish species, and were determined to be sufficient to allow the Amendment 80 sector to fully harvest its allocation of groundfish species. Furthermore, NMFS anticipates that vessel operators will be able to tailor their fishing operations to reduce the use of halibut PSC under cooperative management.

The commenter's assertion that increasing halibut PSQ violates MSA National Standard 2 ''Conservation and management measures shall be based upon the best available information'' (16 U.S.C. 1851(a)(2)), or National Standard 9 ''Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch'' (16 U.S.C. 1851(a)(9)), is not valid. The increased allocation of halibut PSC to the CDQ Program as halibut PSQ is based on a review of projected use of halibut PSQ by CDQ groups using the best available information on past and potential future harvest patterns and bycatch rates. As noted earlier, increasing the amount of halibut PSQ assigned to the CDQ Program does not increase the total amount of halibut bycatch used in the BSAI. However, overall the Program does minimize bycatch of halibut. NMFS did not modify the regulations based on this comment.

Comment 10: Under the Council's recommendation for Amendment 85 to the FMP, it was understood that the catcher vessel trawl sector would be assigned a specific amount of halibut PSC distinct from the AFA trawl catcher/processor or Amendment 80 sectors. Under the proposed PSC allocations in Amendment 80, it appears that the AFA catcher vessel, non-AFA catcher vessel, and the AFA catcher/processor sectors will operate on the same halibut and crab PSC limits. Given the restrictions applicable to AFA catcher/processors this may not result in difficulties. However, during the annual specification process, the Council may find it difficult to apportion halibut and crab PSC among the participants within the BSAI trawl limited access sector. It is not yet clear how the annual specifications process will be altered to accommodate PSC apportionment in the BSAI trawl limited access sector.

Response: The final rule implementing Amendment 85, published September 4, 2007, did not change how PSC is allocated among trawl sectors; the Council's

recommended modifications to PSC allocations were not approved by NMFS. The preamble to the proposed rule for Amendment 80 notes that the allocation of PSC under Amendment 80 would supersede the allocation of PSC established by the final rule for under Amendment 85 (see 72 FR 30068). This final rule continues the use of the harvest specification process as the mechanism for apportioning halibut and crab PSC among the BSAI trawl limited access sector participants. NMFS notes that the Council did not envision or recommend that the Program retain any aspect of the apportionment of halibut and crab PSC recommended under Amendment 85 as the basis for apportioning PSC among participants in the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

In order to be consistent with the rule implementing Amendment 85, and the fact that the preamble to the proposed rule for the Program explicitly noted that trawl PSC apportionments within the BSAI trawl limited access sector would not be affected by this action, NMFS does not intend to implement regulations that would apportion PSC in that sector. The annual specification process would continue to be used as the basis for assigning PSC. If the Council experiences difficulties with the allocation of halibut PSC during the annual specification process as the commenter suggests, the Council can initiate an action to address those difficulties.

Comment 11: Segregate the crab and halibut PSC allocations to the BSAI trawl limited access sector between the AFA catcher/processors and the catcher vessel sector (i.e., AFA and non-AFA catcher vessels), as was contemplated under Amendment 85.

Response: As noted in the response to comment 10, the Program is not intended to implement PSC apportionments among the participants in the BSAI trawl limited access sector. The final rule implementing Amendment 85, published on September 4, 2007, did not change the process for apportioning PSC limits among trawl fisheries and sectors. The annual specification process is the mechanism available to determine allocations of crab and halibut PSC among participants in the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

Section 679.27

Comment 12: Section 679.27(j)(3) sets forth proposed GRS regulations for improved retention and use of fishery resources. These proposed regulations would allow NMFS to calculate the GRS on either a vessel-specific basis for vessels in the Amendment 80 limited access fishery, or as an aggregate based on the activities of all Amendment 80 vessels assigned to an Amendment 80 cooperative. The proposed regulations allow Amendment 80 vessels that cannot meet the GRS on a vessel-specific basis to ''hide their discards'' when they participate in an Amendment 80 cooperative. These vessels will simply join a cooperative and be able to conceal the fact that they discard fish at a rate that would normally be a violation of the GRS. This is a form of smoke and mirrors that should not be sanctioned in these regulations. Moreover, such an approach raises questions of fundamental fairness and equality when the GRS is not applied to all Amendment 80 vessels. Allowing vessels to effectively hide discards in excess of the vessel-specific GRS by joining a cooperative would also appear to violate the MSA National Standard 9, which calls for true bycatch reductions.

Response: The goal of the GRS regulations originally implemented under Amendment 79 to the FMP (71 FR 17362) is to improve retention overall for the Amendment 80 sector. As noted in the preamble to the proposed rule to Amendment 80, the Program extends the GRS to vessels less than 125 ft (36.1 m) length overall (LOA). The Program also provides an opportunity for vessel operators to choose to form cooperatives for which NMFS will calculate the GRS on an aggregate basis for all Amendment 80 vessels assigned to that Amendment 80 cooperative. These provisions are explicitly intended to provide all Amendment 80 vessel operators with a mechanism to combine catch, including discarded catch, with other Amendment 80 vessel operators to catch and process groundfish with the greatest efficiency and likelihood that as much groundfish as practicable is retained.

This provision is not unfair and would not increase the discard of groundfish or allow Amendment 80 vessels in a cooperative to hide their discards. Because the Program extends the GRS requirements to Amendment 80 vessels of all sizes, a greater proportion of the total groundfish allocated to the Amendment 80 sector must be retained, thereby reducing groundfish bycatch and clearly meeting the objectives of National Standard 9. Furthermore, the choice of a vessel operator to join a cooperative and apply the GRS to all vessels in that Amendment 80 cooperative is an option available to all Program participants. The Council specifically noted that once the GRS is extended to Amendment 80 vessels of all length classes, some vessels may have difficulty meeting the GRS on a vessel-specific basis in a cost-effective manner. The Council recommended applying the GRS on an aggregate basis so that vessel operators could choose to form an Amendment 80 cooperative so that the overall retention of all of the Amendment 80 vessels in the Amendment 80 cooperative meets or exceeds the GRS. Groundfish catch on all Amendment 80 vessels fishing for an Amendment 80 cooperative will be accounted to ensure that the catch by the cooperative in the aggregate is not less than the GRS. The net effect of this provision is that all catch by Amendment 80 vessels in the cooperative is counted and the amount of that catch retained is determined, just not an individual vessel-by-vessel basis if an Amendment 80 vessel is participating in a cooperative. This provision is incorporated in the rule and reduces bycatch for the Amendment 80 sector overall while reducing some of the potential costs and complexities associated with GRS compliance. NMFS did not modify the regulations based on this comment.

Section 679.28

Comment 13: Section 679.28(i) addresses bin monitoring standards and options. It is not clear under § 679.28(i)(1)(ii) whether vessel owners have the responsibility to ensure that only observers who are of average height between 64 and 74 inches (140 to 160 cm) will be permitted on the vessel when utilizing the line of sight option. What is a vessel owner to do if an observer of less than (or greater than) average height is assigned to the vessel?

Response: Section 679.28(i)(1)(ii) requires that vessel owners and operators ensure the line of sight option allows observers between 64 and 74 inches (140 to 160 cm) tall be able to see all areas of the bin or tank where crew could be located. This standard is used to inspect and approve the line of sight option for bin monitoring. If an observer outside the average height range boards a vessel, reasonable accommodations will be discussed between the vessel owner, the observer, and NMFS during the precruise meeting. NMFS did not modify the regulations based on this comment.

Comment 14: The line of sight option (§ 679.28(i)(1)(ii)) does not address the issue of what standards, if any, must be met for a crew member to enter the tank if bin boards are removed to expose the bin to the observer's view.

Response: The standard is clearly described in § 679.28(i)(1)(ii) and requires that from the observer sample station, or the location where the observer sorts and weighs samples, an observer of average height (between 64 and 74 in (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. Bin boards are used by vessel personnel to change the bin shape and configuration to maximize space or alter the flow of fish. However, bin boards between the catch and the location an observer samples could obstruct his or her view of crew activity inside the bin. If bin boards obstruct an observer's view of these activities, then the line of sight standard is not being met. Therefore, the line of sight option is only available when the bin boards have been removed. If bin boards that obstruct an observer's view are in place, the vessel operator must ensure that no crew enter the bin or tank unless the observer has been given notice someone will be entering the bin, the observer is given the chance to view the activities of the crew in the tank, the flow of fish has been stopped, and all fish have been removed between the tank and the location the observer collects their samples. NMFS did not modify the regulations based on this comment.

Comment 15: Section 679.28(i) provides that a bin monitoring option inspection report will be valid for 12 months from the date it is signed by NMFS. There is no stated or apparent basis for limiting the validity of such a report to a 12-month period, effectively requiring annual inspections. Once an inspection has been performed, the inspection report should remain valid until changes are made to the bin or observer area onboard the vessel. An annual inspection for a vessel that utilizes the line of sight option should remain valid until changes are made to the factory or until such time as an observer indicates that he or she cannot view the bin via line of sight. Absent such changes, annual inspections are not warranted, and the cost associated with them is unduly burdensome and in violation of MSA National Standard 7, which requires minimization of costs and avoidance of unnecessary duplication.

Response: NMFS disagrees with the commenter's assertion that annual inspections are not warranted or are in violation of National Standard 7. Annual inspections for the bin monitoring option are required to ensure no changes have been made since the last inspection. Even minor modifications to the factory or the bin may change the flow of fish that can affect monitoring protocols, and require reapproval of a bin monitoring option. NMFS has made efforts to minimize costs and avoid unnecessary duplication. As an example, the bin monitoring inspections can occur simultaneously with the annual observer sample station inspection. Furthermore, NMFS notes that the bin monitoring inspection process established in the rule is the same process used for catcher/processor vessels that are operating under the Central GOA Rockfish Program, thereby further reducing costs for any Amendment 80 vessel participating in both LAPPs. These measures explicitly ensure consistent application of regulations, and minimize costs and avoid unnecessary duplication as much as possible, thereby meeting the requirements of National Standard 7. NMFS did not modify the regulations based on this comment.

Comment 16: Section 679.28(i)(1)(iii)(F) requires an owner or operator of a vessel that selects the video option to ensure that the video system has sufficient resolution to see and read a text sample in 130 point type from any location within the tank where crew could be located. The purpose of this regulation is to ensure that cameras will be able to capture images of sufficient quality for the observer to monitor crew activity in the tank. Being able to see and read text in 130 point type characters (about the size of a half dollar coin) goes well beyond being able to monitor what crew are doing in the tank.

NMFS needs a standard with which to judge performance, but this standard is too constraining. Either double the font size to 260 point type or substitute another more suitable standard such as removing the font specification and require that cameras have adequate resolution for general fish identification. Font size has little bearing on whether the observer can differentiate categories of limiting species.

Response: In order to provide NMFS staff with a means of objectively approving video options, and give observers a method to articulate visibility concerns with vessel personnel, an objective standard is required. Font size was selected as the objective standard because of the general availability of a specific font size to the public. NMFS staff has approved three vessels selecting the video option (§ 679.28(i)(1)(iii)) under the Central GOA Rockfish Program using the same standards in this rule and has found the standard may be met with available, reasonably priced technology. While the NMFS continues to investigate improved standards for determining the adequacy of video installations, NMFS is unable to specify a better standard at this time. NMFS did not modify the regulations based on this comment.

Section 679.50

Comment 17: In §§ 679.50(c)(6) and 679.93(c), the observer and flow scale requirements are particularly burdensome to the smaller operators. While the range of costs are discussed, there appears to be little justification for these costs when weighed against the marginal increase in information that will be made available to NMFS as a result, especially when dealing with smaller vessels.

Response: NMFS disagrees with the commenter's conclusion that the increase in information from observer coverage and flow scale requirements do not justify the costs. NMFS has attempted to balance the monitoring and enforcement requirements to be cost-effective, manageable, and effective. The final EA/RIR/FRFA prepared for this action does identify the benefits of the increased monitoring requirements.

Section 2.3.7 notes that ''[b]ecause Amendment 80 monitoring requirements would include flow scales, observer stations, observation of every haul, and additional requirements described above; some improvements to management [of] catch accounting may also occur. For example, direct measurement of weight on a flow scale is likely to be more reliable than observer measurements based on volumetrics and density.'' More accurate catch accounting ensures that CQ and Amendment 80 limited access ITAC amounts are properly debited based on the best available information.

Section 1.10.6 of the final EA/RIR/FRFA notes that ''[p]resently, many vessels in the H&G fleet [Amendment 80 sector] are required to carry only one observer. Generally, this results in less than 100 percent of the hauls being sampled. Under the Amendment 80 requirement for two observers, all hauls would be sampled. NMFS would no longer need to rely on secondary sources, such as the skipper's estimates or total weekly production figures, as the basis for calculating catch weight for H&G vessels. This would decrease the number of hauls NMFS would need to extrapolate for this fleet.''

For example, if a vessel operates on the fishing grounds for several weeks and has less than 100 percent of its hauls observed, some of the bycatch calculations for that vessel are based on bycatch rates derived from other

observed hauls and applied to the total catch determination. If NMFS has haul-specific information from observer sampling, improved information on actual bycatch amounts would supplant the use of data based on a rate from other observed hauls. The extension of coverage to two observers per vessel would allow every haul to be sampled and could reduce risks associated with the timing of openings and closings for some groundfish fisheries (i.e., decrease the probability that stocks would be overfished or underharvested). Higher levels of observer coverage ensure adequate catch accounting for vessels assigned to cooperatives. The benefits of additional observer coverage apply to both larger and smaller vessels. Currently, vessels 125 feet (38.1 m) LOA or longer must carry an observer at all times. However, smaller vessels less than 125 feet (38.1 m) LOA are only required to carry an observer for 30 percent of their fishing days. The incremental increase in the amount of management data associated with increased observer coverage on vessels less than 125 feet (38.1 m) LOA is far greater than with larger vessels. NMFS will no longer be required to extrapolate data to unsampled hauls on smaller vessels, thereby resulting in better management decisions. NMFS did not modify the regulations based on this comment.

Section 679.90

Comment 18: Section 679.90(d)(1) notes that Amendment 80 QS units will be assigned based on the Amendment 80 vessel's legal landings for each Amendment 80 species in each management area. For purposes of calculating legal landings, § 679.90(d)(i)(B) of the proposed rule states that the five calendar years between 1998–2004 with the highest amount of legal landings are to be used. This calculation method gives an unfair and disproportionate advantage to companies who have an erratic catch history or no catch at all for some years. As such, this is not a fair and equitable distribution method as required by the MSA.

Response: As noted in the preamble to the proposed rule, this calculation method was selected to accommodate harvesters who may have been active in the fishery, but who may have had reduced catch, or no catch during a specific year due to factors beyond their control such as mechanical problems, weather conditions, poor harvests, or unanticipated closures in the fishery. Using this weighted average calculation method for all participants, including those with consistent harvest patterns, will result in QS allocations that reduce the effects of years with reduced harvests relative to other years. This method for computing QS is applied equally to all Amendment 80 sector participants with legal landings. Because the same calculation method is applied to all participants, the argument that this calculation method is somehow disproportionately advantageous or disadvantageous to any one participant, or group of participants is not valid. As an example, a vessel that had consistent, but poorer catch in several years, would yield QS that is based on a weighted average of the best five of seven years of catch from that vessel. Vessels with limited or sporadic catch would likewise yield QS based on a weighted average of catch, but the QS derived from such a vessel would still reflect the relatively limited participation of that vessel. NMFS did not modify the regulations based on this comment.

Comment 19: Eliminate the provision in section 679.90(d)(1)(iii) that states that Amendment 80 vessels that did not have any legal landings between 1998–2004 will be assigned 0.5 percent of the total QS issued for BSAI rock sole and BSAI yellowfin sole. This provision would result in three vessels being granted an allocation of rock sole and yellowfin sole despite the fact that they failed to meet the legal landing requirements imposed on all other vessels in the Program. Two of these three vessels no longer exist and have not participated in the fishery for over a decade. This provision creates a double standard by which some vessels are required to satisfy the legal landing requirements while others are not. This provision violates the fair and equitable distribution requirements of the MSA.

Response: As noted in the preamble to the proposed rule, the three vessels referred to in the comment meet the statutory participation criteria in the Amendment 80 sector as an Amendment 80 vessel according to the CRP. However, the years recommended by the Council to allocate QS, and incorporated in the rule, would foreclose the ability of QS to be issued based on the historic catch history of these vessels, even though Congress clearly intended that those vessels would be eligible to participate in the Amendment 80 sector. The Council recommended, with the input of the Amendment 80 sector participants, to provide a relatively small and fixed allocation of Amendment 80 QS based on the eligibility of these vessels according to the CRP instead of readjusting the years used to allocate QS. The rule implements that recommendation.

The allocation of QS to these vessels is specifically intended to provide a fair and equitable opportunity to participate for all eligible Amendment 80 vessels, while considering and accommodating those participants with unique harvest patterns. Although the method of allocating QS to these Amendment 80 vessels differs from the method used for other vessels, the EA/RIR/FRFA (see **ADDRESSES**) and proposed rule provided the rationale for this decision. The preamble to the proposed rule indicates that although the Council considered alternative methods to allocate QS that would accommodate the historic catch patterns of these three vessels, the Council recommended an allocation that would provide a minimal but measurable amount of QS that may be used to allow these vessel operators to continue to participate in the Amendment 80 sector. NMFS did not modify the regulations based on this comment.

Comment 20: Three Amendment 80 vessels without legal landings during the 1998 through 2004 qualifying years will be issued a specific amount of QS. Assign all Amendment 80 vessels a minimum amount of QS in addition to historic legal landings.

Response: The Council considered a range of criteria when determining the minimum amount of QS to be issued based on the catch history of a specific vessel. The Council did not recommend and the rule does not implement a minimum QS issuance for all Amendment 80 vessels. The purpose of the allocation to the three Amendment 80 vessels described by the comment is provided in the preamble to the proposed rule and in response to comment 19. NMFS did not modify the regulations based on this comment.

Comment 21: Modify § 679.90(d)(i) to incorporate the entire catch history for all vessels that qualify under the Program. Limiting the allocation to the years 1998–2004 unfairly penalizes long-term participants in the fishery, while rewarding short-term speculative participants. Failure to consider the full catch history of all participants in the Program violates principles of fundamental fairness. The choice of the years 1998–2004 appears to give a much greater emphasis, and thus a greater allocation, to new or more recent participants in the fishery, at the expense of those who have an established presence in this fishery.

Both the MSA and the Amendment 80 draft EA/RIR/IRFA indicate that recent catch history shall be considered in allocation programs. However, the selection of the years 1998–2004 for this Program severely slants the allocations

in favor of recent entrants. Cutting off consideration of all catch history prior to 1998 ignores the investments made by companies pioneering these fisheries. Participants took a substantial risk in building ships and developing markets to replace the foreign ships operating off the coast of Alaska at that time. Limiting catch history to the years 1998–2004 effectively negates the effort and commitment of early entrants, and there is no justification in the Amendment's analysis for ignoring the complete catch history in making species allocations under the Program. This is contrary to MSA National Standard 4, which requires fair and equitable allocation of fishing privileges.

Response: The Council spent considerable time reviewing catch patterns in the fishery. The Council considered a wide range of factors that have been described in the final EA/RIR/FRFA, the Council record, and in the preamble to the proposed rule. Section 303(b)(6) of MSA requires that both historic and current participation patterns be considered when allocating fishery resources. Both recent and historic harvest patterns were considered and numerous opportunities were provided to Amendment 80 sector participants to recommend the specific methods used to allocate QS.

The Council and NMFS examined historic and recent catch patterns before recommending the allocation ultimately selected. The final EA/RIR/FRFA prepared for this action notes that harvest patterns from 1995 through 2004 were considered in various combinations. There are several factors that were considered in determining allocations to the Amendment 80 sector.

First, the CRP notes that only vessels that were active from 1997 through 2001 are eligible to participate in the Amendment 80 sector. Including years prior to 1997 could potentially include the legal landings of vessels that are not eligible to participate in the Amendment 80 sector. Including the legal landings for those vessels would provide QS allocations based on the activities of vessels that Congress specifically determined should not be able to continue to participate.

Second, including legal landings prior to 1998 only for Amendment 80 vessels would likely shift the allocation of QS from more recent participants to more historic participants. As with all QS allocations, the Council endeavored to balance historic and recent participants. Including legal landings prior to 1998 would likely have the effect of increasing the QS allocations to longer term participants but would provide less QS to Amendment 80 vessels that are currently active. The net effect of such a change would be to allocate an amount of QS to current participants that is not representative of current participation patterns. The Council attempted to ensure that vessels that are currently active in the fishery are able to continue to operate in a fashion representative of their dependence and use of the fishery. Shifting the allocation of QS to favor vessels active more than ten years before the Program would defeat that goal. Section 303(b)(6) of the MSA notes that in developing a limited access system, such as the Program, the Council and NMFS take into account present participation in the fishery, historical fishing practices, and dependence on the fishery. The MSA does not define these terms, or require that the Council or NMFS weight one measure over another. The Council and NMFS did consider historic and recent participation and dependence. The Council determined that allocating QS based on legal landings some eight years prior to Council action, and likely ten years prior to the implementation of the Program reasonably considered historic participation and dependence.

Third, NMFS also notes that allocating QS based on legal landings during the time period prior to 1998 could result in relatively few long-term participants receiving a relatively large proportion of the overall QS allocated to the Amendment 80 sector. Depending on the way in which catch prior to 1998 would be considered this could result in a particular individual or corporation receiving a much larger share of QS relative to their current fishery patterns. This raises a concern that such an allocation method would not be fair and equitable to other fishery participants, could result in such an individual or corporation acquiring an excessive share of QS, and would contravene National Standard 4.

Fourth, a review of catch patterns in the final EA/RIR/FRFA of Amendment 80 vessels indicates that the number of non-AFA trawl catcher/processors, and amount of Amendment 80 species TAC taken by those vessels is relatively consistent throughout the 1998 through 2004 time period. This suggests that participation patterns during this time period are most reflective of a reasonable range of historic and recent participation. For example, in the yellowfin sole fishery, during the 1995 through 1997 time period an average of 28 non-AFA trawl catcher/processors retained 64 percent of the total TAC. During the 1998 through 2004 time period an average of 22 non-AFA trawl catcher/processors retained 90 percent of the TAC, indicating a fewer number of non-AFA trawl catcher/processors retained a greater proportion of the total TAC. The Council and NMFS observed similar catch and participation patterns for the other Amendment 80 species. Catch and participation patterns prior to 1998 do not appear reflective of long term trends after 1998.

Fifth, the Council noted that there have been substantial changes in the fishery due to the implementation of the AFA beginning in 1998. The AFA effectively excludes almost all non-AFA trawl catcher/processors from participating in the directed pollock fishery, and limited those vessels eligible in the AFA to specific sideboard limits. This change in fishery management shifted catch patterns dramatically. Amendment 80 vessels increased their harvests of Amendment 80 species, and AFA vessels focused their catch on pollock. Management prior to 1998 is not representative of management changes that resulted from the enactment of the AFA.

The seven year time frame used to allocate QS included the most recent year of participation for which records were available at the time of Council action (2004) as well catch as early as 1998, which was best thought to represent the traditional harvest patterns of the Amendment 80 sector. The Council's recommendation does not violate principles of fundamental fairness. NMFS did not modify the regulations based on this comment.

Comment 22: An Amendment 80 LLP license is assigned QS (*i.e.*, an Amendment 80 QS/LLP license) if an Amendment 80 vessel is lost or becomes permanently ineligible to fish. The regulations allow the CQ derived from an Amendment 80 QS/LLP license to be fished on an existing Amendment 80 vessel. That Amendment 80 QS/LLP license will be assigned to a cooperative. This would allow a vessel owner to ''stack'' Amendment 80 QS/LLP licenses on a vessel so long as that vessel owner did not exceed the 30 percent use cap. This stacking of Amendment 80 QS/LLP licenses on a vessel could be used to leverage others who are seeking to form a cooperative. This goes against the Council's intent to limit the amount of consolidation in the industry.

Response: The Council spent considerable time attempting to balance cooperative formation standards so that the interests of single and multiple QS permit holders were balanced. In particular, the Council adopted measures to ensure that holders of single QS permit would have the ability to reasonably negotiate with multiple QS permit holders to ensure an

equitable distribution of costs and revenues in a cooperative arrangement. The ability to purchase Amendment 80 QS/LLP licenses and use the resulting CQ or ITAC does not necessarily result in any greater ability to form a cooperative. A minimum number of unique entities and QS permits must be assigned to form a cooperative. Cooperative formation would be limited if consolidation occurred that made meeting these requirements difficult. It is not clear how consolidation of permits would necessarily provide a greater advantage to a person holding multiple QS permits because other persons holding QS permits must choose to form a cooperative with that person. If the minimum requirements cannot be met to form a cooperative, Amendment 80 QS permit holders can assign those permits to the Amendment 80 limited access fishery.

The Program provides an opportunity for persons to hold and transfer QS permits, subject to specific limits, but within those limits the choice to consolidate permits is made by the potential transferor and the transferee. There is no requirement that an Amendment 80 QS/LLP license holder has to transfer that license to another person. The Council did not recommend and the rule does not implement a requirement that an Amendment 80 LLP/QS license be assigned only to an Amendment 80 cooperative, and the comment provides no rationale why it would need to be. As an example, the holder of an Amendment 80 QS/LLP license could choose to enter into a contract with participants in the Amendment 80 limited access fishery and receive compensation for the ITAC derived from that Amendment 80 QS/LLP license. NMFS did not modify the regulations based on this comment.

Comment 23: For no discernable reason, replacement vessel provisions are absent from the proposed rule. This is a serious omission that was not addressed or explained anywhere in the proposed rule even though Section 1.11.13.4 in the draft EA/RIR/IRFA assumes that replacement vessels will be allowed. There is no explanation for the rationale of such a drastic and unprecedented step.

NMFS has indicated that section 219(a)(7) of the CRP limits the vessels that can participate in the Amendment 80 sector. NMFS has incorrectly interpreted this provision of the CRP. Section 219 of the CRP should not be interpreted to create a defined class of vessels. Had Congress wished to limit participation by a group of vessels, they would have used the same language as was used in the AFA. A clear distinction needs to be made between qualifying participants, which is what the CRP addresses, and the vessels used to qualify.

Response: The proposed rule does not address, or create provisions for replacement vessels in the event an Amendment 80 vessel suffers an actual total loss or constructive total loss, because Congress did not provide for such a provision in the CRP. The preamble to the proposed rule clearly describes the criteria that Congress established for allowing a person to fish in the Amendment 80 sector under the CRP (72 FR 30057). In addition, NOAA General Counsel provided a series of memoranda to guide the Council in the development of the Program that specifically address this issue. Those memoranda are appended to the final EA/RIR/FRFA prepared for this action (see **ADDRESSES**).

The criteria to participate in the Amendment 80 sector are clearly established in the CRP. For purposes of participation in the catcher/processor sector of the BSAI non-pollock groundfish fishery, section 219(a)(7) of the CRP states:

(7) Non-AFA Trawl Catcher Processor Subsector.—The term ''non-AFA trawl catcher processor subsector'' means the owner of each trawl catcher processor—

(A) That is not an AFA trawl catcher processor;

(B) To whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and

(C) That the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997 through December 31, 2002.

It is quite clear from the language used in the definition of the non-AFA trawl catcher/processor subsector (i.e., Amendment 80 sector) that there are three criteria for eligibility in the sector. Additionally, it is clear from the language used that all the criteria must be met by the owner of a trawl catcher/processor in order to be eligible for the Amendment 80 sector given Congress' use of the word ''and'' at the end of subsection 219(a)(7)(B).

The statutory language used in § 219(a)(7) or in other sections of the CRP does not include words that permit the Council or NMFS to amend Congress' enumerated qualification criteria. Additionally, there is no statutory language in § 219(a)(7) or elsewhere in the CRP that would permit the application of more restrictive, or more lenient, qualification criteria by the Council or NMFS. Congress did not provide the Council or NMFS with any ability to make adjustments to the specific statutory criteria addressing eligibility in the Amendment 80 sector. The criteria as to who is eligible to be a member of the Amendment 80 sector has been decided by Congress, and the Council and NMFS cannot select or impose different eligibility requirements for entrance to the Amendment 80 sector.

Persons who are eligible to participate in the Amendment 80 sector are those persons who, at the time of participation, own a trawl catcher/processor that meets the statutory criteria at § 219(a)(7)(A) and (C), and who has been issued a valid LLP license is endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity for the trawl catcher/processor that meets the criteria in § 219(a)(7)(A) and (C). The criteria for trawl catcher/processors at § 219(a)(7)(A) and (C) will qualify a finite number of vessels for the Amendment 80 sector.

NOAA provided the Council and the public with a review of the CRP that addressed the inability for vessels not meeting the criteria of the CRP to be used to participate in the fishery. The Council clearly understood that no vessels other than those that meet the criteria established in the CRP could be used to fish in the Amendment 80 sector and that there was not a provision in the CRP to allow vessels not meeting the criteria established by Congress to replace those that did.

Throughout the draft EA/RIR/IRFA the terms ''qualified vessel'' or ''eligible vessel'' are used to describe the 28 vessels that have been identified in Table 31 to Part 679 that meet the criteria established in sections 219(a)(7)(A) and (C) of the CRP. Other than Section 1.11.13.4 of the draft EA/RIR/IRFA, there is no suggestion that any vessels other than the 28 defined ''qualified vessels'' or ''eligible vessels'' could be used to fish in the Amendment 80 sector. Section 1.11.13.4 in the draft EA/RIR/IRFA prepared for the proposed rule is misleading and has been corrected in the final EA/RIR/FRFA to make it clear that this section does not describe the potential use of replacement vessels to fish in the Amendment 80 sector.

Section 1.11.13.4 is intended to describe the requirement that Amendment 80 vessel holders must meet any time a person designates a vessel on an LLP license if that vessel wasnt previously designated on that LLP license. Specifically, this section notes that the existing maximum length overall (MLOA) requirements of the LLP

license continue to apply to any vessel designated on an LLP license. The use of the term ''replacement vessel'' is intended to refer to a vessel that is newly designated on an LLP license. Although the use of this term may have caused confusion, this section does not describe a process for replacing an Amendment 80 vessel. NMFS has revised this section of the analysis to make it clear that it is intended to describe the use of LLP licenses on specific vessels, and not to suggest that vessels other than those vessels meeting the clear criteria established by Congress in sections 219(a)(7)(A) and (C) of the CRP can participate in the Amendment 80 sector. NMFS did not modify the regulations based on this comment.

Comment 24: If a person is eligible to receive QS and decides not to participate in the Amendment 80 sector, then his share of the amount of the ''resource'' derived from his QS should be allowed to be used in the BSAI trawl limited access fishery. This provision would be particularly important in those cases where the QS holder decides that the advantages offered by Amendment 80 are outweighed by the disadvantages.

Response: The Council did not recommend, and this rule does not implement, a provision that allows Amendment 80 QS and the ITAC that could be derived from that Amendment 80 QS to be reassigned to the BSAI trawl limited access sector. The Council explicitly considered and rejected a provision that would have allowed ITAC to be reallocated from the Amendment 80 sector to the BSAI trawl limited access sector during the development of the Program. The Council rejected this provision due to the difficulty in reassigning catch, specifically CQ from the Amendment 80 sector to the BSAI trawl limited access sector.

NMFS agrees that a person who is eligible to receive QS may choose not to apply for that QS, not become a participant of the Amendment 80 sector, and therefore choose to participate in another sector, such as the BSAI trawl limited access sector, subject to the limitations on participation in that sector. The decision to do so would be made on a case-by-case basis. NMFS did not modify the regulations based on this comment.

Comment 25: Provide a greater allocation to the Amendment 80 sector based on both historic and recent catch and PSC use patterns. The allocations provided to the BSAI trawl limited access sector are more than adequate to support the needs of that sector and should not be increased. An increase in allocations to the Amendment 80 sector is supported by comparing the allocations made under the Program to the historic current use of Amendment 80 species and PSC by the Amendment 80 and BSAI trawl limited access sectors.

Response: The Council considered a range of alternatives when making the allocations to the Amendment 80 and BSAI trawl limited access sectors. The rule implements allocations among fishery participants in accordance with the MSA and in consideration of a range of factors summarized in the final EA/RIR/FRFA prepared for this action (see **ADDRESSES**). See response to comment 21 for additional detail on the years selected for determining catch history allocation. NMFS did not modify the regulations based on this comment.

Section 679.91

Comment 26: Remove from § 679.91(a)(1) the requirement that a person assign all Amendment 80 vessels, QS permits, and LLP licenses to only one Amendment 80 cooperative or the limited access fishery. This provision was never discussed by the Council, which opted to provide the sector with the flexibility to form multiple cooperatives. Given the total number of companies and the varying number of vessels that each entity controls, some companies may need to have the flexibility to split their vessels, LLP licenses, and QS permits among more than one cooperative. In order to maximize the possibility that all vessels find like-minded operations with which to form up to three effective cooperatives, the ''all in'' rule should be eliminated to allow an Amendment 80 vessel owner the opportunity to determine how to best structure his or her operation to maximize the benefits that may be derived from cooperative management. The ''all in'' rule coupled with the other cooperative formation requirements would hinder, rather than enhance, the sector's ability to form cooperatives.

Response: As noted in the preamble to the proposed rule, consistent with the FMP, NMFS proposed this provision to encourage participants in the Amendment 80 Program to form cooperatives. NMFS proposed similar provisions in other LAPPs to facilitate administrative oversight by limiting the number of cooperative arrangements that need to be tracked, and to provide an incentive to participants to either join a cooperative or the limited access fishery with all QS permits, thereby making a decision to join a cooperative more attractive. However, as indicated in the comment, members of the Amendment 80 sector indicate that due to the particular structure of their business arrangements, this provision would frustrate, rather than encourage cooperative formation. NMFS has therefore made the following changes:

- Modified § 679.91(a)(1)(i) to require that each calendar year, an Amendment 80 QS holder must designate those Amendment 80 QS permits, associated Amendment 80 vessels, and Amendment 80 LLP licenses that the Amendment 80 QS holder wants to be in the cooperative or Amendment 80 limited access fishery on a timely and complete application for CQ or application for the Amendment 80 limited access fishery. This modification provides a person the opportunity to choose which Amendment 80 QS permit held by the person to assign to an Amendment 80 cooperative or to the limited access fishery;
- Modified § 679.91(a)(1)(ii) to state that NMFS will assign the Amendment 80 QS permit(s), associated Amendment 80 vessel(s) and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to either the Amendment 80 cooperative(s) or Amendment 80 limited access fishery as designated by the Amendment 80 QS holder;
- Modified § 679.91(a)(1)(iii) to remove references regarding the assignment of all Amendment 80 QS permits, associated Amendment 80 vessels, and Amendment 80 LLP licenses held by a person to a specific Amendment 80 cooperative or the Amendment 80 limited access fishery; and
- Modified § 679.91(h)(3)(xi) and (h)(3)(xii) to clarify that a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.

Comment 27: The provision in § 679.91(h)(3)(xi), that requires a holder of multiple Amendment 80 QS permits, LLP licenses or vessels to assign all such permits, licenses or vessels to a single cooperative for a given calendar year, is an unnecessary and unwarranted infringement upon the companies' ability to form effective working cooperatives. Multi-vessel companies may have good reasons for assigning different vessels to different cooperatives, based on vessel configuration or other concerns. Denying companies the opportunity to

assign their various permits, licenses, and vessels in the ways that best meet their needs, in keeping with historical practices and economic considerations, unfairly limits their ability to effectively participate and compete in the industry. The risk of an unfair competitive advantage is negligible.

Response: This comment has been addressed in response to comment 26.

Comment 28: Add a new paragraph to § 679.91(a)(3)(ii) that states that if a person fails to submit a timely and complete application for CQ or the Amendment 80 limited access fishery for an Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license, NMFS will assign that Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license to the Amendment 80 limited access fishery. This would allow for a default opportunity to fish in the limited access fishery, even if a deadline for an annual application declaring the intent to fish in the limited access fishery was missed.

Vessels need to be designated on each CQ application annually; however, it is ''draconian'' to prohibit a vessel owner from fishing in the limited access fishery if he forgets to meet an Amendment 80 limited access fishery application deadline. If this change is not possible, then the disposition of the ITAC derived from the Amendment 80 QS from a person not meeting a limited access fishery application deadline should be allocated among Amendment 80 cooperatives. Alternatively, the unused QS could be allocated on a *pro rata* basis between each cooperative and the Amendment 80 limited access fishery.

Response: NMFS proposed this provision to encourage persons to submit timely information indicating the use of QS permits, Amendment 80 vessels, and LLP licenses for each year. NMFS needs to know which QS permits, vessels, and licenses are used in each cooperative and the limited access fishery. A similar provision is used in the BSAI crab LAPP. However, in the unlikely event that a person fails to submit a timely application for a QS permit, NMFS can assign any ITAC derived from that QS permit, and the associated Amendment 80 vessels and LLP licenses, to the Amendment 80 limited access fishery. This would still provide that Amendment 80 sector participant with an opportunity to fish. NMFS has modified § 679.91(a)(3) by renumbering existing § 679.91(a)(3) as (a)(3)(i) and editing that paragraph to remove reference to the application for an Amendment 80 limited access fishery, and inserting a new paragraph (a)(3)(ii) to clarify that if an application is not submitted to NMFS for an Amendment 80 QS permit, that permit, and the associated Amendment 80 vessel and LLP license will be assigned to the Amendment 80 limited access fishery. NMFS notes that with this change, NMFS will not need to modify the mechanism for allocating ITAC or halibut or crab PSC within the Amendment 80 sector as described at § 679.91(c), (d), and (e).

Comment 29: Section 679.91(a)(2) provides that any QS permits or units assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for the calendar year will not result in any additional CQ or ITAC being issued. While the proposed regulations comply with constitutional due process requirements by providing an appeals process, there is no way for a QS holder who prevails in such an appeal to be made whole. When NMFS makes an error in the allocation of CQ or ITAC, issuance of the correct amount the following calendar year does not correct the damage done in the previous year. If NMFS is shown to have made an error in allocation, it should be liable to the QS holder for lost income during the calendar year at issue. Assuming nothing could be done to make the correction during the year in question, the most logical way to correct such an error would be to give the QS holder additional quota for the following year. Without such a provision in the event of an allocation error, the proposed rule does not guarantee due process.

Response: The comment reflects an incorrect interpretation of this provision. Section 679.91(a)(2) addresses the situation that could arise should a successful appeal or operation of law result in NMFS issuing QS after NMFS has issued CQ or ITAC for a calendar year. This provision states that NMFS will not reissue CQ or ITAC to accommodate QS issued after this date. As noted in the preamble to the proposed rule, this provision is necessary to ensure that all other fishing operations are not disrupted with the addition of new QS that would require reissuing a smaller amount of CQ and ITAC to all other Amendment 80 sector participants. As an example, reducing CQ allocations mid-year to accommodate new QS holdings could create a situation where a cooperative has fully harvested its CQ, but readjustment by NMFS to reallocate CQ could cause that cooperative to exceed its CQ and violate regulations due to factors beyond its control. Reallocating CQ away from existing participants could severely impact the reasonable expectations of industry. NMFS issues CQ and ITAC based on the amount of QS held by a person at the time of application for CQ or application for the Amendment 80 limited access fishery and is not required to readjust CQ or ITAC allocations mid-year.

Concerns regarding the potential for NMFS to err in the issuance of CQ or ITAC to a QS holder and the recommendation that NMFS provide compensation to a QS holder are not warranted. First, it is highly unlikely that such an error would occur given the limited number of QS holders and the review mechanisms for issuing ITAC and CQ. Second, even if such an error did occur, it would likely be evident before fishing began and NMFS could reissue CQ or ITAC prior to fishing. Third, Section 303A(i(1)) of the MSA notes that any LAPP ''for which a Council has taken final action * * * within 6 months after the date of enactment of the [MSRA]'' is subject to the provisions of section 303(d) of the MSA prior to amendment by the MSRA. Section 303(d)(3)(B) prior to amendment by the MSRA clarifies that a limited access system authorization such as the Program ''may be revoked or limited at any time in accordance with [the MSA].'' Section 303(d)(3)(C) prior to amendment by the MSRA notes that a limited access system authorization ''shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited.'' NMFS made no changes to the regulations based on this comment.

Comment 30: Section 679.91(c) describes the process by which Amendment 80 species would be allocated to the BSAI trawl limited access sector and the Amendment 80 sector. The rule proposes using total catch rather than retained catch to determine the allocations. This is a fundamentally flawed methodology that rewards those who have historically had the highest discards and does nothing to reward those who have diligently worked to retain more fish onboard their vessels. This allocation method unduly benefits the smaller vessels in the BSAI, who have been high-grading for years due to smaller factory size, and penalizes larger vessels. The MSA National Standard 9 specifically addresses the issue of lowering discards and increasing retention. The proposed allocation method runs contrary to the MSA's mandate, and as such, would appear to be in violation of the statute.

Response: The Council and NMFS considered a variety of methods and

factors to allocate QS including differential catch patterns among larger and smaller vessels, historic and current participation, and fishery-specific characteristics. The Council considered these factors before recommending the specific QS allocation method implemented in the rule. Among the factors considered was that smaller Amendment 80 vessels typically are less able to fully retain all catch due the limited space for processing machinery and product storage, and the need to race for fish with larger vessels that have a greater harvesting and processing capacity. The race for fish may have encouraged smaller vessels to discard more fish relative to larger vessels to ensure more valuable product was processed before the fishery closed. Consistent with section 303(b)(6) of the MSA, the Council considered these historical fishing practices when allocating fishing privileges and determined that allocating QS based on total catch would provide a fair and equitable distribution of QS.

Allocating QS is not inconsistent with National Standard 9 that requires NMFS to minimize bycatch and reduce the mortality of that bycatch to the extent practicable. The method used to allocate QS under the Program does not in any way increase bycatch or the mortality of such bycatch. Quota share allocated to a person allows a person an opportunity to catch a portion of the annual TAC either through assigning that QS to an Amendment 80 cooperative or participating in the Amendment 80 limited access fishery. The percentage of catch retained by a person is not determined by the amount of QS allocated to that person, but by the specific operations of a given vessel and crew. NMFS made no changes to the regulations based on this comment.

Comment 32: Section 679.91(c) states that each calendar year NMFS will determine the tonnage of Amendment 80 species to be assigned to an Amendment 80 cooperative or limited access fishery, but does not provide a deadline when NMFS will make those assignments. If these assignments are not made by the end of September of each year, companies will be unable to plan accordingly and make sound business decisions for the coming season.

Response: Under the current harvest specification process, NMFS establishes the BSAI and GOA TACs well in advance of fishing. As noted in the preamble to the proposed rule, TACs have already been established for 2008 and are published in the **Federal Register** (72 FR 9451; March 2, 2007). While it is true that these TAC allocations may be changed through the annual harvest specification process, adjustments to the 2008 harvest specifications would be recommended by the Council in December 2007, and would likely not supersede existing harvest specifications until March 2008. The industry does have substantial certainty about the amount of TAC available for harvest. In addition, NMFS notes that even though the 2008 harvest specifications may be adjusted by the Council in December 2007, the industry will have several months to review the scientific data, participate in the Council process, and modify fishing operations before those final specifications become effective.

NMFS notes that the process for establishing and adjusting annual harvest specifications is well-established. Participants have long been making sound business decisions within the constraints imposed by this process. The Program does not alter the timing of the annual harvest specification process that defines the TAC. Participants in LAPPs such as the AFA, and the halibut and sablefish IFQ, have demonstrated a consistent ability to operate under these constraints. Additionally, once QS is issued to a person, QS permit(s) clearly indicate the percentage of the total QS pool, and therefore the percentage of the ITAC that may be assigned based on that QS, which further facilitates business planning. NMFS made no changes to the regulations based on this comment.

Comment 33: Section 679.91(c)(3)(iii) describes the procedure by which the CQ for BSAI Atka mackerel will be assigned to Amendment 80 cooperatives under the proposed rule. This provision allocates Atka mackerel to vessels that are not economically dependent upon the resource. These vessels predominantly harvested Atka mackerel in Management Area 541/BS as bycatch while fishing in other fisheries. Historically, most of the Atka mackerel caught in Area 541/BS was caught by large catcher/processors. Vessels with no directed fishing history in the mackerel fishery should receive mackerel QS based strictly on their bycatch history.

Atka mackerel from Area 541/BS has traditionally been larger and of higher value than mackerel from Areas 542 or 543. As a result, this allocation method takes Area 541 mackerel away from those who have a directed fishing history in the fishery and causes more economic harm than ''taking away'' allocations of Atka mackerel in Areas 542 or 543. If an allocation is needed to meet the bycatch needs of these smaller ''non-mackerel vessels,'' it should be made in the form of an incidental bycatch allocation managed by NMFS.

Response: As noted in the preamble to the proposed rule, the Council considered a range of options when allocating Atka mackerel ITAC between the Amendment 80 and BSAI trawl limited access sectors. Historic and recent catch patterns and opportunities for new entrants and fishery dependent communities were among the factors considered. The Council is not obligated to recommend, and NMFS is not obligated to make, allocations based solely on one criterion. The Council considered the traditional catch patterns of vessels when making its recommendations to allocate Atka mackerel QS. As the commenter notes, many smaller Amendment 80 vessels historically participated in Area 541/BS. Rather than allocate Atka mackerel QS in a manner that would require these relatively smaller vessels to move into areas not historically fished (i.e., Areas 542 and 543), the Council recommended allocating Atka mackerel QS proportional to the areas in which harvests occurred. As noted in the final EA/RIR/FRFA prepared for this action, this allocation method would not be expected to shift fishing effort substantially for larger vessels that have historically harvested a greater proportion of Atka mackerel in Areas 542 and 543.

Additionally, the commenter suggests that the allocation of Atka mackerel to smaller vessels should be based only on their non-directed fishery harvests, or incidental catch, whereas larger vessels should be allocated QS based on their total catch. The commenter does not provide a rationale for using a different allocation method for non-mackerel vessels. As noted in the response to comment 31, the Council chose to allocate QS based on total catch rather than retained catch. The commenter's suggestion would apply a different standard to smaller vessels than larger vessels, with the net effect being that smaller vessels would receive a smaller allocation of QS relative to larger vessels.

The Council considered all applicable National Standards when recommending allocations under the Program (see section 4 in the final EA/RIR/FRFA for additional detail). As an example, National Standard 5 requires that NMFS consider economic efficiency, ''except that no measure shall have economic allocation as its sole purpose'' (16 U.S.C. 1851(a)(5)). National Standard 6 of the MSA requires that NMFS ''take into account and allow for variations among, and contingencies in, fisheries, fishery

resources, and catches'' (16 U.S.C. 1851(a)(6)). National Standard 8 also requires that NMFS ''provide for the sustained participation of such communities'' (16 U.S.C. 1851(a)(8)(A)). NMFS did not modify the regulations based on this comment.

Comment 34: Allow Amendment 80 and PSC species that are projected to be unused by the Amendment 80 limited access fishery to be reallocated or ''rolled over'' to Amendment 80 cooperatives ensures that the TAC is utilized to the fullest extent possible. This could be accomplished by adding a new paragraph (f) to § 679.91 that mirrors the mechanism for rolling over unused ITAC from the BSAI trawl limited access fishery and renumber the following paragraphs accordingly.

Amendment 80 provides for rollovers of Amendment 80 species and PSC species from the BSAI limited access fishery. The draft EA/RIR prepared for the proposed rule states that ''the purpose of the rollover program is to ensure that the TAC is utilized, to the fullest extent possible.'' This is consistent with Council policy as well as with MSA National Standard 1. The Council specifically authorized the rollover only to the Amendment 80 cooperatives as an additional incentive for eligible sector participants to join a cooperative.

The proposed rule as currently written does not allow rollovers of unutilized fish from the Amendment 80 limited access fishery to Amendment 80 cooperatives. Even though we anticipate that most companies will join cooperatives, the potential exists for stranding fish in the limited access fishery. This is particularly true if a company with a relatively large QS allocation were to decide to fish in the limited access fishery without the flexibility of the cooperative system. Not allowing a mechanism to access underutilized ITAC runs counter to National Standard 1, as well as general Council policy.

Response: The Council did not recommend a provision to allow rollover of potentially unused catch from the Amendment 80 trawl limited access sector to Amendment 80 cooperatives. NMFS assumes that because the Council explicitly recommended a rollover only from the BSAI trawl limited access sector to Amendment 80 cooperatives, and not from the Amendment 80 limited access fishery, it did not intend to provide such a provision. Amendment 80 to the FMP specifically describes the rollover process from the BSAI trawl limited access sector to Amendment 80 cooperatives and this FMP provision is implemented by the final rule (see Section 3.7.5.3 of the FMP as amended by Amendment 80). Amendment 80 to the FMP does not contain a similar provision for rolling over catch from the Amendment 80 limited access sector to Amendment 80 cooperatives.

NMFS discussed the lack of this rollover provision at two public workshops, one on May 23, 2007 (72 FR 27798), and another on June 18, 2007 (72 FR 31548), both of which were attended by numerous participants in the directly regulated industry and a member of the Council. Further, NMFS provided a review of the proposed rule to the Council at its June 2007 meeting (72 FR 26606) and specifically highlighted this issue and requested that the Council provide comments if the proposed rule contravened Council intent.

The Council did not indicate at that meeting that it intended to allow catch from the Amendment 80 limited access fishery to be rolled over to the Amendment 80 cooperatives and the Council did not submit comments to NMFS during the public comment period suggesting that NMFS include that provision in the FMP amendment and final rule. If the Council had intended such a provision, the Council could have provided NMFS with comments specifically stating so.

NMFS determined that allowing a rollover from the BSAI trawl limited access sector and not the Amendment 80 limited access fishery is reasonable. The BSAI trawl limited access sector has not historically harvested Amendment 80 species to the same degree as the Amendment 80 sector and it is more likely that the BSAI trawl limited access sector will not fully harvest its allocations of Amendment 80 species. However, participants in the Amendment 80 sector, including any participants in the Amendment 80 limited access fishery, have traditionally participated in these fisheries and have the ability and expertise to fully harvest Amendment 80 species. This makes it much less likely that there will be unharvested ITAC in the Amendment 80 limited access fishery. Furthermore, given the fact that participants in the Amendment 80 limited access fishery are likely to be able to fully harvest their allocations of ITAC, NMFS may have difficulty determining when participants in the Amendment 80 limited access fishery are finished, and that could put NMFS in a position of prematurely closing the limited access fishery.

Given these factors, the lack of a rollover provision does not prevent the ability of the Amendment 80 sector to maximize catch and achieve optimum yield on a continuing basis. National Standard 1 states that ''Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry'' (16 U.S.C. 1851(a)(1)). The absence of a rollover mechanism from the Amendment 80 limited access fishery to Amendment 80 cooperatives would not encourage overfishing. NMFS will monitor catch by the Amendment 80 limited access fishery using the same M&E standard applicable to Amendment 80 cooperatives and will close the Amendment 80 limited access fishery to avoid overfishing. Participants may choose not to join a cooperative and efficiently harvest the allocation in the Amendment 80 limited access fishery.

Because the CRP and the Program limit the number of participants in the Amendment 80 sector, it is likely that some participants will form cooperatives, and some will not. Because the number of participants is limited, the possibility of private contractual arrangements among participants in the Amendment 80 limited access sector increases. Participants in the Amendment 80 limited access fishery could voluntarily develop methods to coordinate fishing operations and ensure even more efficient harvests. Even if such voluntary arrangements are not entered into, the management of the Amendment 80 limited access fishery is expected to be very similar to fishery management prior to the Program. Fishery management prior to this rule is in full compliance with the MSA, including National Standard 1. NMFS did not modify the regulations based on this comment.

Comment 35: Section 679.91(f) provides certain provisions for the rollover of Amendment 80 species allocations, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives. There is no such provision for rollover from the Amendment 80 limited access fishery. The concept of rollover from the Amendment 80 limited access fishery was not addressed in the Council motion and was not made part of the Amendment's analysis. It is inappropriate and unwarranted to introduce such a notion until it has been proven that such a rollover provision is needed. The Amendment 80 limited access fishery will be a relatively small portion of the overall Amendment 80 Program, and as such, under NMFS resource management, it should have little or no unharvested allocations.

Moreover, it would be extremely difficult for NMFS Inseason Management to effectively manage the rollover process. In particular, the difficulty in determining when participants in the Amendment 80 limited access fishery are ''done'' could put NMFS in a position of prematurely closing the limited access fishery. In short, this type of rollover provision is both unwarranted and unworkable, and should not be introduced into the final rule.

Response: NMFS agrees that a provision for a rollover from the Amendment 80 limited access fishery is not warranted, as discussed in response to comment 34.

Comment 36: Section 679.91(f)(2) provides a list of factors to be considered by NMFS when reallocating or ''rolling over'' Amendment 80 species or PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives. Among the factors to be considered are risk of biological harm, socioeconomic well-being of Amendment 80 cooperatives, administrative requirements to reissue CQ permits and any other relevant biological, socioeconomic, or administrative factors.

It is unclear how NMFS will apply or interpret these factors. What standards will be used to assess the risk of biological harm? How will the ''socioeconomic well-being'' of the Amendment 80 cooperatives be evaluated? How will the risk of socioeconomic harm to other domestic fishery participants be measured? How will each of these factors be weighed and prioritized?

In short, these questions and the many others raised by this provision are another example of how the proposed rule fails to thoroughly consider and address the details of how this Program will be administered. This particular provision could have significant ramifications for the Amendment 80 cooperatives if rollover allocations were to be challenged by the BSAI trawl limited access sector. The factors presented in this provision are extremely subjective and ambiguous in nature, which could invite litigation on the issue of rollover allocations. The lack of clarity in this provision is yet another reason for delaying implementation of the Program until details such as this have been fully addressed.

Response: Under § 679.91(f)(1), the term ''may'' allows the Regional Administrator the discretion to reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. As proposed, § 679.91(f)(2) would have required that the Regional Administrator ''will'' consider specific factors when deciding whether he ''may'' rollover ITAC or PSC. As noted by the commenter, the requirement to consider all the proposed listed factors could increase the amount of time required to initiate a rollover. Should the Regional Administrator decide to reallocate catch, it needs to be done in a timely fashion to prevent disruption the industry, potential economic harm, or unnecessary discards. Also, the fishing industry benefits from the earliest possible notification of a rollover to plan its fishing operations.

As the commenter notes, requiring the Regional Administrator to consider all the factors under § 679.91(f)(2) through a formal analysis could delay a reallocation. NMFS does not intend to prepare a formal analysis of all of the listed criteria. Such an analysis would substantially increase the amount of time required to reallocate fishery resources within a fishing season and would undermine the ability of NMFS to ensure the effective harvest of fishery resources. Therefore, NMFS has changed the requirement to consider these factors in § 679.91(f)(2) to an indication that NMFS may consider the factors listed in § 679.92(f)(2) when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives. This change better meets with the intent of this provision, which is to ensure that NMFS can reallocate fishery resources during the fishing year to ensure the TAC is harvested. This change does not limit NMFS to consider only existing harvest and processing patterns before making any reallocation. This change is also consistent with the discretionary authority of NMFS to manage fishery resources for the net national benefit.

Comment 37: Remove from § 679.91(h)(1) the requirement to admit members to a cooperative subject to the terms and agreements that apply to the members of the cooperative as established in the agreement or contract governing the conduct of an Amendment 80 cooperative. Under the multiple cooperative structure in Amendment 80, the mandatory admission provision is not necessary and cooperatives should be able to determine their membership without mandatory admission requirements. The proposed rule language requiring mandatory admission into a cooperative had its origins in other cooperative LAPPs, which operate either under a single cooperative model or have other limiting characteristics such as processor linkages.

Amendment 80 allows up to three voluntary cooperatives to form, providing eligible persons multiple opportunities to form alliances with other eligible and like-minded entities. The Council deliberately did not choose a single cooperative model. Instead, recognizing the diversity in company size, vessel size, and targeting strategies of the Amendment 80 fleet, the Council provided for up to three cooperatives (i.e., each cooperative having at least three unique non-affiliated entities and assigned at least nine QS permits). Cooperative membership is voluntary, and every eligible entity has multiple opportunities to form alliances that balance the members' needs while assuring that the responsibilities of the cooperatives are met.

Response: NMFS agrees that this requirement is not required under the Program and has removed it from § 679.91(h)(1). This requirement was inserted into the proposed rule based on the regulations for the Central GOA Rockfish Program. The Central GOA Rockfish Program allows catcher vessel operators to form cooperatives only in association with specific processors. As a condition of this requirement in the Central GOA Rockfish Program, the cooperatives were structured to ensure that any person that was eligible to form a cooperative in association with a specific processor could do so. No similar requirement for linkage with a specific processor exists in the Program.

Inserting this provision in the Program based on the requirements of another LAPP with different characteristics is an oversight, is not necessary, and would adversely affect the ability of Amendment 80 sector participants to form cooperatives as intended by the Program. NMFS notes that this requirement was not recommended by the Council during the development of the Program. Amendment 80 sector participants can form cooperative relationships with any other participant in the Amendment 80 sector. As such, there is no need to require a person be accepted by a cooperative.

Comment 38: Do not remove the provision in § 679.91(h)(1) that states that an Amendment 80 cooperative must allow an eligible person to join the cooperative subject to the terms and agreements that apply to the members of the cooperative as established in the

agreement or contract governing the cooperative.

This provision should not be removed because of the potential for the relatively small number of QS holders to use this provision to conduct unfair business practices and manipulate the cooperative program for their own financial gain. If a cooperative were able to exclude otherwise eligible persons from joining the cooperative, then a group of like-minded people could gain an unfair competitive advantage. Otherwise qualified persons who are denied entry to a cooperative would be forced into the limited access fishery, depriving them of millions of dollars worth of rollover fish from the BSAI trawl limited access fishery.

Response: NMFS determined that this provision is not necessary and is inconsistent with the intent of the Program for the reasons provided in response to comment 37. Furthermore, NMFS notes that each participant has the ability to form a cooperative with other Amendment 80 QS holders without a provision requiring that other cooperative members accept that participant. The Council specifically designed the Program to encourage fishery participants to negotiate and cooperate in order to receive an exclusive harvest privilege of CQ. It is not clear how fishery participants would receive a competitive advantage from being able to exclude members. There are numerous fishery participants with whom to form voluntary cooperatives and receive the potential benefits of cooperative management. Numerous comments noted that requiring cooperatives to accept members who are otherwise unable or unwilling to reach agreement with other fishery participants would frustrate the intent of the Program.

Furthermore, NMFS notes that although unharvested catch from the BSAI trawl limited access sector may be reallocated to participants in Amendment 80 cooperatives, that reallocation is not guaranteed to occur, and will not occur if the catch is harvested by participants in the BSAI trawl limited access sector. NMFS also notes that with the change in the regulations concerning the delivery of unsorted catch to Amendment 80 vessels in response to comment 5, any participant in the Amendment 80 sector, whether in an Amendment 80 cooperative or the Amendment 80 limited access fishery, may receive unsorted catch from the BSAI trawl limited access sector and benefit economically from the receipt and processing of that catch. The regulations do not limit any participant in the Amendment 80 sector from offering processing markets to participants in the BSAI trawl limited access fishery and deriving economic benefit from that sector. For these reasons, NMFS made no changes to the regulations based on this comment.

Comment 39: Section 679.91(h)(1) provides that members may leave an Amendment 80 cooperative, but if they choose to do so, any CQ contributed by the Amendment 80 permit(s) held by that member will remain with the cooperative for the duration of the calendar year. Under this provision, a cooperative member who finds the cooperative relationship is not working or is financially detrimental to the company has no choice but to remain in the cooperative or forego its quota for the year. There is no apparent reason for this measure, and no apparent reason why members should not be allowed to transfer from one cooperative to another or be allowed to withdraw from the cooperative and enter the Amendment 80 limited access fishery.

Section 679.91(h)(3)(xv) contemplates modification of cooperative agreements or contracts during the fishing year. Thus it would appear that a modification allowing for the exit of a cooperative member would be possible. Forcing a member to remain in a cooperative that is detrimental to its own interests or surrender its quota would appear to violate constitutional due process protections and prohibitions on the taking of property without compensation.

Response: As explained in the preamble to the proposed rule, the Program is structured so that exclusive harvest allocations are made to cooperatives, not to the Amendment 80 QS permit holder. This allocation method has been used in other LAPP programs such as the Central GOA Rockfish Program. This method ensures that once made, cooperative allocations cannot be adversely affected by the actions of one member of the cooperative. As an example, once NMFS makes an allocation to a cooperative, it would undermine the ability of a cooperative to effectively operate if one member of the cooperative unilaterally chose to withdraw CQ midseason. This could result in the cooperative exceeding its CQ amount and adversely affect all other members of the cooperative.

Cooperatives can transfer CQ between one another using the transfer provisions at § 679.91(g). The Council did not recommend and the rule does not implement, provisions to allow a person to withdraw CQ once issued to a cooperative. Persons joining cooperatives can establish private contractual arrangements to compensate members if certain conditions are not met by the cooperative or specific members of the cooperative. These private contractual arrangements can adequately address specific issues of compensation or other factors without revising the cooperative management structure in a manner not intended by the Program. Cooperative members freely enter into the cooperative. Requiring the CQ that is issued to that cooperative to remain assigned to the cooperative does not violate due process. NMFS issues CQ permits to cooperatives, not individuals. The issue of compensating permit holders has been addressed in response to comment 29. NMFS made no changes to the regulations based on this comment.

Comment 40: Section 679.91(h)(3)(ii) requires that a minimum of nine Amendment 80 QS permits is needed to form a cooperative. This standard is unrealistic and unworkable. A minimum of four permits would be more realistic, especially in light of the fact that while there is a quota use cap of 30 percent, there is no limit to the number of permits that can be consolidated under one vessel owner, as long as the use cap is not exceeded. This consolidation of permits under one or two owners would allow them to control the formation of cooperatives and extort unfair compensation from companies who may not want to do business with them, but are forced to pay them in order to conduct business under the Program.

Response: NMFS disagrees with the assertion that this standard is unreasonable and unworkable. The Council chose the minimum number of permits required after reviewing options available to allow cooperatives to form using lower standards. The Council reviewed the complexity of multispecies groundfish management under cooperative management, the effect of the size of a cooperative on quota management, negotiating strategies that may arise under certain cooperative formation criteria, and other factors before recommending the standard incorporated in this rule (see Section 1.11.7 of the final EA/RIR/FRFA). The Council recommended a minimum number of QS permits that is intended to encourage cooperative formation, yet minimize the complexities that arise with smaller allocations in multispecies fisheries.

The commenter's concern that QS permits could be consolidated by a small number of harvesters and disadvantage other QS permit holders appears unlikely given the anticipated

costs and complexity of completing such a transaction. It is not clear how a lower minimum standard of QS permits necessary to form a cooperative would alleviate the commenter's concern about consolidation. In addition to a minimum number of QS permits, at least three unique non-affiliated entities must be members of a cooperative for it to be allowed to form. Reducing the number of QS permits necessary to form a cooperative does not modify this standard.

NMFS notes that cooperative formation is not required to effectively participate in the Amendment 80 sector. If a QS holder is not willing or able to meet the demands of cooperative formation, the Amendment 80 limited access fishery remains a viable option for that QS holder. NMFS made no changes to the regulations based on this comment.

Comment 41: Allow formation of cooperatives by any single company that has two or more vessels, as in the Central GOA Rockfish Program. Section 679.91(h)(3)(iii) requires a minimum of three unrelated Amendment 80 QS holders to form a cooperative. There are only 13 unique entities that will qualify as Amendment 80 QS holders. Assuming two cooperatives have four or more QS holders in them, this suggests that three cooperatives will form. If one assumes, as the Amendment 80 analysis suggests, that one result of the Program will be consolidation of companies, the total number of separate entities could drop to six or fewer, resulting in only one or two cooperatives. Asking this fiercely competitive industry to form only three or four, or perhaps even fewer, cooperatives is impractical, and could give rise to unscrupulous business practices. This would present a company with no choice but to join an unfriendly cooperative or be forced into the limited access fishery.

Under the Central GOA Rockfish Program, any single company that has two or more vessels is allowed to form a cooperative. As noted earlier, even with these more liberal rules regarding cooperative formation, only two cooperatives were formed in the Central GOA Rockfish Program in 2007. Had the Council and the drafters of the proposed rule been able to see what transpired in the Central GOA Rockfish Program with respect to the formation of cooperatives, they would almost certainly have allowed single companies to form their own cooperatives in Amendment 80.

As written, the proposed rule will inhibit the formation of cooperatives and promote skullduggery within the industry to the point where some participants may be the victim of unfair business practices. Participants may exclude selected participants from joining all cooperatives and force them into the Amendment 80 limited access fishery so that all of the rollover of PSC and Amendment 80 species from the BSAI trawl limited access fishery would go directly to the cooperatives. These rollovers could amount to millions of dollars worth of fish. Such large financial incentives are certainly more than enough motive for the other companies to ''freeze out'' selected participants.

Response: The Council recommended and the rule implements a minimum number of unique entities for cooperative formation in order to encourage participants in the Amendment 80 sector to work collectively to efficiently harvest resources, minimize bycatch, and provide an opportunity for smaller vessel operators to coordinate with larger vessel operators to minimize the potential costs of GRS compliance. The final EA/RIR/FRFA describes the criteria considered by the Council in recommending three unique entities be required to form a cooperative. The Council sought to balance the desire of smaller vessel operators to form alliances with larger operators. The fewer the number of persons required to form a cooperative, the more likely that larger numbers of cooperative would form, increasing management and administrative costs, and potentially creating situations in which smaller operators cannot effectively negotiate with larger operators to form cooperative arrangements. Conversely, requiring a large number of unique persons to form a cooperative could reduce the likelihood of cooperative formation significantly because a larger number of persons would need to agree on a range of operational issues. The Council considered a minimum of three unique entities as a reasonable number to encourage collaborative arrangements.

Some participants may engage in a series of negotiating strategies to form cooperatives, and nothing in the rule prevents a participant from likewise forming alliances and establishing cooperatives with similarly situated and interested entities. Cooperative formation is intended to result in parties reaching mutual consensus on a host of factors to encourage efficiencies of scale. No participant is precluded from that process by the rule. If other participants in the Amendment 80 sector choose not to form cooperative relationships with a specific participant, the limited access fishery provides an option for that participant. If only that participant is assigned to the limited access fishery, that participant could effectively coordinate his own operations within the limited access fishery and *de facto* receive many of the benefits likely to accrue to cooperative members.

Amendment 80 was not directly patterned after the Central GOA Rockfish Program. The conditions that either encourage or inhibit cooperative formation in the Central GOA Rockfish Program are not necessarily applicable to the Program. NMFS made no changes to the regulations based on this comment.

Comment 42: Section 679.91(h)(3)(viii) states that only Amendment 80 vessels can catch an Amendment 80 cooperative's CQ. It is conceivable that Amendment 80 QS could be issued to an Amendment 80 LLP license that is not associated with an Amendment 80 vessel (where, for instance, the Amendment 80 vessel has sunk and is considered a total loss). If the Amendment 80 QS holder in such a case does not meet the requirements set forth in the proposed rule for joining a cooperative, or for whatever reason does not wish to join a cooperative or is otherwise unable to join a cooperative, it is unclear what will happen to any ITAC that could be derived from that QS permit. The only alternative to joining a cooperative is to participate in the Amendment 80 limited access fishery. However, only Amendment 80 vessels are allowed to fish in the Amendment 80 limited access fishery. Without an Amendment 80 vessel to fish the QS, an Amendment 80 QS/LLP license is effectively worthless. This deprivation of such an Amendment 80 QS/LLP license holder's significant property right raises serious questions about due process and unconstitutional takings.

Response: NMFS disagrees that the holder of an Amendment 80 QS/LLP license would not assign that license to the Amendment 80 limited access fishery. NMFS agrees that only Amendment 80 vessels can participate in the Amendment 80 sector in accordance with the CRP. If the holder of an Amendment 80 QS/LLP license is unable to make some arrangement with the owner of an Amendment 80 vessel participating in an Amendment 80 cooperative or the limited access fishery, then the Amendment 80 QS/LLP license holder could not harvest the fish derived from that license. However, nothing would preclude the holder of an Amendment 80 QS/LLP license from establishing a private contractual arrangement with a harvester in an Amendment 80 cooperative or in the limited access fishery to harvest the

ITAC derived from that Amendment 80 QS/LLP license. As noted in the response to comment 29, QS confers a privilege, not a property right, and is not subject to compensation. NMFS made no changes to the regulations based on this comment.

Comment 43: Section 679.91(h)(3)(xvi) does not allow for ''balancing out'' the CQ account of a cooperative if or when the cooperative has exceeded its CQ allocation. The lack of such a mechanism, commonly called a post-delivery transfer mechanism, does not allow for maximum sustainable yield (MSY) and is therefore counterproductive to the MSA (16 U.S.C. 1851(a)(1)).

Response: NMFS disagrees that the lack of a post-delivery transfer mechanism to balance out a CQ account prevents achievement of MSY and therefore the Program is inconsistent with National Standard 1. Cooperatives are able to tailor their fishing operations to harvest their CQ allocation with a great deal of precision. Given that the current management system is consistent with National Standard 1, and the fact that the Program is likely to confer an increased likelihood that vessels can harvest a greater proportion of the TAC, it is reasonable to conclude that the Program, even without a post-delivery transfer mechanism, is consistent with National Standard 1. As noted in the preamble to the proposed rule, this precision is evident in other cooperative-based LAPPs in which participants in cooperatives have consistently demonstrated the ability to maintain catch within their allocation (e.g., BSAI crab rationalization program). Cooperative managers have demonstrated an ability to coordinate their operations to ensure that these CQ accounts are not exceeded. Furthermore, should a cooperative anticipate that additional CQ may be required, that cooperative can initiate an intercooperative transfer. NMFS made no changes to the regulations based on this comment.

Comment 44: Eliminate the ''open-ended'' joint and several liability provision in § 679.91(h)(3)(xvi), or at the very least limit joint and several liability among cooperative members to circumstances directly related to cooperative participation. As written, the proposed rule states that cooperative members are responsible for ensuring that all members of the cooperative comply with all regulations. Insurance underwriters will no doubt balk at writing coverage that exposes them for actions taken by persons or companies other than those they insure, or they will charge exorbitant premiums for doing so. In the face of potentially limitless liability for the acts or omissions of other companies, industry members would be unable to participate in a cooperative.

Response: As explained in the preamble to the proposed rule, joint and several liability is established to ensure that cooperatives and the members of the cooperative adhere to regulations necessary to manage the fishery. Regulations establishing joint and several liability for cooperative members have been explicit components of the last three LAPPs implemented by NMFS (i.e., AFA, BSAI Crab Rationalization Program, and Central GOA Rockfish Program). NMFS is not aware that these provisions have adversely affected the ability of industry participants to receive insurance or constrained the formation of cooperatives in these LAPPs, and does not expect such a result under the Program. The determination of joint and several liability for a specific violation would be determined on a case-by-case basis by the NOAA OLE in conjunction with NOAA General Counsel for Enforcement and Litigation (GCEL). NMFS does not intend to foreclose the ability of NOAA OLE/GCEL to pursue joint and several liability for a given action by predetermining those actions which could be subject to this provision. NMFS made no changes to the regulations based on this comment.

Comment 45: Section 679.91(h)(3)(vii) notes that Amendment 80 vessels are limited to fishing CQ between January 20 and December 31. Although this reflects current regulations, it would be more prudent to limit catch of CQ by the regulations that determine when trawling for a species is allowed.

Response: NMFS agrees and has modified § 679.91(h)(3)(vii) to clarify that an Amendment 80 cooperative is prohibited from catching CQ during the season closure for trawl gear in the BSAI specified at § 679.23(c), unless regulations at § 679.23 applicable to an Amendment 80 species in the BSAI are more restrictive than those established in § 679.23(c), in which case the more restrictive regulations will apply. This modification would ensure that should trawl seasons for a given Amendment 80 species be modified, those season dates would apply to Amendment 80 cooperatives as well.

Comment 46: Section 211 of the AFA requires the Council to mitigate the adverse effects caused by the AFA on non-AFA participants such as the Amendment 80 sector. Based on these criteria, the Council should have elected to revise AFA sideboards to reflect the post-AFA history of the pollock fleet rather than allow a substantial portion of the yellowfin sole ITAC to be allocated to the BSAI trawl limited access sector.

Response: Section 211 of the AFA specifically instructs the Council to recommend ''management measures as it deems necessary to protect other fisheries under its jurisdiction * * * from the adverse impacts caused by [the AFA] or fishery cooperatives in the directed pollock fishery.'' The Program allocates ITAC of Amendment 80 species. In all but a few limited cases (i.e., AFA sideboard limits for Aleutian Islands Pacific ocean perch and halibut PSC sideboard limits for the AFA catcher/processor sector), ITAC or PSC allocated to the BSAI trawl limited access sector is less than the AFA sideboard limits. Compared to the AFA sideboard limits in place prior to the implementation of the Program, the allocations of ITAC and PSC under the Program are more restrictive then the AFA sideboard limits. The Council did consider and recommend the management measures applicable to the AFA sector that it determined necessary to protect other fisheries during the development of the Program. NMFS did not modify the regulations based on this comment.

Comment 47: The proposed rule appears to eliminate AFA sideboard limits for yellowfin sole, and otherwise modifies AFA sideboards. In accordance with the AFA, ensure that no rule is adopted that would have the effect of allowing AFA vessels to exceed in aggregate their traditional harvest levels in non-pollock fisheries.

Response: NMFS acknowledges that the Program does modify existing AFA sideboard limits, and in some cases the new limits under the Program may be less than those currently established. However, NMFS notes that in the case of yellowfin sole, the AFA sideboard limit is relieved only when the yellowfin sole TAC is relatively high. As noted in response to comment 46, the ITAC allocated to the BSAI trawl limited access fishery is more constraining on the fishing activities of the AFA fleet than the AFA sideboard limits as modified under the Program. The Program effectively constrains the AFA fleet overall to catch a smaller proportion of the overall TAC than possible under the AFA sideboard limits prior to modification by the Program in all but the limited case of yellowfin sole at relatively high ITAC levels. The effect of the Program on AFA sideboard limits is discussed extensively in the preamble to the proposed rule. NMFS made no changes to the regulations based on this comment.

Comment 48: The Council's recommendations for allocation of ITAC and crab and halibut PSC to the BSAI trawl limited access sectors are more than fair in accommodating access to fisheries by vessels that have not shown dependence on the fisheries. Requests by representatives of the BSAI trawl limited access sector for larger allocations of ITAC or crab or halibut PSC are unjustified and should be denied.

Response: NMFS did not receive any requests to increase allocations of ITAC, crab PSC, or halibut PSC to the BSAI trawl limited access sector during the public comment periods on Amendment 80 and the proposed rule. NMFS approved the allocations recommended by the Council in Amendment 80 to the FMP, and this final rule implements those allocations.

Section 679.92

Comment 49: Section 679.92(a)(2) imposes a use cap of 30 percent on Amendment 80 QS holders. This 30 percent QS use cap is arbitrary and capricious by virtue of the fact that it does not take into consideration the consolidation that has already occurred in the fishery over the past 18 years. This arbitrary limit also prevents a company that is limited by the cap from participating in the anticipated future consolidation of the sector that is expected to result from the cooperative program. Because there are currently only 13 companies and 25 actively fishing Amendment 80 vessels, this aspect of the proposed rule will limit the sales market. QS holders who wish to sell may not get the highest and best value from the sale, while the very companies who are likely to be in the best financial position to pay the best price will be prohibited from competing in the sale.

Response: The 30 percent use cap was recommended by the Council after considering the catch patterns of participants in the Amendment 80 sector and the potential for increased consolidation in the fishery (Section 1.11.10 of the final EA/RIR/FRFA; see **ADDRESSES**). As with other LAPPs developed and recommended by the Council, the Program implements a limit on the amount of QS that any one entity may obtain and hold. MSA National Standard 4 specifically requires that when allocating fishing privileges among fishermen, that allocation shall ''be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges'' (16 U.S.C. 1851(a)(4)).

The QS use cap recommended by the Council would limit only a few entities, and more likely only one entity, to the amount of QS that it would receive in the initial allocation of QS. The Council recommended, and the Program provides at § 679.92(a)(2), that any person initially issued QS in excess of the 30 percent use cap would be allowed to continue to hold QS at that initial level. Participants can choose to participate in a cooperative with other members of the Amendment 80 sector and achieve efficiencies of scale that may result from such arrangements, or otherwise enter into business arrangements that improve the efficient use of fishery resources. The 30 percent QS use cap does not affect those arrangements, it merely restricts the consolidation of fishing privileges within one or a single entity consistent with MSA National Standard 4. NMFS determined that the Council's recommendation is consistent with the MSA and other applicable law. NMFS made no changes to the regulations based on this comment.

Comment 50: Industry representatives should have the ability to assign LLP licenses to an Amendment 80 vessel at the time of Amendment 80 QS application, rather than having the LLP originally assigned to the vessel automatically become an Amendment 80 LLP license. This logic applies to Table 39 to part 679 which lists LLP licenses that must be used onboard Amendment 80 vessels that are designated as eligible to directed fish for flatfish in the GOA. The proposed rule as written results in a perverse situation where at least one otherwise qualified vessel cannot fish in the GOA flatfish fisheries because the vessel owner does not hold an LLP license specified under Table 39 to part 679. Change the regulation so that the Amendment 80 QS holder can designate LLP licenses for an Amendment 80 vessel rather than specifying a list of predetermined LLP licenses, as presented in Table 39 to part 679, that must be used. Make the following changes to the final rule:

1. Revise § 679.92(c) to remove the reference to a specific LLP license defined in Column C of Table 39 to part 679;

2. Remove Column C in Table 39 to part 679 which lists specific LLP licenses that must be used while directed fishing for flatfish in the GOA;

3. Add a new paragraph to § 679.4(o)(1) which would define any LLP license assigned to any Amendment 80 vessel at any time that the Amendment 80 vessel made a legal landing in the GOA as being an Amendment 80 LLP license for purposes of applying GOA sideboard restrictions under § 679.93(e)(3) and (4); and

4. Add a new table to identify all Amendment 80 LLP licenses with GOA endorsements that are subject to sideboard restrictions under § 679.93(e)(3) and (4).

These changes are consistent with the arguments presented under the issue of defining what constitutes an Amendment 80 LLP in this vessel-based program. In one case, the F/V LEGACY is eligible to fish flatfish in the GOA under sideboard regulations at § 679.92(c), and is one of the most GOA groundfish-dependent vessels in the Amendment 80 fleet. However, that vessel does not use an LLP license listed in Column C in Table 39 to part 679 and therefore would be ineligible to fish in the GOA using the LLP license currently designated for that vessel. By requiring that an Amendment 80 vessel use the LLP license originally assigned to it, this vessel could not fish in the Gulf because (1) the LLP is no longer assigned to the vessel, and (2) even if it was, that LLP is not endorsed for fishing in the GOA under existing LLP endorsement regulations at § 679.4(k). Clearly, this is not what the Council intended when requiring that vessels meet a participation threshold to continue to operate in the GOA.

At the same time, the Council did intend to limit the ability for Amendment 80 vessel-associated LLPs to bring additional catcher/processor effort into the GOA. The Council's motion for Amendment 80, in Component 12.4.6, states that ''sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the [Amendment 80] sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards.'' No LLP license assigned to an Amendment 80 vessel during the qualifying period should be allowed to bring additional catcher/processor effort into the GOA that is not subject to the Amendment 80 sector's sideboard limits. In short, any LLP that was assigned to an Amendment 80 vessel during the qualifying period, and has a GOA endorsement should be subject, for catcher/processor operations, to the Amendment 80 sector's GOA sideboards regardless of whether it is designated as an Amendment 80 LLP.

Response: NMFS agrees in part and has modified the regulations in response to recommended changes (1) and (2). NMFS revised § 679.92(c) to remove the reference to a specific LLP license

defined in Column C of Table 39 to part 679. NMFS removed Column C in Table 39 to part 679 which lists specific LLP licenses that must be used while directed fishing for flatfish in the GOA. NMFS did not make recommended changes (3) and (4), given the changes made in response to this comment and in response to comment 1.

After reviewing the final EA/RIR/FRFA, Amendment 80, and Council records, NMFS agrees that specific LLP licenses do not need to be defined and required to be used by Amendment 80 vessels eligible to fish for flatfish in the GOA. The Council intended to limit the Amendment 80 vessels that could be used to fish flatfish in the GOA. It is also apparent that the Council wished to minimize the risk that LLP licenses with trawl catcher/processor endorsements in the GOA and traditionally used on Amendment 80 vessels could be designated on non-Amendment 80 vessels and increase the overall harvest rate in the GOA groundfish fisheries. However, it is not clear that the Council intended to require that a specific list of LLP licenses with specific catch history would be considered to be Amendment 80 LLP licenses for purposes of applying sideboard limitations in the GOA.

The commenter's recommendation that NMFS define a list of LLP licenses subject to GOA sideboard limits does not appear to be necessary given the changes made in response to comment 1. Specifically, the regulations require that each Amendment 80 vessel be designated on an LLP license, and define any LLP license that designates an Amendment 80 vessel as an Amendment 80 LLP license. Therefore, if an Amendment 80 vessel is qualified to fish in the GOA flatfish fisheries, it will be required to have an LLP license endorsed for activity in the GOA on the vessel, and that LLP license would automatically be defined as an Amendment 80 LLP license. NMFS anticipates that most of the Amendment 80 vessels will continue to operate as catcher/processors in the GOA, and will need to be designated on an LLP license endorsed for trawl catcher/processor activity in the GOA.

Given the limited number of LLP licenses with trawl catcher/processor endorsements for the GOA (22 according to section 1.10.1 of the final EA/RIR; see **ADDRESSES**), it is highly likely that most, it not all, of the LLP licenses with trawl catcher/processor endorsements for the GOA will designate Amendment 80 vessels, be limited for use within the Amendment 80 sector, and therefore, be subject to the sideboard measures applicable under § 679.92(b) and (c).

Comment 51: All of the smaller vessels should have the benefit of the provisions provided to the F/V GOLDEN FLEECE, if they are fishing in the GOA.

Response: NMFS disagrees. The Council recommended and the rule implements regulations applicable to the F/V GOLDEN FLEECE based on a review of fishing activities of all Amendment 80 vessels in the GOA. The Council established criteria that would allow any vessel meeting specific participation criteria to be exempted from certain M&E and sideboard restrictions. As noted in the preamble to the proposed rule, only the F/V GOLDEN FLEECE appears to meet those criteria (72 FR 30093). The Council did not recommend extending these measures to all Amendment 80 vessels, but only those with a clear and consistent dependence on GOA groundfish fisheries over a specific period of time. The criteria selected for granting the exemption to the F/V GOLDEN FLEECE were not intended to extend to all Amendment 80 vessels but only to those Amendment 80 vessels that meet the criteria. Only the F/V GOLDEN FLEECE met those criteria. NMFS did not modify the regulations based on this comment.

Section 679.93

Comment 52: Allow catcher/processors to install two flow scales off existing conveyors, just forward of each fish bin to allow the flow of fish to move over the scales onto the sorters on both sides of the bins. This will remove potential constraints on production that one operational line may cause. The observer could monitor the flow of catch opposite from the side from where the observer samples through the installation of video monitoring equipment, giving the observer 100 percent visual coverage of all fish prior to its entering onto the scales. Observer random samples could be taken from either conveyor.

Response: NMFS agrees that two flow scales are acceptable under certain circumstances. Regulations at § 679.93(c)(4) only require that a vessel not have more than one operational line for the passage of all unsorted catch between the scale used to weigh total catch and the single location where the observer collects samples and multiple scales may not be used simultaneously except when using the configuration described below. The vessel may divide those lines both upstream of the flow scale and downstream of the single location where the observer collects samples in order to increase processing capacity or flexibility. This requirement will only result in a production reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor.

NMFS notes that a reduction in throughput resulting from the use of a single scale is highly unlikely in these fisheries. Given that NMFS-approved flow scales are capable of weighing catch at rates of 60–80 metric tons per hour, NMFS does not believe that such a bottleneck would be created. NMFS also notes that all the catcher/processors and motherships participating in the AFA pollock fishery are able to effectively pass fish across a single point despite the fact that factory throughput in these vessels is often considerably greater than the throughput of any of the catcher/processors regulated under the Program.

Regulations at § 679.93(c)(4) do not limit the ability of a vessel to use multiple scales simultaneously, but only if each scale is used to weigh separate hauls and the live bin configuration keeps each haul flowing over the scale separately. If two hauls were kept separate and two scales were in use at the same time, by regulation, a separate observer and sample station that met the requirements described at § 679.28(d) would be required. Allowing a single observer to monitor both lines in conjunction with video monitoring is not feasible because hauls are stratified to an unknown extent inside the live bin, the samples taken from different flow scales also would not be representative of the catch for the entire haul, and the samples taken from the different sides would thus not be representative of the total catch.

Comment 53: The commenter strenuously objects to the unprecedented data collection provisions to be imposed upon Amendment 80 Program participants in § 679.94.

Response: Mandatory economic data collection in federally regulated fisheries is not unprecedented. The BSAI Crab Rationalization Program included a significantly more detailed economic data collection program, and NMFS Southeast Region maintains mandatory economic data reporting requirements on several fisheries under its jurisdiction.

Comment 54: First and foremost, much of the economic data contemplated by this provision is proprietary and confidential in nature. Companies can maintain their position in the groundfish fleet by actively guarding information about the corporation, its internal organization and its key personnel. In complying with Federal and state laws compelling submission of certain information,

companies do so with the understanding that such information is treated confidentially by the agencies receiving it, and that it is not to be released to the public.

Detailed information regarding a company's revenues, costs, expenditures, and compensation practices is highly confidential and is arguably the most sensitive information a business maintains. In the hands of a company's competitors, such information could be used to gain an unfair competitive advantage, and would be extremely detrimental to that company.

Response: NMFS recognizes the sensitive nature of the required information. However, confidential and trade secret information is routinely collected by agencies of the Federal government under statutory authority. Such information is protected from disclosure under numerous statutes, regulations, and administrative rules and will not be released to a firm's competitors or the public. Only individuals who have signed a nondisclosure agreement under the terms of NOAA Administrative Order 216–100 and who require access to the data for official purposes associated with fishery management plan development will have access to the submitted data.

Comment 55: As the D.C. Circuit Court noted in *Judicial Watch, Inc.* v. *Food & Drug Admin.,* 449 F.3d 141, 148 (D.C. Cir. 2006), government agencies that require or request confidential commercial information from parties outside the government have an incentive to act as good stewards of that information, since disclosure could result in competitive harm to the submitter (449 F.3d at 148). However, there is no indication in the proposed rule that the confidential information collected would be protected from release to competitors under the Freedom of Information Act (FOIA). While the FOIA does contain a provision exempting ''trade secrets and commercial or financial information obtained from a person and privileged or confidential,'' the existence of such a provision does not ensure that such information will not be disclosed, nor does it guarantee that a company submitting the data will not be subject to costly and burdensome disputes over whether such information falls within the aforementioned exemption (See 5 U.S.C. 552(b)(4)).

Response: All public requests for statistics submitted pursuant to a requirement under the MSA will be processed consistent with Department of Commerce (DOC) FOIA regulations found at 15 CFR part 903, NAO 205–13, Department of Commerce Administrative Orders 205–12 and 205–14, and 15 CFR part 4. In addition to the DOC guidance for FOIA requests, NMFS will comply with its NAO 216–100 regulations at 50 CFR 600.405 addressing the confidentiality of fisheries information, and § 402(b)(1) of the MSA. NAO 216–100 and regulations at 50 CFR 600.405 follow § 402(b)(1) of the MSA, which states that any information submitted to the Secretary in compliance with a requirement under the Act, is confidential and shall not be disclosed. Section 402(b)(1) of the MSA, in addition to FOIA Exemption 4 that was described by the commenter, deems information submitted under the Program to be confidential and not disclosable. Disclosure under a FOIA request would not be permitted under the MSA or NMFS guidance. NMFS officials are directed to deny FOIA requests for information considered confidential under § 402(b)(1) of the MSA. Thus, NMFS would consider at least two FOIA exemptions applicable to a request for economic information submitted to the Secretary under this Program. If a requestor is dissatisfied with NMFS' denial of the FOIA request, they can appeal the determination to the DOC. If the DOC were to determine that the data were not confidential, it would provide notice to the submitter and an opportunity for the submitter to commence an action in United States District Court to stop disclosure.

Comment 56: In a briefing paper entitled ''Confidentiality and Data Quality Protocols for BSAI Crab Economic Data: A Discussion and Proposal,'' authored by the Economics and Social Sciences Research Program at the Alaska Fisheries Science Center (Paper), confidentiality issues were addressed with respect to the collection of EDR data for participants in the Crab Rationalization Program, which has very similar requirements in terms of the nature and extent of data to be collected under the Program. The Paper outlines a number of existing statutory and regulatory protections that would apply to the type of data that are to be collected under the BSAI crab rationalization program, including 50 CFR 600.405, which governs the agency's access to confidential information; FOIA (in particular, the exemption from the FOIA for trade secrets); and the Trade Secrets Act, 18 U.S.C. 1905. The Paper goes on to note that additional protocols may be developed specifically for the handling of confidential information submitted by Crab Rationalization Program participants after conducting hearings and soliciting input from industry, agency leadership, the Council and the public at large.

NMFS should make a similar commitment to the protection of confidential information submitted under the Amendment 80 Program, to address the need for additional security protocols, and to conduct public hearings or invite comments on such measures.

Response: Development of protocols for the prevention of statistical disclosure of individual submitters' information is necessary in order to effectively implement nondisclosure policy under existing statutory, regulatory and administrative authority. To the extent that input from industry and the public is necessary to develop data handling protocols to effectively implement existing nondisclosure policies in the case of the economic data collection program, formal public input procedures will be followed.

Comment 57: Even if there were some protection in place to prevent the agency's release of proprietary financial data to competitors or others requesting it under the FOIA, the mere gathering and maintaining of such data poses risks in and of itself. While it is true that there are criminal and civil laws and rules in place to prevent security breaches by government employees and others with access to confidential data, nonetheless there have been a number of recent instances of personal and corporate data being lost or stolen from government agencies that were entrusted with its protection. A very real market exists for the sale of such information, and there are no foolproof methods for guarding against the loss or theft of data. The commenter is exceedingly concerned about the security of any confidential information it might be required to provide.

Response: Amendment 80 EDR data will be housed on a secure server, encrypted, protected by firewall, password protected, and will be accessible by a small number of authorized individuals. The risk of accidental disclosure is minimal.

Comment 58: The proposed rule lacks any scientific or other justification for the collection of these economic data. The MSA requires that fisheries management measures be based upon the best scientific information available (See 16 U.S.C. 1851(a)(2)). There is no stated reason or justification for the gathering of this proprietary information. Indeed, it is difficult to imagine how such economic data about a company's revenues and expenses

would be relevant to the management of the fisheries at issue.

Response: The final EA/RIR/FRFA prepared for this action (see **ADDRESSES**) discusses the need and justification for the ownership, employment, cost, and earnings data proposed for collection under the proposed rule. The analysis states that the program will collect cost, revenue, ownership, and employment data on a periodic basis. The purpose of the data collection is to fully understand the socioeconomic impacts of the action, to inform future management actions, and to assure that this action serves its intended purpose and meets the goals set forth in the problem statement. As the commenter notes, conservation and management measures shall be based upon the best available information available. The data collected through the EDR will provide the best available information on the specific costs and revenues from industry participants and will be considered in reviewing the effects of the Program. Data will be used by Council and agency staff, recognizing that confidentiality is of extreme importance. The ownership data will be collected by vessel for enforcement of the ownership cap regulations; ownership data collection is essential to ensure that ownership caps are not exceeded. Employment data will be collected for monitoring of the community impacts of this program.

Because an objective of this Program is to offer sector participants the opportunity to mitigate, to some degree, the costs associated with bycatch reduction, revenue and cost data by vessel and sector are essential to identify/estimate the costs associated with bycatch reduction and estimate the revenues generated to the sector. Revenue, cost, and employment data will be used to monitor the program benefits to present generations of fishermen, associated fishing sectors, including the CDQ sector, communities, and the nation as a whole.

Comment 59: The proposed data collection measures also raise questions under the Paperwork Reduction Act (PRA). The procedural requirements of the PRA apply anytime an agency seeks to obtain or solicit facts or opinions from 10 or more persons (See Guidelines, Appendix 2.f). The preamble to the proposed rule indicates that the rule's collection-of-information requirements make it subject to the PRA (72 FR 30111; May 30, 2007). As such, the agency is required to estimate the reporting burden imposed by the proposed data collection. In the case of the proposed rule, NMFS has estimated that preparation of the EDRs is estimated to average 7.5 hours for preparation of a report and 3 hours for verification of the data contained therein (72 FR 30112).

Even assuming the Program participants already maintain the type of data sought by § 679.94, this estimate is very conservative, given the nature and extent of information required. Moreover, at least some if not many of the Program participants do not already maintain such data, which means that they will have to implement new accounting systems and other recordkeeping procedures to generate the data required. Creation of the required data from scratch in such instances will clearly take more than the 7.5 hours estimated. The actual burden imposed by these data collection requirements is difficult if not impossible to estimate with any accuracy, but it is safe to say it will be an onerous task for companies in an already heavily regulated industry.

Response: The information required in the proposed data collection is almost entirely either simple descriptive information about the vessel and equipment or standard cash flow information that data submitters already track for tax filing purposes. Other information included in the data collection, such as types of product produced, number of processing lines and throughput per hour, average fuel consumption per hour under different operating conditions, and number of days of fishing, processing, transiting/offloading, and in shipyard in the Amendment 80 and other fisheries, may require additional monitoring. While it is not the purpose or mandate of the data collection to improve the business management of individual fishing operations in the Amendment 80 fishery, it is likely that data submitters will find this information useful for purposes other than EDR filing. The principal data element that most data submitters are likely to find entirely novel and requiring new accounting and recordkeeping systems are the elements associated with reporting of transactions in QS shares. However, the novelty arises not from the economic data reporting requirement, but from the granting of tradeable assets which the QS represents. Transactions in these assets are reportable under federal tax filing requirements as well and as such the accounting and reporting burden is not attributable solely to the EDR requirement.

Experience with the economic data collection under the Crab Rationalization Program suggests that 40 hours represents an upper bound of the amount of time required to complete the Annual Catcher Processor EDR, which is 40 pages long, compared to the nine pages of questions included in the draft Amendment 80 EDR. Assuming that similar accounting practices are followed in both the crab and groundfish fisheries, an upper bound estimate on the burden hours for the Amendment 80 EDR would be approximately 25 percent that of the crab Annual Catcher Processor EDR, or 10 hours. The estimate of 7.5 hours represents an estimated average reporting burden, not an upper bound.

Comment 60: Companies are concerned that inadvertent failures to disclose certain information—which is not unlikely given the scope of the information required—or miscalculations could be discovered in an audit, potentially subjecting them to civil or criminal penalties, even when the omission or error was merely an oversight.

Response: While correct and verified information is always expected from those required to submit certain information, NMFS understands that whenever information is required, such submitted information may at times contain inadvertent errors. Prior to submission, there is no practical way for NMFS to anticipate every possible submission error, its significance and the proper corrective or deterrent response. However, NMFS Sustainable Fisheries, NMFS Alaska Fishery Science Center, NMFS OLE, and NOAA General Counsel have ample experience with data/information collection programs. That experience teaches that some errors will have little or no significance, some could have immediate and significant impact, some could be easily corrected, some may be correctable only at great cost and effort, some will be made by submitters who have no history of such errors, and some will be made by submitters who have made many prior errors.

Although far from exhaustive, these are some of the types of considerations looked to by NMFS in determining the appropriate level of response to an error in required information submissions. Not every error requires submission to NMFS OLE for investigation and disposition. However, if an error is referred to NMFS OLE for investigation, it is also important to note that there is a wide variety of dispositions available to NMFS OLE to respond to an infraction. These include a ''fix-it'' citation, verbal warning, written warning, summary settlement offer, referral to NOAA General Counsel for civil penalties, or Department of Justice for criminal penalties.

Comment 61: The proposed data collection program is in direct violation of the MSA. Section 1881a(a) of the MSA dealing with Council requests for information explicitly excludes ''information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations'' from the type of information that can be sought in an information collection program for a fishery (16 U.S.C. 1881a(a)). The statutory prohibition on the collection of exactly the type of information sought by the proposed rule could not be clearer.

While other sections in the MSA provide the Council and NMFS with authority to gather certain information, detailed financial, cost or other data of the type sought by the proposed rule are not among the permissible categories of data that can be collected under those provisions (16 U.S.C. 1853(a)(5)).

The information sought to be collected by the proposed rule is unprecedented, with the exception of the data collection required of the crab fishery. However, it is critical to note that the only reason the Council and NMFS were able to impose such onerous data collection requirements on the crab fishery was because the MSA's prohibition on the collection of proprietary and confidential data was waived by statutory amendment (See Pub. L. 108–199, Section 801(j)(2)). Without this waiver, the data collection program for the crab fishery would have been illegal. Absent a similar waiver for the EDR requirements of the proposed rule, Amendment 80's data collection requirements are similarly illegal, not to mention costly and intrusive.

Response: NMFS determined that the MSA in effect at the time the Council took final action on Amendment 80 provided statutory authority under section 303(a)(5) to collect the information included in the EDR. Prior to the Council's submission of Amendment 80 for Secretarial review, Congress amended the MSA to provide explicit authority to support the collection of economic data included in the Program. Among other amendments to the MSA, the MSRA amends section 402 of the MSA (16 U.S.C. 1881a) by deleting the clause ''(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations).'' As such, Congress explicitly clarified the MSA authority to collect the type of financial and commercial information specified in the proposed rule, and renders the requirement for a specific statutory waiver unnecessary. Tables to Part 679.

Comment 62: Table 31 to Part 679 lists the 28 vessels that are to be considered Amendment 80 vessels and identifies the 28 LLP licenses that are to be considered Amendment 80 LLP licenses under the Program. Some participants in the Amendment 80 sector would like to see Table 31 modified to allow an Amendment 80 LLP license to be assigned to any Amendment 80 listed vessel or to any other non-Amendment 80 vessel. Specifically, these members of the Amendment 80 sector contend that the F/Vs ARCTIC ROSE, PROSPERITY, and BERING ENTERPRISE, which are lost or permanently ineligible to fish, should be able to assign the QS derived from the legal landings of those vessels to the Amendment 80 LLP license originally assigned to those Amendment 80 vessels and hold the resulting Amendment 80/LLP licenses.

This change in the proposed regulation is not acceptable for the commenter. The commenter notes an inability to acquire additional QS permits as a result of the 30 percent QS use cap. As such, none of these Amendment 80 LLP/QS licenses could be held by the commenter. The commenter states that the proposed rule as written accurately reflects the Council's intent, and any proposed change to Table 31 would require further analysis, deliberation, and approval by the Council.

Response: The commenter appears to argue two points. First, that the Council neither considered nor intended that LLP licenses originally issued to an Amendment 80 vessel could be used outside of the Amendment 80 sector. This argument is not supported based on comment and information provided by other comments, NMFS' review of supporting documentation such as the final EA/RIR/FRFA prepared for this action, and Amendment 80 to the FMP (see **ADDRESSES**). This issue is specifically addressed in the response to comment 1.

Second, the commenter appears to be arguing that because an individual is not able to hold additional QS due to the 30 percent use cap, and therefore cannot hold an additional Amendment 80 QS/LLP license, the practice of assigning QS to an LLP license should not be permitted. This argument appears to be mere dissatisfaction about the inability of the commenter to increase QS holdings due to the limits of the QS use cap and need not be addressed further. It is not clear as to how the practice of transferring QS to an LLP license disadvantages any individual participant. In the unlikely and unfortunate event that a vessel owned by the commenter was lost, the commenter could transfer his QS assigned to that vessel to the LLP license originally assigned to that vessel, and realize the same benefits as the three vessel owners cited in the comment. NMFS made no changes to the regulations based on this comment.

Comment 63: Table 33 to Part 679 sets forth the proposed allocations of Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector. For management areas 541 and 542, the percentage of Atka mackerel assigned to the Amendment 80 sector decreases from 98 percent in 2008 to 90 percent in 2012 and all future years.

At this time, all Atka mackerel is fully utilized by existing Amendment 80 vessels. Any vessel wishing to participate in this fishery during the past 15 years has not been limited in any way from doing so. The proposed reduction in the percentage of ITAC allocated to the Amendment 80 sector is not warranted now or in the future. The proposed reduction cannot be justified and certainly is not in line with the MSA's requirement that allocations be fair and equitable, calling into question the provision's validity under National Standards 2 and 4. This provision appears to be a blatant fish grab from those who have historically harvested it.

Response: NMFS has addressed this comment in its responses to comments 18, 19, and 21.

Comment 64: In Table 33 to Part 679, the rule proposed a decrease in the percentage of Pacific ocean perch apportioned to the Amendment 80 sector for management areas 541 and 542. In 2008 the percentage would be reduced to 95 percent, and in 2009 and all future years it would be further reduced to 90 percent.

At this time, Pacific ocean perch is fully utilized by existing Amendment 80 vessels. For the past 15 years there have been no barriers to participation in this fishery by non-Amendment 80 vessels. The proposed reduction is neither justified nor warranted, and is not in keeping with the MSA's requirement that distributions be fair and equitable.

If user groups exist in the BSAI trawl limited access section that warrant an allocation of Pacific ocean perch, they should be identified and a thorough and sound justification for such an allocation should be demonstrated in the regulatory analysis. Absent such evidence of the need for such an allocation, this provision appears to be nothing more than a blatant fish grab

from those who have historically harvested it.

Response: As noted in the preamble to the proposed rule, the Council considered a range of options when allocating ITAC between the Amendment 80 and BSAI trawl limited access sectors. Historic and recent catch patterns and opportunities for new entrants and fishery dependent communities were among the factors considered. Specifically, the Council considered future needs of fishing communities in the Aleutian Islands and the opportunity that allocating a portion of the ITAC for use in the BSAI trawl limited access sector could provide to smaller vessels operating out of these communities. The Council is not obligated to recommend, and NMFS is not obligated to make, allocations based solely on one criterion.

As an example, National Standard 5 requires that NMFS consider economic efficiency, ''except that no measure shall have economic allocation as its sole purpose'' (16 U.S.C. 1851(a)(5)). National Standard 6 of the MSA requires that NMFS ''take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches'' (16 U.S.C. 1851(a)(6)). National Standard 8 also requires that NMFS ''provide for the sustained participation of such communities'' (16 U.S.C. 1851(a)(8)(A)). NMFS did not modify the regulations based on this comment.

Comment 65: Table 35 to Part 679 establishes progressive reductions in the amount of halibut PSC apportioned to the Amendment 80 sector, beginning with an allocation of 2,525 mt in 2008 and ending with an allocation of 2,325 mt in 2012 and all future years. Such a reduction is unwarranted, and goes against the most fundamental principles of the MSA.

The proposed reductions in PSC to the Amendment 80 sector will severely limit the ability of the Amendment 80 QS holders to harvest the full BSAI flatfish TACs. At the present time, the largest unharvested biomass in the BSAI is the flatfish. This underutilization of the resource is caused by the limitations imposed by existing PSC allocations. The rule proposes to further reduce the allocations of PSC, which will further exacerbate the difficulties in maximizing the harvest of flatfish.

There is no biological rationale for limiting the Amendment 80 halibut PSC allocation. The International Pacific Halibut Commission that establishes catch limits for halibut harvests has indicated that this reduction in bycatch will have no impact on the halibut biomass or the halibut harvesting sector. This same group has reported that there is an abundance of halibut in the BSAI, with BSAI halibut levels at an all-time high. Without any biological or other scientific justification for these reductions in halibut PSC, one has to wonder whether the proposed reductions are being sought purely for political reasons. The halibut and the flatfish harvested by the Amendment 80 sector swim in and around the same area, making it almost impossible to avoid bycatch. The result of the reduction in halibut PSC will be to limit the targeted harvest of non-halibut species. The biomass of these non-halibut species continues to grow, even to the extent that failure to harvest sufficient quantities could result in disruption of the food chain, alteration of established predator-prey relationships, and other negative biological consequences. It is therefore imperative not only for economic reasons but also for biological reasons that the harvest of flatfish by the Amendment 80 sector not be constrained by the proposed reductions in halibut PSC.

Response: The Council considered a range of options to reduce bycatch under the Program. The apportionment of halibut PSC was considered during the development of the Program and, although modest, the Council did recommend, and the Program implements measures that will reduce bycatch of halibut. NMFS acknowledges that the reduction in the amount of halibut PSC apportioned to the Amendment 80 sector is limited. However, bycatch reduction measures need not bear a direct relationship between the measures taken and specific biological goals.

National Standard 9 specifically states that ''conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch'' (16 U.S.C. 1851(a)(9)). Guidelines to implement National Standard 9 at 50 CFR 600.350 include, among other things, a requirement that ''[i]n the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures'' when assessing the impacts of bycatch reduction measures. Additionally, 50 CFR 600.350 states that ''The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5)'' when faced with uncertainty concerning the effects of bycatch reduction measures. The Council considered quantitative data where available and applicable, and qualitative data when establishing the bycatch reduction measures implemented in this rule. Additionally, the Council applied a precautionary approach when implementing these bycatch reduction measures.

NMFS agrees that ideally bycatch reduction measures would have a directly measurable impact on the stock abundance of a given bycatch species, but National Standard 9 specifically provides that NMFS should minimize bycatch and reduce the mortality of bycatch without specific reference to the amounts reduced or the effect on stock abundance.

NMFS disagrees with the commenter's argument that the amount of halibut PSC reduced will significantly curtail the ability of the Amendment 80 sector to harvest specific flatfish species due to a reduced amount of halibut PSC. First, general experience with cooperative-based LAPPs, such as the AFA and most recently in the catcher vessel sector of the Central GOA Rockfish Program, indicate that fleets can effectively adopt fishing strategies that reduce bycatch rates on certain species. Participants in the Amendment 80 sector noted this advantage during the development of the Program. As halibut bycatch rates are lowered, more halibut PSC is available for use when harvesting Amendment 80 species and other species such as arrowtooth flounder or Greenland turbot.

NMFS also disagrees with the commenter's assertion that reduction in the amount of halibut PSC will somehow prevent harvests of certain species that will have an adverse biological effect on BSAI fishery resources. Such an assertion is not supported by current biological information. The complex nature of ecosystem interactions in the BSAI do not support the assertion that due to a slightly reduced halibut PSC allocation to one group of fishermen, fewer flatfish species will be harvested, and ecosystem ''food webs'' will be disrupted to the overall detriment of the BSAI. The commenter does not provide any scientific information to support this contention. NMFS did not modify the regulations based on this comment.

Comment 66: Table 35 to Part 679 indicates that the BSAI trawl limited access sector will be allocated 875 mt of halibut PSC in the BSAI. This amount is higher than this sector has historically utilized.

There is no justification in the Council motion or the amendment analysis for this increased halibut PSC

allocation to the BSAI trawl limited access sector. There is no apparent reason or plausible justification for ratcheting down the halibut PSC allocated to the Amendment 80 sector while at the same time increasing the halibut PSC allocated to the BSAI trawl limited access sector. The same principles used to justify the reduction in Amendment 80 halibut PSC should apply to the BSAI trawl limited access sector.

In the preamble to the proposed rule, NMFS states that ''fixing the AFA catcher/processor sideboard limits at a fixed amount based on the 2006 and 2007 final harvest specifications would prevent AFA catcher/processors from being unduly constrained by halibut PSC sideboard limits'' (72 FR 30071). The same holds true for the Amendment 80 sector. NMFS' creation or endorsement of different halibut PSC allocations for these two sectors smacks of preferential treatment for one sector at the expense of the other.

Response: The preamble to the proposed rule notes that the allocation of halibut PSC to the BSAI trawl limited access sector is intended to accommodate future potential growth of harvests by that sector, especially if the proportion of the ITAC of yellowfin sole allocated to that sector increase. The commenter is correct that the amount of halibut PSC allocated to the BSAI trawl limited access sector is higher than the recent average use of halibut PSC by that sector. The preamble to the proposed rule, final EA/RIR/FRFA, and Council deliberations note that this increase is appropriate to accommodate future ITAC allocations to the BSAI trawl limited access sector that may require additional halibut PSC to be fully harvested.

Statements cited in the comment describing the AFA sideboard limit are taken out of context. The preamble to the proposed rule describes in detail the relationship between the AFA sideboard limits for halibut PSC and the total amount of halibut PSC that is assigned to the BSAI trawl limited access sector (72 FR 30071; May 30, 2007). Fixing the AFA sideboard limits allows AFA vessels to use a greater proportion of the 875 mt of halibut PSC assigned to the BSAI trawl limited access sector, but does not otherwise provide additional halibut PSC to the BSAI trawl limited access sector. NMFS did not modify the regulations based on this comment.

Comment 67: The F/V ENTERPRISE is an Amendment 80 vessel that was not originally issued an LLP license in 2000 based on the harvest activities of that vessel. This limits the ability of the owners of the F/V ENTERPRISE to transfer QS assigned to the vessel to an LLP license in the event of the actual total loss, constructive total loss, or permanent ineligibility of the F/V ENTERPRISE. The proposed rule provides a resolution to this situation by identifying the LLP license that has been used on the F/V ENTERPRISE since 2000 as the LLP license that is originally assigned to the F/V ENTERPRISE (LLG 4831). This LLP license is designated in Table 31 to Part 679, but there is no further reference to the F/V ENTERPRISE in regulation. Insert a footnote in Table 31 to Part 679 stating that LLG 4831 shall be treated as the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383, for all relevant purposes of this part.

Response: NMFS agrees and has added a footnote to Table 3 of Part 679 to clarify that LLG 4831 is the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383 for all relevant purposes of this part.

General Program Comments

Comment 68: The tools offered by the Program are vital to maintain economic viability. Thanks for the efforts to implement the Program effective for 2008. The Program is essential for allowing participants to meet the GRS requirements that will be in effect as of January 20, 2008.

Response: NMFS notes and appreciates the support. However, NMFS disagrees with the commenter's assertion that the Program is essential for allowing participants to meet the requirements of the GRS. NMFS notes that this rule meets four broad goals established by the Program: (1) Improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the groundfish retention standard (GRS) to all non-AFA trawl catcher/processor vessels; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) establishing a LAPP for the non-AFA trawl catcher/processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvested species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

Comment 69: Delay implementation of the Program until 2009, at the earliest. It is unreasonable and unrealistic to expect the Program to be implemented for 2008. The problems similar to those encountered during the first year of implementation in the Central GOA Rockfish Program are likely to occur if the Program is implemented by 2008. There is absolutely no compelling reason why implementation must occur by 2008. The rush to implementation is not in the best interests of the fishing community at large and reflects poorly on the motives of the Council. Assembling a workable cooperative that meets all the requirements set forth in the proposed rule is not a simple task. The guidelines governing the FMP and amendment process clearly state that successful implementation of new management and conservation measures requires adequate time for development and review.

Response: NMFS does not see a need to delay Program implementation until 2009. The Council recommended the Program in June 2006 with the clear expectation that the Program be implemented and effective for 2008. NMFS has regularly updated the Council and members of the industry about the proposed implementation of the Program and has consistently informed the public that if NMFS approves Amendment 80 to the FMP, it would be implemented for the 2008 fishing year. The Council has encouraged NMFS to meet the proposed 2008 implementation schedule. Most of the participants in the Amendment 80 sector have encouraged NMFS to meet a 2008 implementation schedule. The benefits provided by the Program through LAPP management are the primary reasons for the strong support of the Program, and a 2008 implementation is favored by most participants in the Amendment 80 sector.

The perceived difficulties in the first year of implementation in the Central GOA Rockfish Program are not necessarily applicable to this Program. These two LAPPs differ in their structure, official record data, and complexity. However, NMFS is aware of confusion that resulted during the implementation of the Central GOA Rockfish Program and is working to improve the implementation process for the Program. To aid fishery participants, NMFS anticipates holding public workshops with the Amendment 80 sector to aid compliance after the publication of the final rule. Given the direction of the Council and the strong preference of most participants in the Amendment 80 sector to implement the Program by 2008, NMFS did not modify

the effective date of the final rule based on this comment.

Comment 70: The cooperative structure seems to be widely favored in many of the fisheries in Alaska. However, there appears to be no practical benefit to the public in requiring that cooperatives form. The halibut and sablefish IFQ fishery is not saddled with these requirements. The cooperative structure provides some relief for participants dealing with GRS compliance, but this should be an option, not a requirement. Alternatively, the required number of participants should be reduced.

Response: The Council considered and rejected a range of options before ultimately selecting the alternative that has developed into the Program. The final EA/RIR/FRFA notes that cooperative management offers several distinct advantages over IFQs. Specifically, multispecies quotas for both target and bycatch species are difficult to manage when not managed on an aggregate basis. The likelihood that any person would exceed a given allocation is likely to increase under IFQ management. Managing and monitoring individual quota accounts is more costly and complex than cooperative-based allocations. NMFS also notes that another goal of the Program was to reduce bycatch, improve the retention of bycatch, and reduce the potential costs associated with bycatch reduction compliance. Applying the GRS on an aggregate basis to vessels in cooperatives meets that goal, whereas an IFQ program would not.

The Council reviewed and rejected options that would have required fewer persons to reduce the number of persons required to form a cooperative. The Council recommended and the rule implements minimum standards for cooperative formation that were deemed to best meet the goals of encouraging cooperation and consolidation, minimizing costs, and providing adequate opportunity for individual participants to establish relationships with similarly situated harvesters. NMFS did not modify the regulations based on this comment.

Comment 71: The Program has been before the Council for a long time, but the very short public comment period on the proposed rule was a serious handicap to fully responding to the very detailed and lengthy regulations.

Response: NMFS determined that a 30-day public comment period on the proposed rule was legally sufficient under the MSA and the Administrative Procedure Act. Section 304(b)(1)(A) of the MSA requires a public comment period of 15 to 60 days on proposed regulations. A 30-day public comment period on the proposed rule was consistent with this requirement of the MSA. NMFS also determined that the Amendment 80 sector was capable of providing meaningful comment on the proposed rule within a 30-day public comment period. The Amendment 80 sector was actively involved in the development of Amendment 80 and was well aware of the regulatory components that would be necessary to implement Amendment 80. The proposed rule, while lengthy, was written in a manner to facilitate public review, including a table of contents for the preamble and clear examples of management provisions under Amendment 80. NMFS also held two public workshops, one on May 23, 2007 (72 FR 27798), and one on June 18, 2007 (72 FR 31548), to facilitate the public's understanding of specific proposed regulatory components. Both workshops were attended by numerous participants in the Amendment 80 and BSAI trawl limited access sectors. Finally, several representatives from the directly regulated industry (i.e., the Amendment 80 sector) requested a shorter public comment period to ensure that a decision on Amendment 80 and implementation of a final rule if Amendment 80 was approved could be effective in time for fishing to begin under Amendment 80 by 2008.

Comment 72: Prohibit Amendment 80 vessels from processing fish in non-LAPP fisheries to protect non-Amendment 80 processors from the potential rush of Amendment 80 vessels entering into fisheries such as salmon and herring and offering processing services that directly compete with existing processors. The advantage of the revenue that participants in the Amendment 80 sector receive from their ability to form cooperatives will increase the competition and reduce economic incentives for other processors. Amendment 80 sector participants could choose not to fish in the summer and use their vessels as processing platforms to compete with existing salmon processors.

Response: Neither the CRP nor the Program provide NMFS with the specific regulatory authority to limit the ability of a specific vessel to be used in processing activities for specific fisheries such as salmon and herring. Regulations for salmon and herring processing within State waters could be established by the State of Alaska. NMFS does not have the authority to specifically prohibit fishing for species such as salmon or herring that are exclusively harvested within the waters of the State of Alaska.

The potential that Amendment 80 vessels could be used as processing platforms for salmon and herring was not explicitly addressed in the draft EA/RIR/IRFA for the proposed rule. NMFS has revised section 1.10.2 of the final EA/RIR/FRFA to include a description of the existing and potential effects of the Program on existing processing operations, specifically salmon and herring processing operations. Based on the information available to NMFS, it does not appear that Amendment 80 vessels currently process salmon and herring. It is not clear that Amendment 80 vessels would choose to do so given the costs required to refit vessels, coordinate fishing operations, and establish new markets.

Comment 73: Section 4.1.1 of the draft EA/RIR/IRFA prepared for the proposed rule indicates that yellowfin sole could be reallocated from the Amendment 80 sector to the BSAI trawl limited access sector. This provision was considered and rejected by the Council. Remove this reference from the final EA/RIR/FRFA prepared for the final rule.

Response: NMFS agrees. This reference is an error and has been removed from section 4.1.1 in the final EA/RIR/FRFA.

Comment 74: NMFS indicates that it is maintaining the current Steller sea lion protection measures with the implementation of Amendment 80, including the management of the harvest limit area (HLA) for the Atka mackerel fishery. This includes maintaining the ''platoon system'' to subdivide fishing within Steller sea lion critical habitat in Atka mackerel management areas 542 and 543. NMFS should consider implementing existing Steller sea lion protection measures in a manner that would assign separate HLA harvest limits for Amendment 80 cooperatives and the Amendment 80 limited access fishery. Under such an arrangement, the total limit on the amount of Atka mackerel that may be taken within the HLA is maintained, but cooperative participants would not be forced to race to harvest fish within the HLA.

Response: The commenter is correct that NMFS did not propose regulations that would have modified existing regulations concerning management of Atka mackerel in the HLA as part of the Program. NMFS will manage the HLA fisheries in compliance with existing regulations. Those regulations are found primarily at § 679.20(a)(8)(iii) and § 679.22(a)(8)(iv). In response to this comment, NMFS is providing the following explanation of how it will apply the existing HLA management program in the context of the Program.

Atka mackerel are apportioned into three TACs, the Western AI District (Area 543), Central AI District (Area 542) and Eastern AI District (Area 541)/BS. A portion of each TAC is allocated to the CDQ Program and an ICA. In the case of Area 541/BS, an allocation of TAC is made to jig gear. In each of the three areas the remaining ITAC is apportioned into two seasonal apportionments; 50 percent of the ITAC is assigned to the A season, and 50 percent of the ITAC is assigned to the B season. This allocation process is described in detail in the preamble to the proposed rule.

In addition, no more than 60 percent of each seasonal allocation of ITAC may be taken inside the HLA of Areas 542 and 543. With the implementation of the Program, each of the three fishery categories will receive a specific allocation of TAC (after subtraction of the CDQ, ICA, and jig apportionments) in the three Atka mackerel management areas.

To participate in the A and/or B season fisheries for Atka mackerel in the HLA in either Areas 542 or 543, vessels are required to register with NMFS. NMFS randomly assigns vessels through a lottery to one of two HLA fisheries. HLA fisheries are designed to distribute Atka mackerel catch over a broader area and time.

Each year, NMFS will establish HLA limits in the annual specification process. Under this description, NMFS is assuming that Amendment 80 cooperatives and an Amendment 80 limited access fishery will be established to fully illustrate the management of the HLA limit. Additionally, NMFS notes that there is no allocation of Atka mackerel in Area 543 to the BSAI trawl limited access sector, therefore an HLA limit is not established for the BSAI trawl limited access sector in that area. In summary, these HLA limits will be managed as follows:

5. NMFS will establish HLA limits for each of the three fishery categories: The BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate HLA limit applicable to all Amendment 80 cooperatives.

6. NMFS will assign vessels in each of those three fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply. Vessels in each fishery category will then be assigned to either the first or second HLA fishery in Area 542 or Area 543 according to the regulations. Vessels in the BSAI trawl limited access sector will be assigned a single HLA fishery that may operate only in Area 542. The Amendment 80 cooperative and limited access fishery categories will be assigned to one of two initial HLA fisheries in either Area 542 or 543. For the Amendment 80 cooperative and Amendment 80 limited access fishery categories, the first HLA fishery will begin fishing in either Area 542 or Area 543, and the second HLA fishery will fish in the management area not fished by the first platoon. After a specified amount of time, the vessels assigned to an HLA fishery for a fishery category will switch areas and begin fishing in the second HLA fishery.

7. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector; A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543; and a maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543.

8. NMFS will initially open fishing in the HLA for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel in Area 541/BS for any one of the three fishery categories allocated Atka mackerel ITAC. The first closure of Atka mackerel in Area 541/BS would likely be for the BSAI trawl limited access sector given the relatively small amount of ITAC assigned to that fishery category.

9. The amount of time that each HLA fishery in each fishery category may fish in the HLA will be based on the amount of harvest effort of the vessels in that HLA fishery and the amount of the HLA limit available to that fishery category. Existing regulations at § 679.20(a)(8)(iii) limit any HLA fishery to a period of fishing in the HLA not greater than 14 days, therefore no HLA fishery in any fishery category could be open more than 14 days.

10. Once an HLA fishery for a fishery category is closed, the vessels in that HLA fishery may transit to the management area in which they have not been fishing. Vessels in the BSAI trawl limited access HLA fishery do not need to transit because those vessels are limited to fishing only in Area 542. NMFS will provide a limited amount of time for vessels in the Amendment 80 cooperative and limited access HLA fisheries to transit between management areas.

11. NMFS will open the second HLA fishery for each fishery category consistent with the closure of the first HLA fisheries. Some fishery categories may complete fishing in the HLA before other fishery categories depending on the amount of ITAC and the harvest rate within the platoons in that fishery category.

12. According to existing regulations at § 679.20(a)(8)(iii)(F), vessels registered for an HLA fishery are prohibited from participating in any groundfish directed fishery, other than Atka mackerel, during the opening of the first HLA directed fishery assigned to the vessel in a season.

13. According to existing regulations at § 679.22(a)(8)(iv), no vessel may use trawl gear to directed fish for Pacific cod in Areas 542 or 543 while vessels are directed fishing in the HLA. At any time an HLA fishery is open to fishing for any platoon in any fishery category, trawling for Pacific cod in Areas 542 and 543 is prohibited. Once all fishery categories have completed fishing in the HLA, or the maximum time for an HLA fishery has been met, NMFS will close all HLA fishing. At that point, vessels may use trawl gear to directed fish for Pacific cod in Areas 542 and 543.

The following section provides the rationale for integrating the Program and HLA management as summarized. As noted in the preamble to the proposed rule, NMFS will specify the amount of ITAC assigned to the BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate ITAC applicable to all Amendment 80 cooperatives in the annual harvest specifications. This amount of ITAC assigned to each of these three fishery categories will be subject to the HLA limits. The regulations at § 679.20(a)(8) describe the mechanisms for establishing HLA limits and HLA fisheries. These regulations do not preclude NMFS from assigning HLA limits to fishery categories that are established in the annual harvest specifications. Because each fishery category will be assigned its own HLA limit, each fishery category will have its own HLA fisheries.

This structure will facilitate management of the HLA by ensuring that vessels in each fishery category will be limited in the HLA based on the proportion of the ITAC assigned to that fishery category. Assigning an HLA limit in the aggregate for all fishery categories could encourage vessels in the HLA fisheries to compete with one another for this limit and thereby create incentives for vessels to rapidly harvest the HLA. A highly competitive fishery in the HLA would result in NMFS restricting the amount of time allowed for fishing.

Regulations at § 679.20(a)(8)(iii)(C) state ''48 hours after prohibiting directed fishing for Atka mackerel in area 541, the Regional Administrator will allow directed fishing within the HLA in areas 542 and 543.'' The current regulations do not address management of the Area 541/BS seasonal fishery for the three fishery category allocations and the implication of the management of these three fishery categories for the initiation of the HLA fisheries. The regulations do not explicitly state that closures of Atka mackerel for all three fishery categories in Area 541/BS is required to initiate the HLA fisheries.

The directed fishery for Atka mackerel assigned to the cooperatives as CQ will be managed by each cooperative. NMFS does not anticipate closing cooperatives from fishing. Expected dates for closing the directed fishery by the Amendment 80 limited access sector will depend on the amount allocated, number of vessels participating, the harvest rates of those vessels, and the fishing plans of those vessels. NMFS will directly manage the Amendment 80 limited access fishery through inseason management action. However, the Amendment 80 limited access fishery participants may choose not to fish the Area 541/BS allocation and never trigger a closure, or may delay fishing and therefore closure of the Amendment 80 limited access fishery in Area 541/BS may not occur until late in the Atka mackerel A or B season. The BSAI trawl limited access sector is expected to have the smallest allocation of the three fishery categories. In 2008, its allocation under this rule will be two percent of the Area 541/BS TAC, after deduction for the CDQ allocation, and projected jig gear and ICA deductions. Using the current 2008 Area 541/BS TAC of 17,600 mt, NMFS calculates the allocation for the BSAI trawl limited access sector allocation to be 143 mt for each season. Since 2003, vessels in the BSAI trawl limited access sector have not participated in a directed Atka mackerel fishery in Area 541/BS. The Regional Administrator may prohibit directed fishing for Area 541/BS Atka mackerel by the trawl limited access sector at the beginning of the trawl season (January 20) since the BSAI trawl limited access sector allocation is expected to be small relative to the amount of potential fishing effort in this fishery.

For simplicity, NMFS will base the initiation of the HLA fisheries on the first closure of any of one of the three fishery categories allocated seasonal Atka mackerel TAC in Area 541/BS. Clearly defined dates for the initiation of the HLA fisheries is important for the efficient operation of the participating vessels. As explained above, the first closure would likely be for the BSAI trawl limited access fishery.

Regulations at § 679.20(a)(8) governing the management of the lottery for participation in the HLA fishery state, ''[t]he Regional Administrator * * * will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered.'' Similar to the described case of managing the initiation of the HLA fisheries, regulations governing the creation of the HLA platoons envision one HLA limit to be managed among two platoons in each of the two areas in each season. However, the regulations allow NMFS to apportion the ITAC among fishery categories by season with the attendant HLA limit applied to each seasonal apportionment.

A single lottery in which all three fishery categories are combined in a single HLA fishery would not be an effective implementation of the existing HLA regulations. Each HLA fishery in each fishery category is likely to require varying amounts of time to efficiently attain the HLA limits associated with their seasonal TAC allocations. Vessels associated with a fishery with limited time requirements (e.g., the BSAI trawl limited access fishery) would be restricted from participating in other groundfish fisheries until the first HLA fisheries for all sectors ended. For vessel's in the cooperative sector's HLA, catch will be limited by their own activity under the regulations, not by active NMFS management. Vessels in those fisheries may be unnecessarily restricted to short time requirements under a single lottery for all HLA fishery participants. Constructing separate lotteries and therefore separate HLA fisheries for each of the fishery categories allows efficient conduct of the fishery and distributes catch across time within the HLA.

Comment 75: Revise the Amendment 80 rule to divide the HLA harvesting between cooperative and limited access sectors. The HLA fishery is limited to a maximum of 14 days. This prevents the cooperatives from spreading Atka mackerel harvest over a longer time period with a smaller fleet without losing harvesting potential in the HLA. Dividing the HLA harvesting between cooperative and limited access sectors would prevent the use of a smaller number of vessels with a lower catch per day within the HLA and would allow the cooperative to harvest its allocation within the HLA without engaging in a race for fish with the limited access sector. NMFS may adjust the duration of the HLA fishery for each sector based on vessel capacity to harvest the Atka mackerel.

Response: The portion of this comment addressing the management of HLA fishing by fishery categories is addressed in the response to comment 74. The 14-day limit for an HLA fishery was established to limit the duration of HLA fishing and provide for a date-certain opening of Areas 542 and 543 to Pacific cod trawl fishing. In the recent past, the Atka mackerel HLA fisheries have closed well before the 14-day maximum time limit. This rule provides an opportunity for vessels in platoons to coordinate their fishing operations within their fishery category and harvest their allocation more slowly compared to current HLA fishing patterns. Until it is determined that the 14-day time limit on the HLA fishery is not needed, this aspect of the regulations will remain unchanged.

Comment 76: NMFS should consider providing for a Pacific cod trawl fishery in the HLA concurrent with the Atka mackerel HLA fishery. The Pacific cod trawl fishery could occur during a window in which either the Amendment 80 cooperative or limited access fishery HLA fisheries are closed. Alternatively, the Pacific cod fishery in the HLA in Areas 542 and 543 could occur concurrent with the Atka mackerel HLA fisheries if the daily catch rates are sufficiently low as to not be likely to adversely affect the ability of Steller sea lions to forage.

Response: NMFS notes that concurrent directed fishing using trawl gear for Atka mackerel and Pacific cod in the HLA in Areas 542 and 543 is prohibited by existing regulations at § 679.22(a)(8)(iv). The proposed rule notes that no changes in regulations for Steller sea lion protection were proposed. Allowing for the concurrent removal of two important prey species for Steller sea lions within critical habitat was not addressed in the proposed rule, and was not specifically analyzed in the final EA/RIR/FRFA developed for this action. The suggested changes may have an affect on the prey availability for Steller sea lions and would require Endangered Species Act Section 7 consultation before further consideration. The approach to HLA management under the Program as described in response to comment 74 maintains existing regulations for Steller sea lion protection so that no effects on Steller sea lions beyond those already analyzed in previous consultations are likely to occur. NMFS did not modify the regulations based on this comment.

Comment 77: If the change in regulations recommended in comment 5 is adopted, then Section 3.3.1.1 of the

FMP as modified by Amendment 80 should be corrected to strike the reference to an LLP license that ''was originally assigned to'' an Amendment 80 vessel and revise this section to state that ''A license that designates a non-AFA trawl catcher/processor may only be used on a non-AFA trawl catcher/processor.'' This change in the FMP would be consistent with the intent of this provision and is consistent with the change recommended under response to comment 5.

Response: The change in regulation in response to comment 5 does not require a revision to the FMP text. The FMP text provides a broad description of the limitations on the use of an LLP license that is ''originally assigned to'' an Amendment 80 vessel. The regulations at § 679.2 and at § 679.7(o) define an LLP license that is ''originally assigned to'' an Amendment 80 vessel and the criteria that must be met so that an LLP license that is originally assigned to an Amendment 80 LLP license is limited for use within the Amendment 80 sector. The regulations as amended are not inconsistent with the FMP text and merely clarify the definition and application of this FMP text. The Secretary did not disapprove this portion of the FMP text.

Comment 78: The preamble to the proposed rule states that Pacific cod could be reallocated to the Amendment 80 sector, but could not be reallocated from the Amendment 80 sector to other sectors. Correct the typographical error in Table 9 of the preamble to the proposed rule which indicates that Pacific cod can be reallocated from the Amendment 80 sector.

Response: NMFS agrees that Table 9 in the preamble text to the proposed rule is in error and inconsistent with the description in the remaining portions of the preamble and the proposed regulatory text. However, because the error is in the preamble text and not the regulatory text, no change is required in the regulatory text.

Comment 79: NMFS should review the cost/benefit and practicability language contained in National Standard 9, and consider the definition of ''practicability'' offered by Representative Don Young in the Congressional Record (House) from September 27, 1996: '' 'Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend that this provision will be used to allocate among fishing gear groups, nor to impose costs on fishermen and processors that cannot reasonably be met.''

Response: NMFS has reviewed the costs of imposing the Program in the final EA/RIR/FRFA prepared for this action (see **ADDRESSES**). Section 4.1 of the final EA/RIR/FRFA prepared for this action describes the effect of the Program toward meeting the goals of National Standard 9. This analysis details the significant economic benefits likely to be received by participants in the Program through LAPP management, the additional costs of M&E requirements, and the potential economic effects of the allocations considered and ultimately recommended by the Council in the development of the Program. The bycatch reduction measures implemented by the Program do not serve to allocate fishery resources among fishing gear groups. Bycatch reduction measures are not expected to adversely affect the ability of the Amendment 80 sector to effectively and fully harvest the fishery resources it has been assigned under the Program, particularly given the ability of participants in the Amendment 80 sector to form cooperative arrangements with other fishery participants and reduce bycatch rates using improved fishing techniques.

The regulations implementing the Program do not result in costs that cannot be reasonably met by the Amendment 80 sector. These costs are extensively analyzed in the final EA/RIR/FRFA prepared for this action. NMFS notes that many of the compliance measures, and the costs associated with those measures, are required for compliance with other programs such as Amendment 79 to the FMP (71 FR 17362; April 6, 2006) and the Central GOA Rockfish Program (71 FR 67210; November 20, 2006). The Amendment 80 vessels subject to the provisions of those regulations may have already borne many of the costs anticipated under this Program. NMFS did not modify the regulations based on this comment.

Comment 80: National Standard 6 requires FMPs to ''take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches'' (16 U.S.C. 1851(a)(6)). NMFS has not seriously considered and allowed the variations in the methods and means of the participants. National Standard 7 requires FMPs to ''where practicable, minimize costs'' (16 U.S.C. 1851(a)(7)). There has been little or no consideration of the alternatives, nor any weighing of the benefits against the expense. The Regulatory Flexibility Act requires more analysis by the agency.

Response: NMFS has determined that the Program and this final rule are consistent with National Standards 6 and 7. The final EA/RIR/FRFA contains an extensive discussion of the alternatives considered, the nature of the fisheries, the operations of the fleet, and the catch patterns of various participants.

The Council chose to recommend, and the rule implements measures that address specific variations among the Amendment 80 sector that address National Standard 6. Some examples of measures to address variations and contingencies in fishery resources and catch patterns include allocating QS based on the best five of seven years of catch history from 1998 through 2004, applying GOA sideboard limits to vessels to accommodate variations in catch patterns of Amendment 80 sector participants, and assigning a minimum amount of QS to eligible Amendment 80 sector participants who would not otherwise receive QS. The final EA/RIR/FRFA and Council deliberations provide additional detail on the application of National Standard 6.

The Council chose to recommend, and the rule implements measures that minimize costs and avoid unnecessary duplication where practicable, consistent with National Standard 7. As an example, M&E measures applicable to this Program mirror those required in the Central GOA Rockfish Program to reduce compliance costs and minimize duplication of regulations. The final EA/RIR/FRFA and Council deliberations provide additional detail on the application of National Standard 7.

The IRFA and FRFA prepared for the proposed rule and final rule respectively address those issues required to be examined by the RFA. The RFA requires the agency to conduct an analysis to determine the potential effects of the Program on directly regulated entities. The costs that are likely to accrue under the Program are described in the IRFA, FRFA, and associated RIR and the rationale for the costs imposed by the Program are described in those analyses.

Comment 81: National Standard 8 requires that FMPs consider the effects of management measures on fishing communities. As a member of one such fishing community, there is little evidence of consideration having been given to minimize the adverse economic impacts that will surely follow the rule. Conservation has little, if anything, to do with many of these changes, yet the avoidance of economic harm has been given little attention. The cumulative effect of these changes is to drive the smaller operators out of business and consolidate the fleet.

Response: NMFS determined that Amendment 80 and this rule are

consistent with National Standard 8. The final EA/RIR/FRFA prepared for this action describes the importance of fishery resources to fishing communities. Responses to comments 33 and 64 provide additional clarification on how the Council and NMFS took into account the importance of fishery resources to communities, provided for the sustained participation of those communities, and to the extent practicable minimized adverse economic impacts on those communities. As an example, the Council reviewed participation patterns of harvesters and processors for various communities, ensured that participation could continue, and provided harvest opportunities to specific communities, such as Adak, Alaska, that would facilitate that participation and to the extent practicable minimize possible adverse economic impacts of the Program on the sustained participation of these communities. The rule does not restrict the continued participation of fishing communities even if limits are placed on specific members of those communities.

NMFS disagrees that conservation of fishery resources is not addressed by this rule. The Program this rule implements accomplishes a range of objectives such as extending GRS to all Amendment 80 vessels, ensuring more efficient harvests such as through LAPP management, and reducing bycatch, all of which are intended to directly provide conservation benefits.

NMFS also disagrees that the potential economic impacts, and consideration of measures that may minimize adverse economic impacts to the extent practicable has not been addressed. The final EA/RIR/FRFA considers the economic effects of the Program in detail. The allocation of fishery resources, efforts to reduce costs associated with M&E compliance, and mechanisms to encourage more economically efficient fishery operations have been extensively analyzed, considered, and where practicable incorporated into this rule.

Comment 82: Trawlers must be totally banned from all use. It is clear that overfishing allowed in this area is killing and stressing the marine mammals that need fish to stay alive in these waters. Cut all TACs by 50 percent this year and 10 percent each year thereafter. NMFS is doing a lousy job of protecting all marine life, has presided over the raping of the seas for commercial fish profiteering, and has failed to enforce the laws passed to protect fish. A new agency should replace NMFS. Corruption in Washington DC, where profiteers rule, is the root of the problem.

Response: NMFS disagrees. The goal of this action is to improve the use of fishery resources, reduce discards of fish, reduce bycatch, and encourage improved economic efficiency through LAPP management. Banning trawling and reducing the TACs allocated are not components of this action, and would need to be addressed in a different rulemaking process. Groundfish species in the North Pacific are widely regarded as well-managed by the Council and NMFS and under national and international standards. None of the groundfish fisheries in the North Pacific are overfished. NMFS reviewed the potential effects of this action on marine mammals and concluded it would not adversely affect marine mammal populations. The remaining accusations are unfounded.

IV. Additional Changes From the Proposed Rule

NMFS made several changes to the proposed regulatory text in this final rule to integrate the Program with Amendment 85, clarify regulatory language, or correct minor mistakes in the proposed rule.

A. Integration of the Program with Amendment 85

This final rule makes several changes to regulations published in the final rule for Amendment 85, published September 4, 2007, to the FMP that modified the allocation of Pacific cod in the BSAI. These changes integrate the Program and Amendment 85, consistent with the revisions anticipated and described in the preamble to the proposed rule for the Program (72 FR 30052; May 30, 2007).

14. In § 679.2 as published September 4, 2007, NMFS deleted the definition of ''non-AFA trawl catcher/processor.'' This definition is consistent with, and duplicates the definition of ''Amendment 80 vessels'' provided in this final rule.

15. In § 679.20(a)(7)(ii)(A)(*8*) as published September 4, 2007, NMFS deleted the term ''Non-AFA trawl CP'' and inserted the term ''Amendment 80 sector.'' This change does not alter the intent of this paragraph to allocate Pacific cod, but uses the nomenclature established in the Program.

16. In § 679.20(a)(7)(iii)(B) as published September 4, 2007, NMFS revised the process of reallocating Pacific cod in the trawl sectors consistent with the changes described in the preamble of the proposed rule for the Program. NMFS revised this paragraph so that references to reallocating Pacific cod from the ''Non-AFA trawl catcher/processor sector'' (i.e., ''Amendment 80 sector'') have been removed. NMFS notes that the preamble to the proposed rule for the Program clearly indicated that there would not be a reallocation of Pacific cod from the Amendment 80 sector as envisioned under Amendment 85, and that NMFS would be revising the regulations established under Amendment 85 pending the approval of Amendment 80 and the publication of a final rule.

In addition, NMFS made several changes to the proposed rule implementing the Program to conform to regulations implemented with Amendment 85, published September 4, 2007.

17. NMFS changed the citation in § 679.20(a)(7)(v) from § 679.20(a)(7)(iii)(A)(*1*)(*ii*) to § 679.20(a)(7)(iv)(A)(*1*)(*ii*). This is a technical correction to ensure proper citation to the seasonal apportionment of Pacific cod to the Amendment 80 sector.

18. In § 679.20(a)(7)(vi), NMFS referenced the procedure for determining if Pacific cod is available for reallocation in the regulations established in § 679.20(a)(7)(iii) as modified by Amendment 85. This reference is to ensure that the process for determining if Pacific cod may be reallocated to the Amendment 80 sector established in Amendment 85 is applied.

19. In § 679.64(a), NMFS redesignated the paragraphs that are revised in this section to conform to changes in the designation of paragraphs made under Amendment 85. These are housekeeping changes.

B. Other Changes, Corrections, and Clarifications

NMFS made several changes to the rule to establish a consistent application of GOA sideboard limits to the F/V GOLDEN FLEECE. Sections 679.50, 679.92, and 679.93 contain requirements that the F/V GOLDEN FLEECE must be designated on a specific LLP license (LLG 2524) so that the F/V GOLDEN FLEECE can be exempted from specific halibut PSC sideboard measures and catch accounting procedures in the GOA. NMFS deleted the requirement that the F/V GOLDEN FLEECE must be designated on LLP license LLG 2524 to receive these exemptions. These changes are applicable in §§ 679.50(c)(6)(ii); 679.92(b)(2); 679.92(d)(2); 679.92(d)(3), and 679.93(d)(4)(ii).

These changes are consistent with the changes made in response to comment 1. In response to that comment, NMFS removed the requirement that a specific LLP license must be used on a specific list of Amendment 80 vessels that are allowed to fish in the GOA flatfish fisheries as defined in Table 39 to Part 679. The same rationale applicable to remove the requirement to use a specific LLP license is also applicable to the F/V GOLDEN FLEECE. A review of the FMP amendment, the Council motion supporting the FMP amendment, and the final EA/RIR/FRFA prepared for this action do not explicitly indicate that the F/V GOLDEN FLEECE must use a specific LLP license while fishing in the GOA. NMFS made this change to consistently apply sideboard measures in the GOA.

NMFS also made several editorial corrections to the regulatory text for improved readability and accuracy. These changes clarify or correct minor errors in the phrasing of particular provisions.

20. The response to comment 1 notes that NMFS changed the definition of an ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'' to ''LLP license originally assigned to an Amendment 80 vessel'' at § 679.2. With this change references throughout the regulatory text to an ''Amendment 80 LLP license originally assigned to an Amendment 80 vessel'' have been changed to ''LLP license originally assigned to an Amendment 80 vessel.'' This change is required for consistency.

21. The term ''title of abstract'' is referred to several times in the rule. The correct term is ''abstract of title'' This correction has been made throughout the regulatory text . This change does not alter the intent of the term.

22. Section 679.2 includes the term ''Amendment 80 limited access fishery.'' That term is defined as ''the fishery conducted in the BSAI by persons who have not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to an Amendment 80 cooperative, and who have assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel to the Amendment 80 limited access fishery.'' This definition is inconsistent with the changes made in response to comment 26 that allows NMFS to assign Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the Amendment 80 limited access fishery in the event that a person fails to apply in a timely fashion. NMFS modified the definition to ensure consistency by defining the Amendment 80 limited access fishery as the fishery conducted in the BSAI by persons with Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels assigned to the Amendment 80 limited access fishery. This change does not alter the intent of this definition.

23. Section 679.2 defines the term ''Amendment 80 sector.'' The proposed definition stated that this term is defined as ''Amendment 80 QS holders'' who ''own Amendment 80 vessels and hold Amendment 80 permit.'' This definition is circular. By definition, an Amendment 80 QS holder holds an Amendment 80 permit. To correct redundancy in this term, NMFS deleted the phrase ''Amendment 80 permit holder.'' Additionally, the second part of the proposed definition stated that ''Amendment 80 QS holders who hold Amendment 80 LLP/QS licenses'' are also members of the Amendment 80 sector. By definition, a person who holds an Amendment 80 QS/LLP license holds the Amendment 80 QS permit affixed to that LLP license. Therefore, NMFS is correcting this circular reference by replacing the term ''Amendment 80 QS holders'' with ''persons'' so that the second part of this definition reads ''those persons who hold Amendment 80 QS/LLP licenses.''

24. Section 679.2 includes the term ''Amendment 80 QS/LLP license.'' That term is defined as ''an LLP license originally assigned to an Amendment 80 vessel issued to an Amendment 80 LLP holder with the Amendment 80 QS permit assigned to that LLP license.'' The reference to the LLP license ''issued to an Amendment 80 LLP holder'' is not necessary. The inclusion of this term confuses the intent of this definition, which is to define an Amendment 80 QS/LLP license as ''an LLP license originally assigned to an Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license.'' This clarification does not alter the intent of the definition.

25. Section 679.4(o)(1)(ii) notes that an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel unless an Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d). In § 679.4(o)(1)(ii), NMFS included a reference to § 679.90(e) which allows an Amendment 80 QS permit to be assigned to an LLP license through a transfer of QS. This clarification does not alter the intent of the provision.

26. Section 679.4 (o)(3)(i) notes that NMFS will issue a person an Amendment 80 limited access fishery permit if they have submitted a timely and complete application and an EDR for all Amendment 80 QS permits held by that person. With the change in response to comment 26, NMFS may issue an Amendment 80 limited access fishery permit to a person if they fail to apply by the annual application deadline. To accommodate this change, NMFS will change this permitting requirement to note that NMFS will issue an Amendment 80 limited access fishery permit to a person who has submitted an application or is assigned to the fishery by NMFS. This change is required for consistency.

27. Section 679.5(a)(1)(i)(C) includes a reference to paragraphs (n)(1) and (n)(2) of this section. Paragraphs (n)(1) and (n)(2) have been deleted from this section, and the reference to them in paragraph (a)(1)(i)(C) of this section is a miscitation that needs to be removed. This change is a housekeeping measure and does not affect the intent of this provision.

28. Section 679.20(a)(8)(iv) contains a reference to Table 32 to this part. It should reference Table 33 to this part. This change corrects the reference.

29. Section 679.20(a)(8)(v) contains a reference to Table 32 to this part that should be a reference to Table 33 to this part. This change corrects the reference.

30. Section 679.27(j)(1)(ii) states that ''[a]n Amendment 80 cooperative and the member of an Amendment 80 cooperative must comply with the GRS * * *''. The reference to the members of the Amendment 80 cooperative is not required and has been deleted because the Amendment 80 cooperative is subject to the GRS and failure of the cooperative to meet that GRS would be applicable to the cooperative. NMFS notes that Amendment 80 cooperative members may still be subject to joint and several liability for violations under regulations at § 679.91(h)(3)(xvi).

31. Section 679.28(d)(8)(iii)(B) notes that a person using a video monitoring system to monitor catch in fish bins must have a computer with ''at least one external USB (1.1 or 2.0) hard drive.'' Technically, this requirement should require that a person have at least one USB ''port'' that can be used to transfer data. This change is necessary to clarify that a separate USB hard drive is not required. This change does not affect the costs of compliance.

32. The instructions to § 679.31 contained a reference to a paragraph (g) that does not exist. This reference was an error and has been removed. In addition, the instructions refer to modifications to paragraph (a)(1)(i). This reference is a miscitation, and has been corrected to refer to paragraph (a)(2)(i).

33. Section 679.90(a)(2) states that a person may receive an Amendment 80 QS permit if they own an Amendment 80 vessel, hold an Amendment 80 LLP license, is a U.S. citizen, and submits a timely application for Amendment 80 QS. NMFS is clarifying that a person may receive an Amendment 80 QS permit ''based on the legal landings of an Amendment 80 vessel.'' This change makes it clear that each Amendment 80 QS permit is issued to a person based on the activities of the vessel that gave rise to that permit. This change provides additional clarity, but does not change the intent of the provision.

34. Section 679.91(a)(1)(ii) and (iii) note that NMFS will assign all Amendment 80 QS permits, associated vessels, and LLP licenses to either a cooperative, or the Amendment 80 limited access fishery depending on which fishery a person applies to fish. With the change in response to comment 26 to remove the requirement that all Amendment 80 QS permits must be assigned to a specific Amendment 80 cooperative or the limited access fishery in their entirety, this regulation must be amended for consistency to note that NMFS will assign ''an'' Amendment 80 QS permit, vessel, or LLP license to either an Amendment 80 cooperative or limited access fishery depending on how that Amendment 80 QS permit, vessel, or LLP license is designated by a person. In addition, paragraph (a)(1)(iii) of this section must be amended to be consistent with response to comment 26 that allows NMFS to assign an Amendment 80 QS permit, vessel, or LLP license to the Amendment 80 limited access fishery should a person fail to apply by the November 1 annual deadline. These changes ensure consistency with changes made in responses to comments.

35. Section 679.91(c)(3) states that ''[t]he amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the ITAC for that Amendment 80 species in that management area. For clarity, the phrase ''Amendment 80 sector'' is added after the phrase ''the total Amendment 80 QS pool multiplied by the.'' This change clarifies that the amount of CQ issued is determined based solely on the amount of the Amendment 80 sector ITAC and not the combined Amendment 80 and BSAI trawl limited access sector ITAC. This clarification does not alter the intent of the provision.

36. Section 679.91(c)(4) states that ''[t]he amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area.'' For clarity, the phrase ''Amendment 80 sector'' is added after the phrase ''is equal to the.'' This change clarifies that the amount of Amendment 80 limited access fishery ITAC issued is determined based solely on the amount of the Amendment 80 sector ITAC and not the combined Amendment 80 and BSAI trawl limited access sector ITAC. This clarification does not alter the intent of the provision.

37. Section 679.92(b)(2)(i) states that an ''Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part.'' NMFS is adding the phrase ''while fishing under a Rockfish CQ permit'' at the end of this paragraph to clarify that the exemption applies only while an Amendment 80 vessel is actively fishing under the authority of the Central GOA Rockfish Program and not if an Amendment 80 vessel has fished under the authority of that program, but is not currently fishing under a Central GOA Rockfish Program CQ permit. This clarification does not alter the intent of the provision.

38. NMFS revised § 679.93(d) by (1) renumbering § 679.93(d)(3) and (d)(4) as § 679.93(d)(4) and (d)(5), respectively; (2) inserting a new § 679.93(d)(3) to clarify that the owner or operator of an Amendment 80 vessel fishing in the GOA is required to ensure that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch at the location where the observer collects species composition sample; (3) removing a reference to a requirement that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples; and (4) clarifying that the references in the renumbered § 679.93(d)(4) apply to § 679.93(c). These clarifications are necessary to meet the clear intent of the Program and to avoid confusion for vessels that are not subject to scale requirements.

Section 679.93(d)(3) would have required Amendment 80 vessels fishing in the GOA to meet certain monitoring provisions also applicable to Amendment 80 vessels fishing in the BSAI. One of these requirements stated that the owner or operator of an Amendment 80 vessel fishing in the GOA would be required to ensure that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples. However, Amendment 80 vessels fishing in the GOA will not be required to carry a scale used to weight total catch. Therefore, NMFS is inserting a paragraph to clarify that vessels must have only one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples. The intent of this provision is to ensure that all catch passes through the point at which the observer collects samples to ensure proper catch sampling.

This change is consistent with the description of the need for one operational line provided in the preamble to the proposed rule which states ''[t]he use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling * * *'' Therefore, vessels would be prohibited from the use of multiple lines for conveying fish between the bins and the area where unsorted catch is sampled by the observer'' (72 FR 30105). This is also consistent with the analysis of M&E provisions in section 1.10.6 in the final EA/RIR/FRFA (see **ADDRESSES**).

The clarification that the references in the renumbered § 679.93(d)(4) apply to § 679.93(c) is a technical correction to ensure proper reference to M&E provisions contained in the previous paragraph.

39. Section 679.93(e)(3) contains the phrase ''Amendment 80 sideboard species.'' This phrase is not explicitly defined in § 679.2, but refers to those species that are described in Table 37 to part 679. NMFS is including a reference to Table 37 to part 679 in this paragraph for clarity. This clarification does not alter the intent of the provision.

40. Rows 3 through 7 in Column C of Table 34 to part 679 incorrectly calculate the allocation of yellowfin sole ITAC allocated to the Amendment 80 sector. The equation in each row of column C of the table does not need to

sum the results of all previous rows in column C. The correct formula for the calculation in rows 2 through 7 in column C is to add the sum of each row to the results of the previous row in column C. The summation sign is not necessary nor is the reference to all previous rows in rows 3 through 7 in column C. These references are deleted. This change corrects an error in the notation of the algorithm and does not alter the intent of this provision.

Other editorial changes were made throughout the rule that NMFS determined had no substantive effect.

Classification

NMFS has determined that Amendment 80 and the provisions in this rule that implement Amendment 80 are consistent with the MSA National Standards and other applicable laws. NMFS made the determination that this rule is consistent after taking into account the data, views, and comments received during the comment period.

Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

Why Action by the Agency Is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA, CRP, Coast Guard Act, and MSRA provide the legal basis for the rule, as discussed in Section II of this preamble. The objectives of the rule are to reduce excessive fishing capacity, end the race for fish under the current management strategy, reduce bycatch, and reduce discards for commercial fishing vessels using trawl gear in the non-pollock groundfish fisheries in the BSAI. By ending the race for fish, NMFS expects the action to increase resource conservation, improve economic efficiency, and address social concerns.

Number of Small Entities to Which the Final Rule would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. The FRFA estimates that as many as 28 entities, that own approximately 28 catcher/processor vessels, would be eligible to receive QS under the Program.

Of the estimated 28 entities owning vessels eligible for fishing under the Program, one is estimated to be a small entity because it generated less than $4.0 million in gross revenue based on participation in 1998 through 2004. All other entities owning eligible catcher/processor vessels are not small entities as defined by the RFA.

One entity made at least one landing as a non-AFA trawl catcher/processor from 1998 to 2004, but did not appear to qualify as an eligible Amendment 80 vessel. This entity is not a small entity by SBA standards. Moreover, this vessel that the FRFA considers ''non-qualified'' would not be allowed to continue fishing under the requirements imposed by the CRP. Therefore, the non-qualified vessels is not considered impacted by the rule and is not discussed in this FRFA.

The six CDQ groups participating in the CDQ Program are not-for-profit entities that are not dominant in the overall BSAI fishing industry. Thus, the six CDQ groups directly regulated by the rule would be considered small entities or ''small organizations'' under the RFA.

Several communities (e.g., Dutch Harbor, Seattle) could be indirectly impacted by the Program. Most of the Amendment 80 vessels have home ports in Seattle, Washington, but operate throughout Alaska and rely on other communities for support services. The specific impacts on these communities cannot be determined until NMFS issues QS and eligible harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for this action (see **ADDRESSES**).

Public Comments Received on the IRFA

Proposed regulations were published in the **Federal Register** on May 30, 2007 (72 FR 30052). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and was described in the classification section of the preamble to the proposed rule. The public comment period ended on June 29, 2007. Two comments were received that commented directly or indirectly on the IRFA. These comments and NMFS' responses are found under comments 5 and 79 in the Response to Comments Section, above.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

Implementation of the Program changes the overall reporting structure and recordkeeping requirements of the participants in BSAI and GOA groundfish fisheries. All directly regulated entities are required to provide additional reporting. Each harvester is required to track harvests to avoid exceeding his or her allocation.

NMFS must develop new databases to issue QS and CQ and monitor harvesting and processing allocations. These changes require the development of new reporting systems.

To participate in the Program, persons must complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required

information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour. Persons must submit an application for Amendment 80 QS the start of the Program. Persons must complete additional forms every year, such as the applications to fish for an Amendment 80 cooperative or Amendment 80 limited access fishery. Additionally, reporting for purposes of catch accounting or transfer of CQ among Amendment 80 cooperatives will be completed more frequently.

It will cost participants in the Program an estimated $56 to complete applications to participate in the Program, $55 for the annual application to participate in an Amendment 80 cooperative or limited access fishery, and $61 to complete a transfer of CQ.

NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (Internet version and optional fax version) will be used to debit CQ and track catch in the Amendment 80 limited access fishery. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. NMFS considered the options of a paper-based or an electronic recordkeeping and reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the electronic reporting system would provide continuous access to accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS believes that the added benefits of the electronic reporting system outweigh any benefits of the paper-based system. However, NMFS will also provide an optional backup using existing telecommunication and paper-based methods, which would reduce the burden on small entities in more remote areas with limited electronic infrastructure.

Under this rule, catcher/processors may be required to purchase and install motion-compensated scales (i.e., flow scale) to weigh all fish at-sea. Approved flow scales cost approximately $50,000. Equipment to outfit an observer station, including a motion-compensated platform scale to verify the accuracy of the flow scale, costs between $6000 and $12,000. Due to space constraints on many catcher/processors, the need to relocate sorting space and processing equipment, and the wide range of configurations on individual vessels, the installation cost range for the scales and observer sample stations could cost between $20,000 and $250,000 per vessel. Installation costs exceeding $100,000 are expected to be rare. The total cost of purchasing and installing scales and sample stations may range between $76,000 and $300,000 per vessel. Based on discussions with equipment vendors, NMFS estimates that 10 catcher/processors, none of which are small entities, would choose to fish in the BSAI and would be required to have scales. This estimate includes catcher/processor vessels that have already installed flow scales in compliance with other programs (i.e., CDQ Program and Central GOA Rockfish Program) and is likely to overestimate the total number of entities that will install this equipment based solely on the requirements for the Program.

The Program will increase observer coverage for Program participants in most cases. In similar NMFS-managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and crab PSC rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form cooperatives, which would limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage would be required to offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage would cost approximately $355 per day. Additional costs may be incurred by owners of catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary depending on specific conditions of each vessel.

NMFS determined that a vessel monitoring system (VMS) is essential to properly enforce of the Program. Therefore, owners and operators of vessels participating in the Program would be required to use a VMS. Depending on which brand of VMS a vessel owner or operator chooses to purchase, NMFS estimates that this requirement would impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. NMFS does not estimate that any additional vessel owners or operators would incur these costs if they choose to participate in the Program. Those vessels that would be likely to participate in the Program are already subject to VMS requirements under existing regulations.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sampling station, and the type of viewing port installed. These costs cannot be estimated with existing information. Some vessel owners and operators that are eligible to participate in this Program may modify some of their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional costs for those vessels under the Program.

Because NMFS would allow vessel owners and operators to select the video option using performance standards, the costs for a vessel to implement this option could be quite variable, depending on the nature of the system chosen. In most cases, the system would consist of one digital video recorder (DVR)/computer system and between two and eight cameras. DVR systems range in price from $1,500 to $10,000, and cameras cost from $75 to $300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between $400 and $3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly

simple installation will cost approximately $2,000, and a complex installation will cost approximately $10,000, per vessel. However, these costs could be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation would be expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, NMFS estimates an annual cost of $680 to $4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

Vessel owners and operators that are eligible to participate in the Central GOA Rockfish Program and the Amendment 80 Program may modify their vessels to meet these requirements in the Central GOA Rockfish Program and would not be expected to incur any additional installation costs under the Program. Annual system maintenance costs are anticipated to be partially borne by the requirements in the Central GOA Rockfish Program.

Comparison of Alternatives

The preferred alternative, Alternative 4 (described in this rule), implements new TAC allocations to CDQ groups in compliance with recent amendments to the MSA. CDQ groups will receive 10.7 percent of allocated species. One non-AFA trawl catcher/processor in this fishery is a small entity. The opportunity for non-AFA trawl catcher/processors to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations are similar to historical allocations for yellowfin sole, rock sole, and flathead sole, and slightly smaller for Atka mackerel, and Aleutian Islands Pacific ocean perch. Operations would face some additional monitoring costs associated with Amendment 80.

Alternative 1 is the no action/status quo alternative. Under the status quo, the fishery would continue competitive fishing within the confines of the license limitation restrictions on the vessels that may participate. This alternative would not implement new TAC allocations to the CDQ Program for relevant species at 10 percent of the TAC, an option that was consistent with the MSA at the time the Council took final action on Amendment 80. Costs are believed to be higher than under other alternatives, and revenues are believed to be lower. The costs of meeting GRS requirements are believed to be higher than under the other alternatives due to the inability of vessel participants to form cooperatives and meet GRS requirements on an aggregate basis. The preferred alternative has smaller adverse impacts than the status quo, and better meets the objectives of this action to reduce bycatch, improve utilization of fishery resources, and encourage cooperative management to end the race for fish and reduce costs associated with GRS compliance.

Alternative 2 is a multiple cooperatives alternative. Cooperatives may be formed if they have 15 percent of the eligible participants and at least two separate entities. CDQ allocations for relevant species would be established at 15 percent of the TAC, an option that was consistent with the MSA at the time the Council took final action on Amendment 80. The opportunity to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations are similar to historical allocations for yellowfin sole, rock sole, and flathead sole, Atka mackerel, and Aleutian Island Pacific ocean perch. The threshold to cooperative formation in this alternative is lower than Alternatives 3 and 4 (only unique entities with a minimum of 15 percent of the Amendment 80 QS permits is needed to form a cooperative). Therefore, cooperative formation may be more likely under this alternative than the other alternatives considered. Bargaining power of the small entity, compared to that of larger entities, may or may not be greater than under the preferred alternative. Allocations for yellowfin sole, rock sole, and flathead sole are similar to those under the preferred alternative, and slightly greater for Atka mackerel and Aleutian Islands Pacific ocean perch. Additional monitoring costs would be similar to those under the preferred alternative.

Alternative 2 is very similar to Alternative 4. The Amendment 80 sector receives a somewhat smaller allocation of Atka mackerel and Aleutian Islands Pacific ocean perch under Alternative 4 than Alternative 2. It is not clear whether cooperative rules would be better for the small entity under Alternative 2 or 4. Alternative 4 provides greater entry level fishing opportunities for non-non-AFA catcher/processors, and catcher vessels including vessels fishing out of Adak, vessels that are not directly regulated by this action, because of the reduced Atka mackerel and Aleutian Islands Pacific ocean perch allocations.

Alternative 3 is the single cooperative alternative. This alternative allows the formation of a cooperative if it has 67 percent of the eligible participants, and is comprised of at least three separate entities. CDQ allocations for relevant species would be established at 10.7 percent of the TAC consistent with the MSA. This alternative would implement new TAC allocations to CDQ groups, in compliance with recent amendments to the MSA. The opportunity to form cooperatives offers the potential for reduced costs and increased revenues for all affected firms, including the small entity.

The difficulties of forming a cooperative under this alternative are expected to be greater than those under Alternatives 2 and 4. It is not clear how the small entity's bargaining position relative to other firms would be affected by the conditions for forming a cooperative under this alternative compared to other alternatives. TAC allocations to the Amendment 80 sector are smaller under this alternative than under the preferred alternative. Operations would face some additional monitoring costs associated with Amendment 80.

Challenges to cooperative formation are greater, increasing the risk that a cooperative might not form, or that some operations will not be able to take advantage of the benefits of the cooperative. Bargaining power of the small entity within the cooperative may be smaller (only one cooperative can form, and it only needs three members to form; a small operation would contribute fewer vessels to meeting the vessel count threshold for cooperative formation, and would contribute less fishing history to the cooperative). Additional monitoring costs would be similar to those under the preferred alternative.

The standards for cooperative formation under Alternative 3 raised serious concerns among industry participants over the ability of the Amendment 80 sector to organize the single cooperative and provide benefits to most of the fleet. Failure to form a

cooperative would make it difficult for Alternative 3 to address the important objective of enabling the industry to improve economic efficiency through cooperative arrangements, including the ability to reduce the costs required to comply with GRS requirements.

Alternative 4 is preferable to Alternative 3 because it reduces the threshold for cooperative formation, thereby encouraging the formation of more efficient operations. Additionally, Alternative 4 is preferable to Alternative 2 in that the number of cooperatives that may form is more limited, which is expected to reduce administrative costs of compliance possible under multiple cooperative arrangements.

Federal Rules Which May Duplicate, Overlap or Conflict With the Rule

No federal rules that may duplicate, overlap, or conflict with this action have been identified.

Collection-of-Information

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by the OMB under the control numbers listed below. Public reporting burdens per response for these requirements are listed by OMB control number.

OMB Control No. 0648–0213

Total public reporting burden for this collection is 36,705 hours. Recordkeeping and reporting requirements are described in this collection.

OMB Control No. 0648–0269

Public reporting burden per response is estimated to average 1 hr for a CDQ delivery report and 15 minutes for a CDQ catch report.

OMB Control No. 0648–0330

Public reporting burden per response is estimated to average 0.1 hr per at-sea scale inspection request; 0.17 hr for observer sampling station inspection request; 0.17 hr for bin monitoring inspection request; 1 hr for video monitoring system; 2 hr for at-sea scale approval report/sticker; 0.03 hr for observer notification of scale tests; 0.75 hr for records of at-sea scale tests; and 0.02 hr for printed output, at-sea scales.

OMB Control No. 0648–0334

Total public reporting burden for this collection is 544 hours. License Limitation Program (LLP) applications are described in this collection.

OMB Control No. 0648–0445

Total public reporting burden for this collection is 13,152 hours. Vessel monitoring system requirements are described in this collection.

OMB Control No. 0648–0515

Total public reporting burden for this collection is 3,343 hours. Interagency electronic reporting system (IERS) requirements are described in this collection.

OMB Control No. 0648–0565 (Amendment 80 Permits)

Public reporting burden per response is estimated to average 2 hr for the Application for Amendment 80 QS; 2 hr for the Application for CQ; 2 hr for the Application for the Amendment 80 limited access fishery; 2 hr for the Application to Transfer Amendment 80 QS; 2 hr for the Application for CQ Transfer; 4 hr for Annual Amendment 80 cooperative report; and 4 hr for a letter of appeal, if denied a permit.

OMB Control No. 0648–0564 (Amendment 80 EDR)

Public reporting burden per response is estimated to average 7.5 hr for an Economic Data Report and 3 hr for verification of data.

Response times include 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 these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to: *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed an Internet site that provides easy access to details of this final rule, including links to the final rule, and frequently asked questions regarding Program. The Small Entity Compliance Guide for the Program is available on the Internet at *http://www.fakr.noaa.gov.* Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

Executive Order 12866

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 30, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 15 CFR chapter IX, and 50 CFR chapter VI as follows:

15 CFR Chapter IX [Amended]

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under ''50 CFR'' is amended by:
■ a. Removing the existing entry for ''679.4(g) and (k)''; and
■ b. Adding new entries for ''679.4(g)'', ''679.4(k)'', ''679.4(o)'', ''679.5(s)'', ''679.90'', ''679.91'', ''679.93'', and ''679.94'' in alphanumeric order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
679.4(g)	–0334.
679.4(k)	–0334, –0545, –0565.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
679.4(o)	–0565.
* * * * *	
679.5(s)	–0565.
* * * * *	
679.90	–0565.
679.91	–0565.
679.93	–0213, –0330, –0565.
679.94	–0564.

50 CFR Chapter VI [Amended]

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–447.

■ 4. In § 679.2:

■ a. Remove the definition of ''Non-AFA trawl catcher/processor.''

■ b. Add the following definitions in alphabetical order: ''Amendment 80 cooperative'', ''Amendment 80 fishery'', ''Amendment 80 initial QS pool'', ''Amendment 80 legal landing'', ''Amendment 80 limited access fishery'', ''Amendment 80 LLP license'', ''Amendment 80 LLP/QS license'', ''Amendment 80 mackerel QS'', ''Amendment 80 mackerel vessel'', ''Amendment 80 non-mackerel QS'', ''Amendment 80 non-mackerel vessel'', ''Amendment 80 official record'', ''Amendment 80 Program'', ''Amendment 80 PSC'', ''Amendment 80 QS holder'', ''Amendment 80 QS permit'', ''Amendment 80 QS pool'', ''Amendment 80 QS unit'', ''Amendment 80 sector'', ''Amendment 80 species'', ''Amendment 80 vessel'', ''BSAI trawl limited access sector'', ''CQ permit'', ''Economic data report (EDR)'', ''Initial Total Allowable Catch (ITAC)'', ''LLP license originally assigned to an Amendment 80 vessel'', and revise the definition of ''Cooperative quota (CQ)'', and the heading of the definition of ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' to read as follows:

§ 679.2 Definitions.

* * * * *

Amendment 80 cooperative means a group of Amendment 80 QS holders who have chosen to fish cooperatively for Amendment 80 species under the requirements of subpart H to this part and who have applied for and received a CQ permit issued by NMFS to catch a quantity of fish expressed as a portion of the ITAC and crab and halibut PSC limits.

Amendment 80 fishery means an Amendment 80 cooperative or the Amendment 80 limited access fishery.

Amendment 80 initial QS pool means the sum of Amendment 80 QS units established for an Amendment 80 species in a management area based on the Amendment 80 official record and used for the initial allocation of Amendment 80 QS units and use cap calculations as described in § 679.92(a).

Amendment 80 legal landing means the total catch of Amendment 80 species in a management area in the BSAI by an Amendment 80 vessel that:

(1) Was made in compliance with state and Federal regulations in effect at that time; and

(2) Is recorded on a Weekly Production Report from January 20, 1998, through December 31, 2004; and

(3) Amendment 80 species caught while test fishing, fishing under an experimental, exploratory, or scientific activity permit, or fishing under the Western Alaska CDQ Program are not considered Amendment 80 legal landings.

Amendment 80 limited access fishery means the fishery conducted in the BSAI by persons with Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels assigned to the Amendment 80 limited access fishery.

Amendment 80 LLP license means:

(1) Any LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation and that designates an Amendment 80 vessel in an approved application for Amendment 80 QS;

(2) Any LLP license that designates an Amendment 80 vessel at any time after the effective date of the Amendment 80 Program; and

(3) Any Amendment 80 LLP/QS license.

Amendment 80 LLP/QS license means an LLP license originally assigned to an Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license.

Amendment 80 mackerel QS means Atka mackerel QS derived from Amendment 80 legal landings assigned to an Amendment 80 mackerel vessel.

Amendment 80 mackerel vessel means an Amendment 80 vessel that is not an Amendment 80 non-mackerel vessel.

Amendment 80 non-mackerel QS means Atka mackerel QS derived from Amendment 80 legal landings assigned to an Amendment 80 non-mackerel vessel.

Amendment 80 non-mackerel vessel means an Amendment 80 vessel that is less than 200 feet in length overall and that has been used to catch less than 2.0 percent of the total Amendment 80 legal landings of BSAI Atka mackerel.

Amendment 80 official record means information used by NMFS to determine eligibility to participate in the Amendment 80 Program and to assign specific catch privileges to Amendment 80 QS holders.

Amendment 80 Program means the Program implemented under subpart H of this part to manage Amendment 80 species fisheries by limiting participation in these fisheries to eligible participants.

Amendment 80 PSC means halibut and crab PSC as described in Table 35 to this part that are allocated to the Amendment 80 sector.

Amendment 80 QS holder means a person who is issued an Amendment 80 QS permit by NMFS.

Amendment 80 QS permit means a permit issued by NMFS that designates the amount of Amendment 80 QS units derived from the Amendment 80 legal landings assigned to an Amendment 80 vessel for each Amendment 80 species in a management area.

Amendment 80 QS pool means the sum of Amendment 80 QS units established for each Amendment 80 species in a management area based on the Amendment 80 official record.

Amendment 80 QS unit means a measure of the Amendment 80 QS pool based on Amendment 80 legal landings.

Amendment 80 sector means:

(1) Those Amendment 80 QS holders who own Amendment 80 vessels and hold Amendment 80 LLP licenses; or

(2) Those persons who hold Amendment 80 LLP/QS licenses.

Amendment 80 species means the following species in the following regulatory areas:

(1) BSAI Atka mackerel;

(2) Aleutian Islands Pacific ocean perch;

(3) BSAI flathead sole;

(4) BSAI Pacific cod;

(5) BSAI rock sole; and

(6) BSAI yellowfin sole.

Amendment 80 vessel means:

(1) The vessels listed in Column A of Table 31 to this part with the corresponding USCG Documentation Number listed in Column B of Table 31 to this part; or

(2) Any vessel that:

(i) Is not listed as an AFA trawl catcher/processor under sections 208(e)(1) through (20) of the American Fisheries Act; and

(ii) Has been used to harvest with trawl gear and process not less than 150 mt of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole in the aggregate in the BSAI during the period from January 1, 1997, through December 31, 2002.

* * * * *

BSAI trawl limited access sector means fisheries conducted in the BSAI by persons using trawl gear and who are not:

(1) Using an Amendment 80 vessel or an Amendment 80 LLP license; or

(2) Fishing for CDQ groundfish.

* * * * *

Cooperative quota (CQ):

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(2) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

CQ permit means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2) or to a rockfish cooperative under § 679.4(n)(1).

* * * * *

Economic data report (EDR) means the report of cost, labor, earnings, and revenue data required under § 679.94.

* * * * *

Initial Total Allowable Catch (ITAC) means the tonnage of a TAC for an Amendment 80 species in a management area that is available for apportionment to the BSAI trawl limited access sector and the Amendment 80 sector in a calendar year after deducting from the TAC the CDQ reserve, the incidental catch allowance the Regional Administrator determines is required on an annual basis, as applicable, to account for projected incidental catch of an Amendment 80 species by non-Amendment 80 vessels engaged in directed fishing for groundfish and, for Atka mackerel, the Atka mackerel jig allocation.

* * * * *

LLP license originally assigned to an Amendment 80 vessel means the LLP license listed in Column C of Table 31 to this part that corresponds to the vessel listed in Column A of Table 31 to this part with the USCG Documentation Number listed in Column B of Table 31 to this part.

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Amendment 80 Program and Rockfish Program * * *

* * * * *

■ 5. In § 679.4, paragraphs (a)(1)(xiii), (b)(6)(iv), (k)(12), and (o) are added to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see. . .
* * * * * * *		
(xiii) Amendment 80 Program:		
(A) Amendment 80 QS permit	Indefinite	§ 679.90(b).
(B) CQ permit	Specified fishing year	§ 679.91(b).
(C) Amendment 80 limited access fishery	Specified fishing year	§ 679.91(b).

* * * * *

(b) * * *

(6) * * *

(iv) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued to an Amendment 80 vessel.

* * * * *

(k) * * *

(12) *Amendment 80 Program.* In addition to other requirements of this part, a license holder must have an Amendment 80 LLP license to conduct fishing for an Amendment 80 species assigned to the Amendment 80 sector.

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 QS permit.* (i) An Amendment 80 QS permit is issued to a person who submits a timely and complete application for Amendment 80 QS that is approved by NMFS under § 679.90(b).

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel that gave rise to that permit under the provisions of § 679.90(b), unless the Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d) or § 679.90(e).

(iii) If an Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel the Amendment 80 QS permit will designate the Amendment 80 vessel to which that permit is assigned.

(iv) If an Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d)(2)(ii) or § 679.90(e)(4), the Amendment 80 QS permit will be permanently affixed to the LLP license originally assigned to an Amendment 80 vessel which will be designated as an Amendment 80 LLP/QS license.

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(e).

(vi) A person must hold an Amendment 80 LLP license to hold an Amendment 80 QS permit.

(2) *Amendment 80 Cooperative quota (CQ) permit.* (i) A CQ permit is issued annually to an Amendment 80 cooperative that submits a timely and complete application for CQ that is approved by NMFS as described at § 679.91(b)(4).

(ii) A CQ permit authorizes an Amendment 80 cooperative to catch a quantity of fish expressed as a portion of the ITAC and halibut and crab PSC that may be held for exclusive use by that Amendment 80 cooperative.

(iii) A CQ permit will indicate the amount of Amendment 80 species that may be caught by the Amendment 80 cooperative, and the amount of Amendment 80 crab and halibut PSC

that may be used by the Amendment 80 cooperative. The CQ permit will list the members of the Amendment 80 cooperative, Amendment 80 LLP licenses, Amendment 80 QS permits, and Amendment 80 vessels that are assigned to that Amendment 80 cooperative.

(iv) The amount of CQ listed on the CQ permit will be based on:

(A) The amount of Amendment 80 QS units held by all members of the Amendment 80 cooperative designated on a timely and complete application for CQ as described under § 679.91(b) that is approved by NMFS;

(B) The Amendment 80 QS units derived from Amendment 80 QS permits held by members of the Amendment 80 cooperative who have submitted a timely and complete EDR for all Amendment 80 QS permits held by that member as described under § 679.94; and

(C) The amount of CQ as modified by an application for CQ transfer as described under § 679.91(g) that is approved by NMFS.

(v) A CQ permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the CQ permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(vi) A legible copy of the CQ permit must be carried onboard an Amendment 80 vessel assigned to an Amendment 80 cooperative when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(3) *Amendment 80 limited access fishery permit.* (i) An Amendment 80 limited access fishery permit is required for an Amendment 80 QS holder to catch, process, and receive Amendment 80 species assigned to the Amendment 80 limited access fishery, or use halibut and crab PSC assigned to the Amendment 80 limited access fishery. An Amendment 80 limited access fishery permit is issued annually to an Amendment 80 QS holder who:

(A) Has submitted a timely and complete application for the Amendment 80 limited access fishery as described at § 679.91(b)(4) that is approved by NMFS, or

(B) Is assigned to the Amendment 80 limited access fishery by NMFS as described at § 679.91(a)(3)(ii); and

(C) Has submitted a timely and complete EDR for all Amendment 80 QS permits held by that person as described under § 679.94.

(ii) An Amendment 80 limited access fishery permit is valid until whichever of the following occurs first:

(A) Until the end of the year for which the Amendment 80 limited access fishery permit is issued; or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the Amendment 80 limited access fishery permit must be carried onboard an Amendment 80 vessel assigned to the Amendment 80 limited access fishery when fishing in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

6. In § 679.5, paragraph (a)(1)(i)(C) is revised; paragraphs (n)(1) and (n)(2) are removed; paragraphs (n)(3) and (n)(4) are redesignated as paragraphs (n)(1) and (n)(2), respectively; and paragraph (s) is added to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(a) * * *

(1) * * *

(i) * * *

(C) *CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided in paragraphs (g), (k), and (l)(1) through (6) of this section.

* * * * *

(s) *Amendment 80 Program*—(1) *General.* The owners and operators of Amendment 80 vessels must comply with the applicable recordkeeping and reporting requirements of this section. All owners of Amendment 80 vessels must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook-DCPL.* Operators of Amendment 80 vessels must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Amendment 80 Program landings and production.

(3) *Check-in/check-out report, processors.* Operators or managers of an Amendment 80 vessel must submit check-in/check-out reports as described in paragraph (h) of this section.

(4) *Weekly production report (WPR).* Operators of Amendment 80 vessels that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(5) *Product transfer report (PTR), processors.* Operators of Amendment 80 vessels must submit a PTR as described in paragraph (g) of this section.

(6) *Annual Amendment 80 cooperative report*—(i) *Applicability.* An Amendment 80 cooperative issued a CQ permit must submit annually to the Regional Administrator an Amendment 80 cooperative report detailing the use of the cooperative's CQ.

(ii) *Time limits and submittal.* (A) The annual Amendment 80 cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format; by fax: 907–586–7557; or by mail sent to the Regional Administrator, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668; and

(B) The annual Amendment 80 cooperative report for fishing activities under a CQ permit issued for the prior calendar year must be received by the Regional Administrator not later than 1700 hours A.l.t. on March 1 of each year.

(iii) *Information required.* The annual Amendment 80 cooperative report must include at a minimum:

(A) The cooperative's actual retained and discarded catch of CQ and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;

(B) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(C) A description of any actions taken by the cooperative against specific members in response to a member that exceeded the amount of CQ that the member was assigned to catch for the Amendment 80 cooperative.

(7) *Vessel monitoring system (VMS) requirements* (see § 679.28(f)).

7. In § 679.7, remove and reserve paragraphs (d)(13), (d)(14), and (d)(16); revise paragraph (m); and add paragraph (o) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *Prohibitions specific to GRS.* (Effective January 20, 2008). It is unlawful for either the owner or operator of a catcher/processor not listed in § 679.4(l)(2)(i) not assigned to an Amendment 80 cooperative and using trawl gear in the BSAI, or an Amendment 80 cooperative to:

(1) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained under the GRS described at § 679.27(j).

(2) Fail to submit, submit inaccurate information, or intentionally submit false information, on any report, application or statement required under this part.

(3) Process or discard any catch not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed and each haul must

be available to be sampled by an observer for species composition.

(4) Process any groundfish without an observer sampling station that complies with § 679.28(d).

(5) Combine catch from two or more hauls.

(6) Receive deliveries of unsorted catch at any time during a fishing year without complying with § 679.27(j)(5), if the vessel is required to comply with § 679.27(j)(1) at any time during the same fishing year.

* * * * *

(o) *Amendment 80 Program*—(1) *Amendment 80 vessels.* (i) Use any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) Use an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited access sector.

(2) *Amendment 80 LLP license.* (i) Designate any vessel other than an Amendment 80 vessel on an Amendment 80 LLP license;

(ii) Fail to designate an Amendment 80 vessel on an Amendment 80 LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation at all times during a calendar year unless that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

(3) *Amendment 80 QS permit.* (i) Hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that person does not hold an Amendment 80 LLP license that designates that Amendment 80 vessel.

(ii) Hold an Amendment 80 QS permit that is assigned to an Amendment 80 vessel under § 679.4(o)(1) if that person is not designated as the owner of that Amendment 80 vessel by an abstract of title or USCG documentation.

(iii) Hold an Amendment 80 QS permit assigned to an Amendment 80 vessel if that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 after October 15 in the calendar year following the date of that actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108.

(4) *Amendment 80 cooperatives.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to an Amendment 80 cooperative for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to that Amendment 80 cooperative during that calendar year;

(ii) Use an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative for that calendar year.

(iii) Catch, process, or receive Amendment 80 species assigned to an Amendment 80 cooperative in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 CQ permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(iv) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained by an Amendment 80 cooperative under the GRS described at § 679.27(j).

(v) For an Amendment 80 cooperative to catch any Amendment 80 species, crab PSC, or halibut PSC in excess of the CQ permit amounts assigned to that Amendment 80 cooperative.

(5) *Amendment 80 limited access fishery.* (i) Use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to the Amendment 80 limited access fishery for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access sector during that calendar year;

(ii) Use an Amendment 80 vessel assigned to the Amendment 80 limited access fishery for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to the Amendment 80 limited access fishery for that calendar year;

(iii) Catch, process, or receive Amendment 80 species assigned to the Amendment 80 limited access fishery in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season without a copy of a valid Amendment 80 limited access fishery permit onboard unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(6) *Catch monitoring.* (i) Operate an Amendment 80 vessel using any gear but dredge gear while directed fishing for scallops or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear, to catch, process, or receive fish in the BSAI or adjacent waters opened by the State of Alaska for which it adopts a Federal fishing season and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (c).

(ii) Operate an Amendment 80 vessel using any gear but dredge gear while directed fishing for scallops that is subject to a sideboard limit detailed at § 679.92(b) and (c), as applicable, in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, and fail to follow the catch monitoring requirements detailed at § 679.93(a), (b), and (d).

(7) *Use caps.* Exceed the use caps that apply under § 679.92(a).

(8) *Economic data report (EDR):* Fail to submit a timely and complete EDR as described under § 679.94.

■ 8. In § 679.20:

■ a. Paragraph (a)(7)(ii)(A)(*8*) is revised;

■ b. Paragraph (a)(7)(iii)(B) is revised.

■ c. Paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(iv), and (a)(8)(v) are added;

■ d. Paragraph (a)(8)(ii) is revised;

■ e. Paragraphs (a)(10) and (a)(11) are redesignated as paragraphs (a)(11) and (a)(12), respectively;

■ f. New paragraph (a)(10) is added;

■ g. Paragraphs (b)(1)(i) and (ii) are revised and paragraph (b)(1)(iii) is removed; and

■ h. Paragraphs (d)(1)(v) and (d)(1)(vi) are added.

The additions and revisions read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(*7*) * * *

(ii) * * *

(A) * * *

(*8*) Amendment 80 sector—13.4

* * * * *

(iii) * * *

(B) *Trawl gear sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the trawl catcher vessel or AFA trawl catcher/processor sectors to other trawl sectors before unharvested amounts are reallocated and apportioned to specified gear sectors as follows:

(*1*) 83.1 percent to the hook-and-line catcher/processor sector,

(*2*) 2.6 percent to the pot catcher/processor sector, and

(*3*) 14.3 percent to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector.

* * * * *

(v) *ITAC allocation to the Amendment 80 sector.* A percentage of the Pacific cod TAC, after subtraction of the CDQ reserve, will be allocated as ITAC to the

Amendment 80 sector as described in Table 33 to this part. Separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery are described under § 679.91. The allocation of Pacific cod to the Amendment 80 sector will be further divided into seasonal apportionments as described under paragraph (a)(7)(iv)(A)(*1*)(*ii*) of this section.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (*1*) The amount of Pacific cod listed on a CQ permit that is assigned for use in the A season may be used in the B or C season.

(*2*) The amount of Pacific cod that is listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(*3*) The amount of Pacific cod listed on a CQ permit that is assigned for use in the C season may not be used in the A or B seasons.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B seasons.

(*2*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(*3*) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the C season may not be harvested in the A or B seasons.

(vi) *ITAC rollover to Amendment 80 cooperatives.* If during a fishing year, the Regional Administrator determines that a portion of the Pacific cod TAC is unlikely to be harvested and is made available for reallocation to the Amendment 80 sector according to the provisions under paragraph (a)(7)(iii) of this section, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Pacific cod to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(8) * * *

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

* * * * *

(iv) *Amendment 80 sector allocation.* The allocation of Atka mackerel ITAC to the Amendment 80 sector is established in Table 33 to this part. The allocation of Atka mackerel ITAC to the Amendment 80 sector will be further divided into seasonal apportionments under § 679.23(e)(3), and separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(A) *Use of seasonal apportionments by Amendment 80 cooperatives.* (*1*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the A season may be used in the B season.

(*2*) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(B) *Harvest of seasonal apportionments in the Amendment 80 limited access fishery.* (*1*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.

(*2*) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(v) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of Atka mackerel ITAC assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Table 33 to this part.

(B) *BSAI trawl limited access sector incidental catch allowance and ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the Atka mackerel incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount of Atka mackerel directed fishing allowance to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(10) *Amendment 80 species except Pacific cod and Atka mackerel*—(i) *ITAC allocation to the Amendment 80 and BSAI trawl limited access sectors.* The remainder of the TACs for each Amendment 80 species other than Atka mackerel and Pacific cod, after subtraction of the CDQ reserve and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(ii) *Amendment 80 sector ITAC.* The allocation of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod to the Amendment 80 sector is established in Tables 33 and 34 to this part. The allocation of these species to the Amendment 80 sector will be further divided into separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(iii) *BSAI trawl limited access sector allocation*—(A) *BSAI trawl limited access sector directed fishing allowance.* The amount of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Tables 33 and 34 to this part.

(B) *BSAI trawl limited access sector ITAC rollover.* If, during a fishing year, the Regional Administrator determines that a portion of the incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector for each Amendment 80 species other than Atka mackerel and Pacific cod is unlikely to be harvested, the Regional Administrator may issue inseason notification in the **Federal Register** that reallocates that remaining amount to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve and the ''other species'' category. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve or the ''other species'' category, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the ''other species'' category.

(ii) *CDQ reserves*—(A) *Pollock CDQ reserves*—(*1*) *Bering Sea.* In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve as a directed fishing allowance.

(*2*) *Aleutian Islands subarea and Bogoslof District.* In the annual harvest

specifications required by paragraph (c) of this section, 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TACs will be allocated to a CDQ reserve as a directed fishing allowance unless the Aleutian Islands subarea or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under paragraph (a)(5)(i)(A)(*1*) of this section.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the hook-and-line or pot gear allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

(C) *CDQ reserves for Amendment 80 species.* An amount equal to 10.7 percent of the BSAI TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod will be allocated to a CDQ reserve for each of these species by management area, subarea, or district.

(D) *CDQ reserves for other groundfish species.* An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(E) If the groundfish harvest specifications required by paragraph (c) of this section change a TAC category allocated to a CDQ reserve under paragraphs (b)(1)(ii)(A) through (D) of this section by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in paragraphs (b)(1)(ii)(A) through (D) of this section will apply to the new TAC categories.

* * * * *

(d) * * *

(1) * * *

(v) *Amendment 80 GOA sideboard limits—GOA groundfish.* (A) If the Regional Administrator determines that a GOA sideboard limit for a GOA groundfish species as described under Table 37 to this part is sufficient to support a directed fishing allowance for that species, the Regional Administrator may establish a directed fishing allowance for the species applicable only to Amendment 80 vessels subject to the GOA groundfish sideboard limit.

(B) If the Regional Administrator determines that a GOA groundfish sideboard limit as described under Table 37 to this part is insufficient to support a directed fishing allowance by Amendment 80 vessels for that species, then the Regional Administrator may set the directed fishing allowance to zero for that species for Amendment 80 vessels.

(C) Upon determining that a GOA sideboard limit as described under Table 37 to this part for a species is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for that species by the Amendment 80 vessels to which the GOA sideboard limit applies.

(vi) *Amendment 80 GOA sideboard limits—halibut PSC.* (A) If the Regional Administrator determines that a GOA sideboard limit for halibut PSC is sufficient to support a directed fishery for a species or species group, management area, and season specified in Table 38 to this part, then the Regional Administrator may establish a halibut PSC sideboard limit for that species or species group, management area, and season applicable to the Amendment 80 vessels to which the halibut PSC limit applies.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a species or species group, management area, and season as specified in Table 38 to this part then the Regional Administrator may set the halibut PSC sideboard limit for that species or species group to zero for the Amendment 80 vessels to which the halibut PSC limit applies.

(C) Upon determining that a halibut PSC sideboard limit for a species or species group, management area, and season as specified in Table 38 to this part is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for a specific species or species group by the Amendment 80 vessels to which the halibut PSC limit applies as follows:

(*1*) If the halibut PSC sideboard limit is reached for the deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) for a season, then NMFS will close directed fishing in the GOA for all species in the deep-water species fishery except northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA for that season.

(*2*) If the halibut PSC sideboard limit is reached for the shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) for a season, then NMFS will close directed fishing in the GOA for all species in the shallow-water species fishery for that season.

* * * * *

■ 9. In § 679.21, paragraphs (e)(1)(i), (e)(3)(i), (e)(3)(ii) heading, (e)(3)(ii)(A), (e)(3)(ii)(B)(*2*), and (e)(3)(iv) introductory text are revised, and paragraph (e)(3)(vi) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(i) *PSQ reserve.* The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(A) *Crab PSQ.* 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (iv) of this section.

(B) *Halibut PSQ.* (*1*) 276 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section in each year for 2008 and 2009.

(*2*) 326 mt of the total PSC limit set forth in paragraph (e)(1)(v) of this section effective in 2010 and each year thereafter.

(C) *Salmon PSQ*—(*1*) Chinook salmon. 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(*2*) *Non-Chinook salmon.* 10.7 percent of the PSC limit set forth in paragraph (e)(1)(viii) of this section.

* * * * *

(3) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(ii) through (viii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the BSAI, other than vessels fishing under a CQ permit assigned to an Amendment 80 cooperative, the PSC limits for red king

crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) * * *

(*2*) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under paragraph (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(ii) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 25 percent of the red king crab PSC allowance and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

* * * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits among fisheries, other than PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(vi) *Amendment 80 sector bycatch limitations.* (A) Halibut and crab bycatch limits for the Amendment 80 sector in the BSAI will be established according to the procedure and formulae set out in § 679.91(d) through (f); and

(B) Halibut and crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80 vessels to which the halibut and crab bycatch limits apply.

* * * * *

■ 10. In § 679.27, paragraph (j) is revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(j) *Groundfish retention standard.* (Effective January 20, 2008)—(1) *Applicability.* (i) The operator of a catcher/processor not listed in § 679.4(1)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(ii) An Amendment 80 cooperative and the members of an Amendment 80 cooperative must comply with the GRS set forth under paragraph (j)(4) of this section while fishing for or processing groundfish caught from the BSAI from January 1 through December 31 of each year.

(iii) No part of the GRS supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation for a catcher/processor not in an Amendment 80 cooperative.* For any fishing year, the percent of groundfish retained by each catcher/processor not listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI will be calculated using the following equations:

$$\text{GFroundweight} = \sum_{i=1}^{n} \left(\text{PWspecies}_n / \text{PRRspecies}_n \right)$$

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

GFroundweight is the total annual round weight equivalent of all retained product weights for each IR/IU groundfish species.

PWspecies_n is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report required at § 679.5(i).

PRRspecies_n is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% is the groundfish retention percentage for a vessel calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF is the total groundfish round catch weight as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(3) *Percent of groundfish retained calculation for an Amendment 80 cooperative.* For each Amendment 80 cooperative, for any fishing year, the percent of groundfish retained by that Amendment 80 cooperative is based on the aggregate groundfish retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative and will be calculated using the following equations:

$$\text{GFroundweight} = \sum_{i=1}^{n} \left(\text{PWspecies}_n / \text{PRRspecies}_n \right)$$

Substituting the value for GFroundweight into the following equation:

GFR% = (GFroundweight / TotalGF) * 100

Where:

GFroundweight is the total annual round weight equivalent of all retained product weights retained by all Amendment 80 vessels assigned to that Amendment 80 cooperative for each IR/IU groundfish species.

PWspecies_n is the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report for all Amendment 80 vessels assigned to that Amendment 80 cooperative required at § 679.5(i).

PRRspecies_n is the standard product recovery rate for each groundfish species and product combination listed in Table 3 to this part.

GFR% is the groundfish retention percentage for an Amendment 80 cooperative calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF is the total groundfish round catch weight for all Amendment 80 vessels assigned to that Amendment 80 cooperative as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(4) *Minimum groundfish retention standard.* An Amendment 80 cooperative or a catcher/processor not

listed in § 679.4(l)(2)(i), not assigned to an Amendment 80 cooperative, and using trawl gear in the BSAI must comply with the annual minimum groundfish retention standard requirements displayed in the following table:

GROUNDFISH RETENTION STANDARD

Year	Annual GRS (percent)
2008	65
2009	75
2010	80
2011 and each year after	85

(5) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI, must comply with observer coverage requirements as described at §§ 679.50(c)(6), and 679.7(m)(3) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch by an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of an Amendment 80 vessel or any other catcher/processor not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI must provide an observer sampling station as described at § 679.28(d) and the owner of the vessel must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and the location along the conveyer belt at which the observers collect their samples.

(6) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of an Amendment 80 vessel, or any other vessel required to comply with paragraph (j) of this section, must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and paragraph (j)(5) of this section at all times the vessel harvests or processes groundfish outside the BSAI.

(7) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of an Amendment 80 vessel, or any other vessel required to comply with this paragraph (j) at any time during a fishing year and who also receives deliveries of unsorted catch at any time during a fishing year must comply with paragraph (j)(5) of this section while processing deliveries of unsorted catch.

■ 11. In § 679.28, paragraph (d)(8)(i) is revised; paragraph (h) is added and reserved; and paragraph (i) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(8) * * *

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mailing (*station.inspections@noaa.gov*) an Inspection Request for Observer Sampling Station available on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Business mailing address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name and name of contact person on vessel.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) Requested inspection date.

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(I) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(J) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

* * * * *

(h) [Reserved]

(i) *Bin monitoring*—(1) *Bin monitoring standards.* The vessel owner or operator must comply with the requirements specified in paragraph (i)(1)(i) of this section unless the vessel owner or operator has requested, and NMFS has approved, one of the monitoring options described at paragraph (i)(1)(ii) or (i)(1)(iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and either

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or

(E) The observer informs the vessel operator, or his designee, that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(iii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height

(between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained sufficiently clear to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iv) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS;

(C) The system uses commercially available software;

(D) Color cameras must have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(E) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period;

(F) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(G) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(H) A 16-bit or better color monitor, for viewing activities within the tank in real time, is provided within the observer sampling station (or location where the observer sorts and weighs samples, if applicable). The monitor must:

(*1*) Have the capacity to display all cameras simultaneously;

(*2*) Be operating at all times when fish are in the tank;

(*3*) Be securely mounted at or near eye level;

(*4*) Provide the same resolution as specified in paragraph (i)(1)(iii)(F) of this section.

(I) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(J) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(*1*) The length and width (in pixels) of each image;

(*2*) The file type in which the data are recorded;

(*3*) The type and extent of compression;

(*4*) The frame rate at which the data will be recorded;

(*5*) The brand and model number of the cameras used;

(*6*) The brand, model, and specifications of the lenses used;

(*7*) A scale drawing of the location of each camera and its coverage area;

(*8*) The size and type of storage device;

(*9*) The type, speed, and operating system of any computer that is part of the system;

(*10*) The individual or company responsible for installing and maintaining the system;

(*11*) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(*12*) Any additional information requested by the Regional Administrator.

(K) Any change to the video system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(v) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (i)(1)(ii) or (i)(1)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel must use the monitoring option specified in paragraph (i)(1)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(2) *Who must have a bin monitoring option inspection?* A vessel owner or operator choosing to operate under the line of sight option (option 2) in paragraph (i)(1)(ii) of this section or the video option (option 3) in paragraph (i)(1)(iii) of this section must receive an annual bin monitoring option inspection.

(3) *How does a vessel owner arrange for a bin monitoring option inspection?* The owner may arrange the inspection time and place by submitting to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov*) an Inspection Request for Bin Monitoring available on the NMFS Alaska Region Web site at (*http://www.fakr.noaa.gov*). Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection. The owner must provide the following information:

(i) Name and signature of the person submitting the application, and the date of the application;

(ii) Business mailing address, telephone number, and fax number of the person submitting the application;

(iii) Whether the vessel has received a bin monitoring option inspection before, and if so, the date of the most recent inspection report;

(iv) Vessel name;

(v) Federal fishery permit number;

(vi) Location where the inspection is requested to occur, including street address and city; and

(vii) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(4) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(5) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (i)(1)(ii) or (i)(1)(iii) of this section. The vessel owner must maintain a current bin option inspection report onboard the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (i)(5). The bin monitoring option inspection report must be made available to the observer,

NMFS personnel or to an authorized officer upon request.

■ 12. In § 679.31:

■ a. Remove paragraphs (a)(2), (c), and (f);

■ b. Redesignate paragraphs (b), (d), and (e) as paragraphs (a)(2), (3), and (4), respectively;

■ c. In redesignated paragraph (a)(2), further redesignate paragraphs (1), (2), and (3) introductory text, and (4) as paragraphs (a)(2)(i), (ii), (iii), and (iv), respectively;

■ d. In redesignated paragraph (a)(2)(iii), further redesignate paragraphs (i), (ii), (iii) and (iv) as paragraphs (a)(2)(iii)(A), (B), (C), and (D), respectively;

■ e. Add and reserve paragraph (b); and

■ f. Revise the section heading, the heading for paragraph (a) and paragraph (a)(1).

The additions and revisions read as follows:

§ 679.31 CDQ and PSQ reserves.

* * * * *

(a) *CDQ and PSQ reserves.*—(1) *Groundfish CDQ reserves.* See § 679.20(b)(1)(ii).

* * * * *

■ 13. In § 679.50, paragraphs (a), (c)(4)(i)(A), and paragraph (c)(6) are revised to read as follows:

§ 679.50 Groundfish Observer Program.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs or fishing in certain areas. Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(5) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

Program	Catcher/ processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) CDQ Program	(c)(4)	(c)(4)	(c)(4)	(d)(5).
(2) AFA pollock	(c)(5)(i)(A) and (B)	(c)(1) through (3)	(c)(5)(i)(A)	(d)(6).
(3) Aleutian Islands pollock	(c)(5)(i)(C)	(c)(1) through (3)	(c)(5)(i)(C)	(d)(1) through (4).
(4) Rockfish Program	(c)(7)(i)	(c)(7)(ii)	N/A	(d)(7).
(5) Vessels fishing in the Red King Crab Savings Area.	(c)(1)(vii)	(c)(1)(viii)	N/A	N/A.
(6) Vessels fishing in the Nearshore Bristol Bay Trawl Closure Area.	(c)(1)(ix)	(c)(1)(ix)	N/A	N/A.
(7) Vessels fishing in the HLA for Atka mackerel.	(c)(1)(x)	(c)(1)(x)	N/A	N/A.
(8) Amendment 80 vessels and Non-AFA trawl C/Ps fishing in the BSAI.	(c)(6)	N/A	N/A	N/A.
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(c)(1) through (3), in GOA only.	(c)(1) through (3)	(c)(1) through (3)	(d)(1) through (4).

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) *CDQ groundfish fisheries (effective January 20, 2008)*—(*1*) *Catcher/processors using trawl gear.* A catcher/processor not listed in § 679.4(1)(2)(i) using trawl gear and groundfish CDQ fishing, except catcher/processors directed fishing for pollock CDQ, must comply with the observer coverage requirements at paragraph (c)(6)(i) of this section and the catch monitoring requirements in § 679.93(c).

(*2*) *Motherships.* A mothership that receives groundfish from catcher vessels using trawl gear and groundfish CDQ fishing, except catcher vessels directed fishing for pollock CDQ, must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section onboard the vessel, at least one of whom must be endorsed as a lead level 2 observer.

* * * * *

(6) *Amendment 80 vessels and non-AFA trawl catcher/processors (effective January 20, 2008)*—(i) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest, receive, or process groundfish in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(A) *Observer lead level 2 requirements.* At least one of the observers required under this paragraph (c)(6)(i) must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(6)(i)(B) of this section would otherwise preclude sampling as required.

(B) *Observer workload.* The time required for the observer to complete sampling, data recording, and data communication duties must not exceed 12 consecutive hours in each 24-hour period.

(ii) *Amendment 80 vessels in the GOA.* Except for the F/V GOLDEN FLEECE (USCG Documentation Number 609951), all Amendment 80 vessels, except when directed fishing for scallops using dredge gear, in the GOA must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest, receive, or process groundfish in the GOA management areas or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

* * * * *

■ 14. In 679.64:

■ a. Revise section heading;

■ b. Revise paragraph (a)(1)(i)(A);

■ c. Redesignate paragraph (a)(1)(iii) as (a)(1)(iv);

■ d. Add paragraph (a)(1)(iii);

■ e. Add paragraph (a)(1)(v);

■ f. Revise paragraphs (a)(2) and (a)(3);

■ g. Revise paragraph (b)(3)(i) heading;

■ h. Redesignate paragraph (b)(3)(iii) as paragraph (b)(3)(iv);

■ i. Add new paragraph (b)(3)(iii);
■ j. Revise paragraph (b)(4); and
■ k. Add new paragraph (b)(6).

The revisions and additions read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) * * *
(1) * * *
(i) * * *

(A) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in Sections 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the remainder of the Aleutian Islands Pacific ocean perch TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

* * * * *

(iii) *Flathead sole, rock sole, and yellowfin sole.* The harvest limit for flathead sole, rock sole, and yellowfin sole will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208(e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year in which the harvest limit will be in effect.

(iv) *Remaining groundfish species.* (A) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in Sections 208 (e)(1) through (e)(20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(B) If the amount of a species calculated under paragraph (a)(1)(iv)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher/processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(v) *Yellowfin sole sideboard limit exemption.* AFA catcher/processors will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

(2) *What are the halibut and crab PSC sideboard limits?* The halibut and crab PSC bycatch limits specified for catcher/processors in the BSAI are listed in Tables 40 and 41 to this part.

* * * * *

(b) * * *
(3) * * *

(i) *BSAI groundfish other than Amendment 80 species.* * * *

* * * * *

(iii) *Amendment 80 species other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each Amendment 80 species other than BSAI Pacific cod will be equal to the aggregate retained catch of that Amendment 80 species from 1995 through 1997 by all AFA catcher vessels, divided by the sum of the TAC available to catcher vessels for that species or species group from 1995 through 1997, and multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C) in the year or season in which the harvest limit will be in effect.

(4) *How will halibut and crab PSC limits be calculated?*—(i) *BSAI.* The halibut and crab PSC bycatch limits specified for catcher vessels in the BSAI are listed in Tables 40 and 41 to this part.

(ii) *GOA.* The AFA catcher vessel PSC bycatch limit for halibut in the GOA will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

* * * * *

(6) *Yellowfin sole sideboard limit exemption.* AFA catcher vessels will not be subject to a harvest limit for yellowfin sole in the BSAI during a calendar year if the aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 metric tons.

* * * * *

■ 15. In § 679.84, paragraphs (c)(7) and (c)(9) are revised to read as follows:

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(c) * * *

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

* * * * *

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

* * * * *

■ 16. Subpart H, consisting of §§ 679.90 through 679.94, is added to read as follows:

Subpart H—Amendment 80 Program

Sec.

679.90 Allocation, use, and transfer of Amendment 80 QS permits.
679.91 Amendment 80 Program annual harvester privileges.
679.92 Amendment 80 Program use caps and sideboard limits.
679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.
679.94 Economic data report (EDR) for the Amendment 80 sector.

Subpart H—Amendment 80 Program

§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.

Regulations under this subpart were developed by NMFS to implement the Amendment 80 Program. Additional regulations that implement specific portions of the Amendment 80 Program are set out at § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.27 Improved Retention/Improved Utilization Program, § 679.28 Equipment and operational requirements, § 679.31 CDQ and PSQ reserves, § 679.50 Groundfish Observer Program applicable through December 31, 2007, and § 679.64 Harvesting sideboard limits in other fisheries.

(a) *Issuance of Amendment 80 QS permits*—(1) *General.* NMFS will issue an Amendment 80 QS permit to a person who is eligible to receive Amendment 80 QS units as described in paragraph (a)(2) of this section and based on:

(i) The information contained in an approved application for Amendment 80 QS as described in paragraph (b) of this section;

(ii) The information contained in the Amendment 80 official record as described in paragraph (c) of this section;

(iii) The Amendment 80 QS permit allocation procedures as described in paragraph (d) of this section; and

(iv) In consideration of any use caps as described in § 679.92(a).

(2) *Eligibility to receive an Amendment 80 QS permit*—(i) *Owner of an Amendment 80 vessel.* A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) That person owns that Amendment 80 vessel at the time of application for Amendment 80 QS as demonstrated on an abstract of title or USCG documentation;

(B) That person holds an Amendment 80 LLP license at the time of application for Amendment 80 QS;

(C) That person is a U.S. citizen;

(D) That person submits a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section; and

(E) A person is not eligible to receive an Amendment 80 QS permit based on the legal landings of that Amendment 80 vessel under the provisions of paragraph (a)(2)(ii) of this section.

(ii) *Holder of an Amendment 80 LLP license.* A person may receive an Amendment 80 QS permit based on the legal landings of an Amendment 80 vessel if:

(A) At the time of application for Amendment 80 QS that person holds the LLP license originally assigned to that Amendment 80 vessel and that Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108;

(B) The actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108 has been clearly and unambiguously established and documented in written form in the application for Amendment 80 QS and that documentation is accepted by NMFS;

(C) The express terms of a written contract clearly and unambiguously provide that the owner(s) of that Amendment 80 vessel transferred all rights and privileges to use the Amendment 80 legal landings from that Amendment 80 vessel to the person holding the LLP license originally assigned to that Amendment 80 vessel;

(D) That person is a U.S. citizen; and

(E) That person has submitted a timely application for Amendment 80 QS that is approved by NMFS as described in paragraph (b) of this section.

(b) *Application for Amendment 80 QS*—(1) *Submission.* A person who wishes to receive an Amendment 80 QS permit must submit a timely and complete application for Amendment 80 QS. Once a person submits a timely and complete application for Amendment 80 QS that is approved by NMFS, an application for Amendment 80 QS is not required to be resubmitted. An application for Amendment 80 QS may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application for Amendment 80 QS must be received by NMFS no later than 1700 hours A.l.t. on October 15 of the year prior to the fishing year for which the applicant is applying, or if sent by U.S. mail, postmarked by that time. Applications received or postmarked after the deadline will not be eligible to receive an Amendment 80 QS permit for the upcoming fishing year.

(4) *Contents of application.* A completed application must contain the following information:

(i) *Applicant identification.* (A) The applicant's name, NMFS person ID (if applicable), tax ID number, permanent business mailing address, business telephone number, business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) Indicate whether the applicant is applying as the owner of an Amendment 80 vessel or the holder of an LLP license originally assigned to an Amendment 80 vessel;

(F) For an applicant claiming Amendment 80 legal landings associated with an Amendment 80 vessel, enter the following information for each Amendment 80 vessel: USCG documentation number of vessel on which Amendment 80 legal landings were caught and processed, vessel name, ADF&G vessel registration number, and LLP license held by that person at the time of application;

(G) If an Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108, provide clear and unambiguous documentation in written form that the Amendment 80 vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108; and

(H) If applicable, a copy of the express terms of a written contract held by the applicant that clearly and unambiguously indicates that the owner of the Amendment 80 vessel that has suffered has an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108 has transferred all rights and privileges to use Amendment 80 legal landings and any resulting Amendment 80 QS or exclusive harvest privilege from that Amendment 80 vessel to the person holding the LLP license originally assigned to that Amendment 80 vessel.

(ii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization for the designated representative signed by the applicant must accompany the application.

(5) *Application evaluation.* The Regional Administrator will evaluate applications received as specified in this paragraph (b)(5) of this section and compare all claims in an application with the information in the Amendment 80 official record. Application claims that are consistent with information in the Amendment 80 official record will be approved by the Regional Administrator. Application claims that are inconsistent with the Amendment 80 official record, unless verified by

documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (b)(4) of this section, will be provided a single 30-day evidentiary period in which to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the Amendment 80 official record. An applicant who submits claims that are inconsistent with information in the Amendment 80 official record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an IAD of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that inconsistent claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions described at § 679.43.

(c) *Amendment 80 official record*—(1) *Use of the Amendment 80 official record.* The Amendment 80 official record will contain all information used by the Regional Administrator to determine eligibility to participate in the Amendment 80 Program, assign QS, and any other privileges or limits for the Amendment 80 Program.

(2) *Amendment 80 official record presumed to be correct.* The Amendment 80 official record is presumed to be correct. An applicant to participate in the Amendment 80 Program has the burden to prove otherwise.

(3) *Documentation is used to establish the amount of Amendment 80 legal landings.* Only Amendment 80 legal landings as defined in § 679.2 will be used to assign Amendment 80 QS units to an Amendment 80 QS permit unless an Amendment 80 vessel has no Amendment 80 legal landings, in which case Amendment 80 QS units will be allocated to the Amendment 80 QS permit derived from that Amendment 80 vessel according to the procedures established under paragraphs (d)(1)(iii) and (iv) of this section.

(4) *Assignment of Amendment 80 legal landings.* An Amendment 80 legal landing is assigned only to the Amendment 80 vessel that was used to make that Amendment 80 legal landing.

(d) *Assigning an Amendment 80 QS permit to an Amendment 80 QS holder*—(1) Amendment 80 QS units derived from an Amendment 80 vessel and issued to an Amendment 80 QS holder. NMFS will assign a specific amount of Amendment 80 QS units to each Amendment 80 QS permit based on the Amendment 80 legal landings of each Amendment 80 vessel for each Amendment 80 species in each management area for that Amendment 80 species as listed in Table 32 to this part, using information from the Amendment 80 official record according to the following procedures:

(i) *All Amendment 80 species.* (A) For each Amendment 80 species, sum the Amendment 80 legal landings for each Amendment 80 vessel in all management areas for that Amendment 80 species listed in Table 32 to this part for each calendar year from 1998 through 2004.

(B) Select the five calendar years that yield the highest amount of Amendment 80 legal landings of that Amendment 80 species in all management areas for that Amendment 80 species listed in Table 32 to this part, including zero metric tons if necessary.

(C) Sum the Amendment 80 legal landings of the highest five years for an Amendment 80 species. This yields the Highest Five Years for that Amendment 80 species.

(D) Divide the Highest Five Years for an Amendment 80 species in paragraph (d)(1)(i)(C) of this section for an Amendment 80 vessel by the sum of all Highest Five Years for all Amendment 80 vessels for that Amendment 80 species based on the Amendment 80 official record for that Amendment 80 species as presented in the following equation:

Highest Five Years/Σ All Highest Five Years × 100 = Percentage of the Total.

The result (quotient) of this equation is the Percentage of the Total for that Amendment 80 vessel for that Amendment 80 species.

(ii) *Aleutian Islands Pacific ocean perch and BSAI Pacific cod.* Multiply the Percentage of the Total for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for Aleutian Islands Pacific ocean perch and BSAI Pacific cod as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for Aleutian Islands Pacific ocean perch and BSAI Pacific cod Pacific cod.

(iii) *BSAI rock sole and BSAI yellowfin sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.5 percent of the Percentage of the Total for BSAI rock sole and BSAI yellowfin sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section for BSAI rock sole and BSAI yellowfin sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel × (100-Σ Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iii)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI rock sole and BSAI yellowfin sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI rock sole or BSAI yellowfin sole.

(iv) *BSAI flathead sole.* (A) If an Amendment 80 vessel did not have any Amendment 80 legal landings during 1998 through 2004, that Amendment 80 vessel will receive 0.1 percent of the Percentage of the Total for BSAI flathead sole as calculated in paragraph (d)(1)(i)(D) of this section.

(B) All Amendment 80 vessels that did have Amendment 80 legal landings during 1998 through 2004 will have the Percentage of the Total assigned to that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section adjusted to account for the assignment of the Percentage of the Total to Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section for BSAI flathead sole as presented in the following equation:

Percentage of the Total for that Amendment 80 vessel × (100-Σ Percentage of the Total assigned to all Amendment 80 vessels under paragraph (d)(1)(iv)(A) of this section) = Adjusted Percentage of the Total for that Amendment 80 vessel.

(C) Multiply the Adjusted Percentage of the Total for that Amendment 80 vessel by the Amendment 80 initial QS pool for BSAI flathead sole as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI flathead sole.

(v) *BSAI Atka mackerel.* (A) Multiply the Percentage of the Total for that Amendment 80 vessel as calculated in paragraph (d)(1)(i)(D) of this section by the Amendment 80 initial QS pool for

BSAI Atka mackerel as set forth in Table 32 to this part. This yields the number of Amendment 80 QS units for that Amendment 80 vessel for BSAI Atka mackerel.

(B) If an Amendment 80 vessel is an Amendment 80 non-mackerel vessel, determine the percentage of the Amendment 80 QS pool that is assigned to each Atka mackerel management area listed in Table 32 to this part in each year from 1998 through 2004 for that Amendment 80 non-mackerel vessel based on the percentage of Amendment 80 legal landings in that Atka mackerel management area from 1998 through 2004 for that Amendment 80 non-mackerel vessel.

(C) The sum of the Amendment 80 QS units allocated to all Amendment 80 non-mackerel vessels is the Total Amendment 80 non-mackerel QS pool.

(D) The sum of the Amendment 80 QS units allocated to all Amendment 80 mackerel vessels is the Total Amendment 80 mackerel QS pool.

(2) *Assigning Amendment 80 QS units to an Amendment 80 permit.* Once the Regional Administrator determines the amount of Amendment 80 QS units to be issued for an Amendment 80 species derived from an Amendment 80 vessel based on the criteria described in paragraphs (b) through (d) of this section, NMFS will assign that amount of Amendment 80 QS units for each Amendment 80 species as an Amendment 80 QS permit to the Amendment 80 QS holder as follows:

(i) *Amendment 80 vessel owner.* NMFS will issue an Amendment 80 QS permit for each Amendment 80 vessel to the owner of that Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(i) of this section; or

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an LLP license originally assigned to an Amendment 80 vessel if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

(e) *Transfers of Amendment 80 QS permits*—(1) *Non-severability of Amendment 80 QS permits.* (i) An Amendment 80 QS holder may not transfer an Amendment 80 QS permit to another person unless all Amendment 80 QS units for all Amendment 80 species on that Amendment 80 QS permit are transferred in their entirety to the same person at the same time; and

(ii) Once an Amendment 80 QS permit is assigned to an Amendment 80 LLP license, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license and a person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

(2) *Transfer of an Amendment 80 LLP/QS license.* A person holding an Amendment 80 LLP/QS license may transfer that Amendment 80 LLP/QS license to another person only under the provisions of § 679.4(k)(7).

(3) *Transfers of Amendment 80 QS permits.* A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person only by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(4) *Assigning an Amendment 80 QS permit to an Amendment 80 LLP license.* An Amendment 80 vessel owner holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel only by submitting an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(f) *Application to transfer an Amendment 80 QS permit*—(1) *General.* An Amendment 80 QS holder who wishes to transfer an Amendment 80 QS permit must submit a complete application that is approved by NMFS. This application may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Application*—(i) *Transferor information*—(A) *Transferor identification.* The transferor's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Type of transfer.* (*1*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to another person; or

(*2*) Indicate whether the transferor is applying to transfer an Amendment 80 QS permit to the LLP license originally assigned to that Amendment 80 vessel as listed in Table 31 to this part.

(C) *Amendment 80 QS permit.* Indicate the Amendment 80 QS permit to be transferred.

(D) *Information for transfers of Amendment 80 QS permit to another person.* If transferring an Amendment 80 QS permit assigned to an Amendment 80 vessel owner to another person, attach abstract of title or USCG documentation that clearly and unambiguously indicates that the Amendment 80 QS permit transferee is named on the abstract of title or USCG documentation as the owner of the Amendment 80 vessel to which that Amendment 80 QS permit would be assigned.

(E) *Information for transfers of Amendment 80 QS permits to an Amendment 80 LLP license.* If transferring Amendment 80 QS assigned to an Amendment 80 vessel owner to the LLP license originally assigned to that Amendment 80 vessel, provide clear and unambiguous written documentation that can be verified by NMFS that the Amendment 80 vessel for which that Amendment 80 LLP license was originally assigned is no longer able to be used in the Amendment 80 Program due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

(F) *Certification of transferor.* The transferor must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Transferee information*—(A) *Transferee identification.* The transferee's name, NMFS person ID (if applicable), tax ID number, date of incorporation or date of birth, permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(B) *Certification of transferee.* The transferee must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated

representative, then explicit authorization signed by the applicant must accompany the application.

§ 679.91 Amendment 80 Program annual harvester privileges.

(a) *Assigning an Amendment 80 QS permit to an Amendment 80 cooperative or Amendment 80 limited access fishery*—(1) *General.* (i) Each calendar year, each Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license must be assigned to an Amendment 80 cooperative or the Amendment 80 limited access fishery in order to use that Amendment 80 QS permit, associated Amendment 80 vessel, and Amendment 80 LLP license to catch, process, or receive Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.

(ii) NMFS will assign an Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to an Amendment 80 cooperative if that Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) is designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(iii) NMFS will assign an Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) held by an Amendment 80 QS holder to the Amendment 80 limited access fishery if that Amendment 80 QS permit(s), associated Amendment 80 vessel(s), and Amendment 80 LLP license(s) is assigned to the Amendment 80 limited access fishery.

(2) *Amendment 80 QS permits issued after issuance of CQ or ITAC.* Any Amendment 80 QS permits, or Amendment 80 QS units on an Amendment 80 QS permit, assigned to an Amendment 80 QS holder after NMFS has issued CQ or ITAC to the Amendment 80 sector for a calendar year will not result in any additional:

(i) CQ being issued to an Amendment 80 cooperative if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to an Amendment 80 cooperative for that calendar year; or

(ii) ITAC being issued to the Amendment 80 limited access fishery if that Amendment 80 QS holder has assigned his Amendment 80 QS permit(s) to the Amendment 80 limited access fishery for that calendar year.

(3) *Failure to submit an application for an Amendment 80 fishery.* (i) If an Amendment 80 QS permit is not designated on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section, the Regional Administrator will not assign that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license to an Amendment 80 cooperative for the applicable calendar year.

(ii) The Regional Administrator will assign an Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license to the Amendment 80 limited access fishery for the applicable calendar year if that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license is designated on a timely and complete application for an Amendment 80 limited access fishery, or if that Amendment 80 QS permit, associated Amendment 80 vessel, or Amendment 80 LLP license is not designated on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (b) of this section.

(b) *Application for CQ and Application for the Amendment 80 limited access fishery*—(1) *General.* An application for CQ or an application for the Amendment 80 limited access fishery may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the calendar year for which the applicant is applying, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ*—(i) *Amendment 80 cooperative identification.* The Amendment 80 cooperative's legal name; tax ID number, the type of business entity under which the Amendment 80 cooperative is organized; the state in which the Amendment 80 cooperative is legally registered as a business entity; permanent business address; business telephone number; business fax number; e-mail address (if available); and printed name of the Amendment 80 cooperative's designated representative.

(ii) *Identification of Amendment 80 QS permit holders and ownership documentation.* Full name of each Amendment 80 cooperative member; NMFS person ID of each member; Amendment 80 QS permit number(s), the names of all persons, to the individual level, holding an ownership interest in the Amendment 80 QS permit(s) assigned to the Amendment 80 cooperative and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(iii) *Identification of Amendment 80 cooperative member vessels and Amendment 80 LLP licenses.* Vessel name; ADF&G vessel registration number; USCG documentation number; and Amendment 80 LLP license number.

(iv) *Identification of vessels on which the CQ issued to the Amendment 80 cooperative will be used.* Vessel name, ADF&G vessel registration number, and USCG documentation number.

(v) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether each member of the Amendment 80 cooperative has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vi) *Certification of cooperative authorized representative.* The cooperative's authorized representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Explicit authorization to complete the application on behalf of the members of the cooperative must accompany the application.

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ.

(5) *Application for the Amendment 80 limited access fishery*—(i) *Applicant identification.* The applicant's name, NMFS Person ID (if applicable), tax ID number (required), permanent business mailing address, business telephone number, fax number, and e-mail (if available).

(ii) *Amendment 80 vessel identification.* The name, ADF&G vessel registration number(s), and USCG documentation number(s) of the Amendment 80 vessel(s) owned by the applicant.

(iii) *Amendment 80 LLP identification.* The Amendment 80 LLP license number(s) held by the applicant.

(iv) *Amendment 80 QS permit information.* The Amendment 80 QS permit number(s) held by the applicant.

(v) *Amendment 80 QS ownership documentation.* The names of all persons, to the individual person level, holding an ownership interest in the Amendment 80 QS permit(s) held by the applicant and the percentage ownership each person and individual holds in the Amendment 80 QS permit(s).

(vi) *EDR submission.* For 2009 and thereafter, indicate (YES or NO) whether the applicant has submitted a timely and complete EDR for each Amendment 80 QS permit held by that person as required under § 679.94.

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(c) *Allocations of Amendment 80 species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of Amendment 80 species that will be assigned to the BSAI trawl limited access sector and the Amendment 80 sector. For participants in the Amendment 80 sector, the tonnage of fish will be further assigned between Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Calculation*—(i) *Determination of TAC and ITAC.* NMFS will determine the TAC and ITAC for each Amendment 80 species in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of ITAC.* The annual apportionment of ITAC for each Amendment 80 species between the Amendment 80 sector and the BSAI trawl limited access sector in a given calendar year is established in Tables 33 and 34 to this part.

(3) *Allocation of CQ to Amendment 80 cooperatives*—(i) *General.* The amount of ITAC for each Amendment 80 species assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool multiplied by the Amendment 80 sector ITAC for that Amendment 80 species in that management area. Once ITAC for an Amendment 80 species in a management area is assigned to an Amendment 80 cooperative, it is issued as CQ specific to that Amendment 80 cooperative.

(ii) *CQ allocation for Amendment 80 species except BSAI Atka mackerel.* The amount of CQ for each Amendment 80 species except BSAI Atka mackerel that is assigned to a Amendment 80 cooperative is expressed algebraically as follows:

CQ in a management area = [(Amendment 80 sector ITAC in a management area) × (Amendment 80 QS units assigned to that Amendment 80 cooperative/ Amendment 80 QS pool)].

(iii) *CQ allocation for BSAI Atka mackerel.* The amount of CQ for BSAI Atka mackerel that is assigned to each Amendment 80 cooperative in each management area is determined by the following procedure:

(A) Determine the amount of non-mackerel ITAC in each management area using the following equation:

Non-mackerel ITAC in a management area = (Amendment 80 non-mackerel QS units designated for that management area/ Total Atka mackerel QS pool) × Amendment 80 sector ITAC in all management areas.

(B) Determine the amount of mackerel ITAC in each management area using the following equation:

Mackerel ITAC in a management area = Amendment 80 sector ITAC in that management area − Non-mackerel ITAC in that management area.

(C) Determine the amount of non-mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Non-mackerel CQ assigned to that Amendment 80 cooperative = (Amendment 80 non-mackerel QS units designated for that management area assigned to that Amendment 80 cooperative/Amendment 80 non-mackerel QS pool in that management area) × Non-mackerel ITAC for that management area.

(D) Determine the amount of mackerel CQ assigned to the Amendment 80 cooperative using the following equation:

Mackerel CQ in a management area = (Mackerel QS units assigned to that Amendment 80 cooperative/Mackerel QS pool) × Mackerel ITAC in that management area.

(E) The total amount of Atka mackerel CQ assigned to an Amendment 80 cooperative for a management area is equal to the sum of paragraphs (c)(3)(iii)(C) and (D) of this section.

(4) *Amendment 80 limited access fishery.* The amount of ITAC in a management area for each Amendment 80 species assigned to the Amendment 80 limited access fishery is equal to the Amendment 80 sector ITAC remaining after subtracting all CQ issued to all Amendment 80 cooperatives for that Amendment 80 species in that management area.

(d) *Allocations of halibut PSC*—(1) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 sector.* The amount of halibut PSC assigned to the Amendment 80 sector for each calendar year is specified in Table 35 to this part. That amount of halibut PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 halibut PSC assigned to an Amendment 80 cooperative.* For each calendar year, the amount of Amendment 80 halibut PSC assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of halibut PSC established in Table 35 to this part by the percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the halibut PSC apportionment for that Amendment 80 species established in paragraph (d)(2)(i) of this section by the percentage of the Amendment 80 QS pool assigned to an Amendment 80 cooperative for that Amendment 80 species established in paragraph (d)(2)(ii) of this section. This yields the amount of halibut PSC apportioned to that cooperative for that Amendment 80 species.

(iv) For each Amendment 80 cooperative, sum the results of paragraph (d)(2)(iii) of this section for all Amendment 80 species. This yields the amount of Amendment 80 halibut PSC assigned to that Amendment 80 cooperative as CQ.

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section.

(4) *Use of Amendment 80 halibut PSC in the Amendment 80 sector*—(i) *Amendment 80 halibut PSC assigned to a Amendment 80 cooperative.* An amount of Amendment 80 halibut PSC

is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by an Amendment 80 cooperative must be deducted from the amount of halibut PSC CQ on its CQ permit. Amendment 80 halibut PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Halibut PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 halibut PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any halibut PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of halibut PSC assigned to the Amendment 80 limited access fishery. Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Halibut PSC assigned to the BSAI trawl limited access sector.* Halibut PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Halibut PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(e) *Allocations of crab PSC*—(1) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 sector.* The amount of Amendment 80 crab PSC assigned to the Amendment 80 sector for each Amendment 80 crab PSC in a calendar year is specified in Table 35 to this part. That amount of Amendment 80 crab PSC is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery.

(2) *Amount of Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* For each calendar year, for each Amendment 80 crab PSC, the amount assigned as CQ to an Amendment 80 cooperative is determined by the following procedure:

(i) Multiply the amount of an Amendment 80 crab PSC established in Table 35 to this part by the percentage of the Amendment 80 crab PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the Amendment 80 crab PSC apportionment for that Amendment 80 species.

(ii) For each Amendment 80 species, divide the amount of Amendment 80 QS units assigned to an Amendment 80 cooperative by the Amendment 80 QS pool. This yields the percentage of Amendment 80 QS units held by that Amendment 80 cooperative.

(iii) For each Amendment 80 species, multiply the Amendment 80 crab PSC apportionment to that Amendment 80 species established in paragraph (e)(2)(i) of this section by the percentage of the Amendment 80 QS pool held by an Amendment 80 cooperative as established in paragraph (e)(2)(ii) of this section. This yields the amount of Amendment 80 crab PSC apportioned to that Amendment 80 cooperative for that Amendment 80 species.

(iv) For each Amendment 80 crab PSC, sum the results of paragraph (e)(2)(iii) for all Amendment 80 species. This yields the amount of that Amendment 80 crab PSC assigned to that Amendment 80 cooperative.

(3) *Amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery.* The amount of each Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is equal to the amount of that Amendment 80 crab PSC assigned to the Amendment 80 sector specified in Table 35 to this part subtracting the amount of that crab PSC that has been assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (e)(2)(iv) of this section.

(4) *Use of Amendment 80 crab PSC in the Amendment 80 sector—(i) Amendment 80 crab PSC assigned to an Amendment 80 cooperative.* An amount of Amendment 80 crab PSC is assigned to the CQ permit issued to an Amendment 80 cooperative for use while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by an Amendment 80 cooperative must be deducted from the amount of Amendment 80 crab PSC CQ on its CQ permit. Amendment 80 crab PSC on a CQ permit may only be used by the members of the Amendment 80 cooperative to which it is assigned. Amendment 80 crab PSC assigned as CQ is not subject to seasonal apportionment under § 679.21.

(ii) *Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* An amount of Amendment 80 crab PSC is assigned to the Amendment 80 limited access fishery for use by all Amendment 80 vessels in the Amendment 80 limited access fishery while fishing for all groundfish species in the BSAI or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Any Amendment 80 crab PSC used by Amendment 80 vessels assigned to the Amendment 80 limited access fishery must be deducted from the amount of Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery. Amendment 80 crab PSC assigned to the Amendment 80 limited access fishery is subject to seasonal apportionment under § 679.21.

(5) *Amendment 80 crab PSC assigned to the BSAI trawl limited access sector.* Amendment 80 crab PSC assigned to the BSAI trawl limited access sector for groundfish fishing in the BSAI may only be used by the members of the BSAI trawl limited access sector unless modified by reallocation to Amendment 80 cooperatives according to the procedures in paragraph (f) of this section. Amendment 80 crab PSC assigned to the BSAI trawl limited access sector is subject to seasonal apportionment under § 679.21.

(f) *Rollover—Annual reallocation of an Amendment 80 species ICA or ITAC, crab PSC, and halibut PSC from the BSAI trawl limited access sector to Amendment 80 cooperatives*—(1) *General.* The Regional Administrator may reallocate a portion of an ICA or ITAC of an Amendment 80 species, crab PSC, or halibut PSC amount assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is projected not to be harvested or used. Any reallocation will result in an amended CQ permit for each Amendment 80 cooperative. The timing of a reallocation will be at the discretion of the Regional Administrator.

(2) *Factors considered.* The Regional Administrator may consider the following factors when reallocating an ICA, a directed fishing allowance of an Amendment 80 species, or crab PSC, or halibut PSC amounts from the BSAI trawl limited access sector to Amendment 80 cooperatives:

(i) The risk of biological harm to a groundfish species or species group;

(ii) The risk of socioeconomic harm to other domestic fishery participants;

(iii) The impact that the allocation might have on the socioeconomic well-being of Amendment 80 cooperatives;

(iv) Current catch and PSC use in the BSAI trawl limited access sector;

(v) Historic catch and PSC use in the BSAI trawl limited access sector;

(vi) Harvest capacity and any stated intent on the future harvesting patterns of vessels in the BSAI trawl limited access sector;

(vii) Administrative requirements to reissue CQ permits; and

(viii) Any other relevant biological, socioeconomic, or administrative factors.

(3) *Rollover of Amendment 80 species.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the ITAC or ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of Amendment 80 species to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives × (Amount of CQ for that Amendment 80 species initially assigned to that Amendment 80 cooperative / Σ CQ for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

(4) *Rollover of halibut PSC.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the halibut PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of halibut PSC to each Amendment 80 cooperative according to the following procedure:

(i) Multiply the amount of the halibut PSC limit to be reallocated by 95 percent (0.95). This yields the maximum amount of halibut PSC available for allocation to Amendment 80 cooperatives; and

(ii) Determine the halibut PSC CQ issued to each Amendment 80 cooperative according to the following formula:

Amount of additional CQ issued to an Amendment 80 cooperative = Maximum amount of halibut PSC available for reallocation to Amendment 80 cooperatives × (Amount of halibut PSC CQ initially assigned to that Amendment 80 cooperative / Σ halibut PSC CQ initially assigned to all Amendment 80 cooperatives).

(5) *Rollover of crab PSC.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of a crab PSC assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of crab PSC to each Amendment 80 cooperative according to the following formula:

Amount of CQ issued to an Amendment 80 cooperative = Amount of that crab PSC available for allocation to Amendment 80 cooperatives × (Amount of that crab PSC CQ initially assigned to that Amendment 80 cooperative / Σ that crab PSC CQ initially assigned to all Amendment 80 cooperatives).

(g) *CQ transfer applications*—(1) *General.* An Amendment 80 cooperative may transfer all or part of its CQ to another Amendment 80 cooperative. Amendment 80 cooperatives may transfer CQ during a calendar year with the following restrictions:

(i) An Amendment 80 cooperative may only transfer CQ to another Amendment 80 cooperative;

(ii) An Amendment 80 cooperative may only receive CQ from another Amendment 80 cooperative; and

(iii) An Amendment 80 cooperative receiving Amendment 80 species CQ by transfer must assign that Amendment 80 species CQ to a member(s) of the Amendment 80 cooperative for the purposes of use cap calculation as established under § 679.92(a).

(2) *Application for CQ transfer.* NMFS will notify the transferor and transferee once the application for CQ transfer has been received and approved. A transfer of CQ is not effective until approved by NMFS. An application for CQ transfer may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) *Fax:* 907–586–7354; or

(iii) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(3) *Application forms.* Application forms are available through the internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(4) *Contents of application.* A completed application for CQ transfer requires that the following information be provided:

(i) *Identification of transferor.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative; permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferor. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* Enter the name, NMFS Person ID, name of Amendment 80 cooperative's designated representative, permanent business mailing address, business telephone number, business fax number, and e-mail address (if available) of the Amendment 80 cooperative transferee. A temporary mailing address for each transaction may also be provided.

(iii) *CQ to be transferred.* Identify the type and amount of Amendment 80 species, or Amendment 80 PSC CQ to be transferred, and the number of QS units from which this CQ is derived.

(iv) *Identification of Amendment 80 cooperative member.* Enter the name and NMFS Person ID of the member(s) of the receiving Amendment 80 cooperative to whose use cap Amendment 80 species CQ will be assigned, and the amount of Amendment 80 species CQ applied to each member, for purposes of applying Amendment 80 species use caps established under the Amendment 80 Program under § 679.92(a).

(v) *Certification of transferor.* The Amendment 80 cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferor's designated representative must be entered.

(vi) *Certification of transferee.* The Amendment 80 cooperative transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. The printed name of the Amendment 80 cooperative transferee's designated representative must be entered.

(5) *CQ amounts applied to a member of an Amendment 80 cooperative.* (i) Amendment 80 species CQ must be assigned to a member of the Amendment 80 cooperative receiving the CQ for purposes of use cap calculations. No member of an Amendment 80 cooperative may exceed the CQ use cap applicable to that member.

(ii) For purposes of Amendment 80 species CQ use cap calculations, the total amount of Amendment 80 species CQ held or used by a person is equal to all metric tons of Amendment 80 species CQ derived from all Amendment 80 QS units on all Amendment 80 QS permits held by that

person and assigned to the Amendment 80 cooperative and all metric tons of Amendment 80 species CQ assigned to that person by the Amendment 80 cooperative from approved transfers.

(iii) The amount of Amendment 80 QS units held by a person, and CQ derived from those Amendment 80 QS units, is calculated using the individual and collective use cap rule established in § 679.92(a).

(h) *Amendment 80 cooperative*—(1) *General.* This section governs the formation and operation of Amendment 80 cooperatives. The regulations in this section apply only to Amendment 80 cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of Amendment 80 cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the Amendment 80 cooperative's proposed conduct. Membership in an Amendment 80 cooperative is voluntary. No person may be required to join an Amendment 80 cooperative. If a person becomes the owner of an Amendment 80 vessel or a holder of an Amendment 80 LLP/QS license that has been assigned to an Amendment 80 cooperative, then that person may join that Amendment 80 cooperative as a member upon receipt of that Amendment 80 vessel or Amendment 80 LLP/QS license. Members may leave an Amendment 80 cooperative, but any CQ contributed by the Amendment 80 QS permit(s) held by that member will remain with that Amendment 80 cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* An Amendment 80 cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each Amendment 80 cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each Amendment 80 cooperative must appoint an individual as the designated representative to act on the Amendment 80 cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the Amendment 80 cooperative. The designated representative may be a member of the Amendment 80 cooperative, or some other individual designated by the Amendment 80 cooperative to act on its behalf;

(iii) Each Amendment 80 cooperative must submit a timely and complete application for CQ; and

(iv) Each Amendment 80 cooperative must meet the mandatory requirements established in paragraphs (h)(3) and (4) of this section applicable to that Amendment 80 cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form an Amendment 80 cooperative:

(i) Who may join an Amendment 80 cooperative?	Any Amendment 80 QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not Amendment 80 QS holders may be employed by, or serve as the designated representative of an Amendment 80 cooperative, but are not members of the Amendment 80 cooperative.
(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?	Any combination of at least nine Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?	At least three Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.
(iv) Is there a minimum amount of Amendment 80 QS units that must be assigned to an Amendment 80 cooperative for it to be allowed to form?	No.
(v) What is allocated to the Amendment 80 cooperative?	CQ for each Amendment 80 species, crab PSC, and halibut PSC, based on the amount of Amendment 80 QS units assigned to the cooperative.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the Amendment 80 cooperative have an exclusive privilege to collectively catch and use this CQ, or an Amendment 80 cooperative can transfer all or a portion of this CQ to another Amendment 80 cooperative.
(vii) Is there a period in a calendar year during which designated vessels must catch CQ?	Yes, any Amendment 80 vessel designated to catch CQ for an Amendment 80 cooperative is prohibited from catching CQ during the season closure for trawl gear in the BSAI specified at § 679.23(c) unless regulations at § 679.23 applicable to an Amendment 80 species in the BSAI are more restrictive than those established in § 679.23(c), in which case the more restrictive regulations will apply.
(viii) Can any vessel catch an Amendment 80 cooperative's CQ?	No, only Amendment 80 vessels that are assigned to that Amendment 80 cooperative for that calendar year in the application for CQ may catch and process the CQ assigned to that Amendment 80 cooperative.
(ix) Can a member of an Amendment 80 cooperative transfer CQ individually without the approval of the other members of the Amendment 80 cooperative?	No, only the designated representative of the Amendment 80 cooperative, and not individual members, may transfer its CQ to another Amendment 80 cooperative; and only if that transfer is approved by NMFS as established under paragraph (g) of this section.
(x) Are GOA sideboard limits assigned to specific persons or Amendment 80 cooperatives?	No, GOA sideboard limits are not assigned to specific persons or Amendment 80 cooperatives. GOA sideboard limits are assigned to the Amendment 80 sector.

(xi) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to more than one Amendment 80 cooperative in a calendar year?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel may be assigned to only one Amendment 80 cooperative in a calendar year. A person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.
(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year. A person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery.
(xiii) Which members may catch the Amendment 80 cooperative's CQ?	Use of a cooperative's CQ permit is determined by the Amendment 80 cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the Amendment 80 cooperative.
(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract that specifies how the Amendment 80 cooperative intends to catch its CQ. A copy of this agreement or contract must be submitted to NMFS with the application for CQ.
(xv) What happens if the Amendment 80 cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended Amendment 80 membership agreement or contract must be sent to NMFS in accordance with § 679.4(a)(4).
(xvi) What happens if the Amendment 80 cooperative exceeds its CQ amount?	An Amendment 80 cooperative is not authorized to catch Amendment 80 species or use crab PSC or halibut PSC in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to an Amendment 80 cooperative. Each member of an Amendment 80 cooperative is responsible for ensuring that all members of the cooperative comply with all regulations applicable to fishing under the Amendment 80 Program.
(xvii) Is there a limit on how much CQ an Amendment 80 cooperative may hold or use?	No, but each Amendment 80 QS holder is subject to use caps, and an Amendment 80 vessel may be subject to vessel use caps. See § 679.92(a).
(xviii) Is there a limit on how much CQ a vessel may catch?	Yes, an Amendment 80 vessel may not catch more than 20 percent of the aggregate Amendment 80 species ITAC assigned to the Amendment 80 sector for that calendar year. See § 679.92(a) for use cap provisions.
(xix) Are there any special reporting requirements?	Yes, the designated representative of the Amendment 80 cooperative must submit an annual Amendment 80 cooperative report as described under § 679.5(s). In addition, each member of an Amendment 80 cooperative must submit a timely and complete EDR as described under § 679.94.

(4) *Successors-in-interest.* If a member of an Amendment 80 cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the Amendment 80 QS permits assigned to the Amendment 80 cooperative for that year from that person remains under the control of the Amendment 80 cooperative for the duration of that calendar year as specified in the Amendment 80 cooperative contract. Each Amendment 80 cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of an Amendment 80 cooperative member.

§ 679.92 Amendment 80 Program use caps and sideboard limits.

(a) *Use caps*—(1) *General.* Use caps limit the amount of Amendment 80 QS units and Amendment 80 species CQ that may be held or used by an Amendment 80 QS holder or Amendment 80 vessel. Use caps may not be exceeded unless the Amendment 80 QS holder or Amendment 80 vessel subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are two types of use caps: Person use caps and vessel use caps. All Amendment 80 QS unit use caps are based on the aggregate Amendment 80 species Amendment 80 initial QS pool set forth in Table 32 to this part. The use caps apply as follows:

(2) *Amendment 80 QS holder use cap*—(i) *QS and CQ use cap.* A person may not individually or collectively hold or use more than thirty (30.0) percent of the aggregate Amendment 80 QS units initially assigned to the Amendment 80 sector and resulting CQ unless that person receives those Amendment 80 QS units on an Amendment 80 permit(s) based on Amendment 80 legal landings assigned to Amendment 80 vessel(s) or Amendment 80 LLP license(s) held by that Amendment 80 QS holder:

(A) Prior to June 9, 2006; and

(B) At the time of application for Amendment 80 QS.

(ii) *CQ use cap calculation.* For purposes of calculating and applying the CQ use cap, a person is assigned CQ based on:

(A) The amount of CQ derived from the Amendment 80 QS units held by that person; and

(B) Any CQ assigned to that person in an Application for CQ transfer.

(iii) *Transfer limitations.* (A) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units that exceeds the use cap listed in paragraph (a)(2)(i) of this section cannot receive any Amendment 80 QS permit by transfer unless and until that person's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(B) If an Amendment 80 QS holder that received an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section transfers an Amendment 80 QS permit to another person, the transferor may not hold more than the greater of either the amount of Amendment 80 QS units held by the transferor after the transfer if the amount of aggregate Amendment 80 QS units continues to exceed the use cap, or the amount equal to the Amendment 80 QS unit use cap established in paragraph (a)(2)(i) of this section.

(C) An Amendment 80 QS holder that receives an initial allocation of aggregate Amendment 80 QS units on his or her Amendment 80 QS permits that exceeds the use cap listed in paragraph (a)(2)(i) of this section is prohibited from having any CQ assigned to that Amendment 80 QS holder in an application for CQ transfer unless and until that Amendment 80 QS holder's holdings of aggregate Amendment 80 QS units are reduced to an amount below the use cap specified in paragraph (a)(2)(i) of this section.

(3) *ITAC use cap for an Amendment 80 vessel.* An Amendment 80 vessel may not be used to catch an amount of Amendment 80 species greater than twenty (20.0) percent of the aggregate Amendment 80 species ITACs assigned to the Amendment 80 sector. This amount includes ITAC that is assigned as CQ or to the Amendment 80 limited access fishery.

(b) *GOA sideboard limits*—(1) *GOA groundfish sideboard limits.* Amendment 80 vessels may not be used to catch more than the amounts of groundfish in the management areas specified in Table 37 to this part from January 1 through December 31 of each year, except that GOA groundfish sideboard limits specified in Table 37 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the fishing vessel GOLDEN FLEECE as specified in paragraph (d) of this section, may not use halibut PSC in the fishery complexes, management areas, and seasons greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year; except that:

(i) An Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations established in the Rockfish Program under subpart G to this part is not subject to the halibut PSC sideboard limits in Table 38 to this part while fishing under a Rockfish CQ permit; and

(ii) Halibut PSC sideboard limits in Table 38 to this part do not apply when an Amendment 80 vessel is using dredge gear while directed fishing for scallops in the GOA.

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* Only an Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) *Sideboard restrictions applicable to the fishing vessel GOLDEN FLEECE.* (1) The fishing vessel GOLDEN FLEECE (USCG documentation number 609951):

(i) May not be used for directed groundfish fishing for northern rockfish, pelagic shelf rockfish, pollock, Pacific cod, or Pacific ocean perch in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(ii) Is not subject to halibut PSC sideboard limits as described in paragraph (b)(2) of this section in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting.* See § 679.5(s).

(b) *Permits.* See § 679.4(o).

(c) *Catch monitoring requirements for Amendment 80 vessels and catcher/processors not listed in § 679.4(l)(2)(i) using trawl gear and fishing in the BSAI.* The requirements under paragraphs (c)(1) through (9) of this section apply to all Amendment 80 vessels except Amendment 80 vessels using dredge gear while directed fishing for scallops, and any other catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear and fishing or receiving fish in the BSAI and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. Except when using dredge gear while directed fishing for scallops, at all times when an Amendment 80 vessel or a catcher/processor not listed in § 679.4(l)(2)(i) using trawl gear has BSAI groundfish onboard the vessel, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* There is sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager, and any observers assigned to the vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clears all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner or operator must comply with the bin monitoring standards specified in § 679.28(i).

(d) *Catch monitoring requirements for Amendment 80 vessels fishing in the GOA.* The requirements under this section apply to any Amendment 80 vessel fishing in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season except Amendment 80 vessels using dredge gear while directed fishing for scallops. At all times when an Amendment 80 vessel is not using dredge gear while directed fishing for scallops and has GOA groundfish onboard the vessel owner or operator must ensure that:

(1) Catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, and all catch is made available for sampling by a NMFS-certified observer;

(2) The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(6)(ii);

(3) *Operational Line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch at the location where the observer collects species composition samples; and

(4) The requirements in § 679.93(c)(5), (8), and (9) are met.

(e) *Catch accounting*—(1) *Amendment 80 species*—(i) *Amendment 80 cooperative.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel assigned to an Amendment 80 cooperative will be debited from the CQ permit for that Amendment 80 cooperative for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(ii) *Amendment 80 limited access fishery.* All Amendment 80 species caught in the BSAI, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery will be debited against the ITAC for that Amendment 80 species in the Amendment 80 limited access fishery for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(2) *Crab PSC and halibut PSC*—(i) *Amendment 80 cooperative.* All crab PSC or halibut PSC used by an Amendment 80 vessel assigned to an Amendment 80 cooperative in the BSAI, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the CQ permit for that Amendment 80 cooperative for that calendar year unless that Amendment 80 vessel is using dredge gear while directed fishing for scallops.

(ii) *Amendment 80 limited access fishery.* All crab PSC or halibut PSC used by an Amendment 80 vessel assigned to the Amendment 80 limited access fishery in the BSAI, including crab PSC or halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the crab PSC or halibut PSC limit assigned to the Amendment 80 limited access fishery for that calendar year, unless that Amendment 80 vessels is using dredge gear while directed fishing for scallops.

(3) *GOA groundfish sideboard limits.* All Amendment 80 sideboard species defined in Table 37 to this part caught in the GOA, including catch in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, by an Amendment 80 vessel will be debited against the Amendment 80 sideboard limit for that Amendment 80 sideboard species for that calendar year except Amendment 80 sideboard species caught by Amendment 80 vessel using dredge gear while directed fishing for scallops.

(4) *GOA halibut sideboard limits.* All halibut PSC used by all Amendment 80 vessels in the GOA, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, will be debited against the sideboard limit established for the Amendment 80 sector, except:

(i) Halibut PSC CQ used by the catcher/processor sector in the Rockfish Program in the Central GOA;

(ii) Halibut PSC used by the fishing vessel GOLDEN FLEECE (USCG Documentation number 609951); and

(iii) Halibut PSC used by an Amendment 80 vessel using dredge gear while directed fishing for scallops.

§ 679.94 Economic data report (EDR) for the Amendment 80 sector.

(a) *Amendment 80 EDR*—(1) *Requirement to submit an EDR.* Each year except 2008, a person who held an Amendment 80 QS permit during a calendar year must submit to NMFS an EDR for that calendar year for each Amendment 80 QS permit held by that person. An EDR must be timely and complete.

(2) *Submission of EDR.* An EDR may only be submitted to NMFS using any one of the following methods:

(i) *Mail:* NMFS, Alaska Fisheries Science Center, Economic Data Reports, 7600 Sand Point Way NE, F/AKC2, Seattle, WA 98115; or

(ii) *Fax:* 206–526–6723

(3) *EDR forms.* EDR forms are available through the Internet on the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov,* or by contacting NMFS at 206–526–6414.

(4) *Deadline.* For each calendar year except 2008, a completed EDR must be received by NMFS no later than 1700 hours A.l.t. on June 1 of the year following the calendar year during which the Amendment 80 QS permit was held, or if sent by U.S. mail, postmarked by that date.

(5) *Contents of EDR.* An EDR must contain completed submissions for each data field required under paragraphs (b) and (c) of this section, as applicable, and the following information:

(i) *Calendar year of EDR.* Calendar year for which the EDR is being submitted;

(ii) *Amendment 80 QS holder information.* Name of company, partnership, other business entity, business telephone number, business fax number, e-mail address (if available) and Amendment 80 QS permits held;

(iii) *Designated representative.* An Amendment 80 QS holder must appoint an individual to be his designated representative and must ensure that the designated representative complies with the regulations in this section. The designated representative is the primary contact person for NMFS on issues relating to data required in the EDR. If an individual Amendment 80 QS holder chooses to complete the EDR, then they are the designated representative;

(iv) *Person completing this report.* (A) Indicate whether the person completing this report is the Amendment 80 QS holder, or the designated representative for the Amendment 80 QS holder;

(B) Record the name of the person completing the report, title, business telephone number, fax number, signature of the person submitting the EDR, and e-mail address (if available). If a designated representative is not the Amendment 80 QS holder, written authorization to act on behalf of the Amendment 80 QS holder must accompany the EDR;

(v) *Amendment 80 QS holders who own Amendment 80 vessels.* An Amendment 80 QS holder who is an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS

permit held and each Amendment 80 vessel owned by that Amendment 80 QS holder as described under paragraphs (b) and (c) of this section;

(vi) *Amendment 80 QS holders who do not own Amendment 80 vessels.* An Amendment 80 QS holder who is not an Amendment 80 vessel owner must submit, or have his designated representative submit, revenue and cost information for each Amendment 80 QS permit held by that Amendment 80 QS holder as described under paragraph (c) of this section; and

(vii) *Certification.* The Amendment 80 QS holder and his designated representative, if applicable, must certify that all information provided under paragraphs (b) and (c) of this section is accurate and complete.

(b) *Amendment 80 vessel information*—(1) *Ownership of an Amendment 80 vessel.* If a person owned any part of an Amendment 80 vessel during a calendar year, that person must provide the following information for each Amendment 80 vessel owned:

(i) *Amendment 80 vessel owner information.* Vessel name, USCG Documentation number, ADF&G vessel registration number, ADF&G processor code, Amendment 80 LLP license number(s) which designated that vessel during that calendar year, Amendment 80 QS permit assigned to that vessel during that calendar year, Amendment 80 limited access fishery permit number assigned to that vessel during that calendar year, or name of Amendment 80 cooperative to which that Amendment 80 vessel was assigned during that calendar year (if applicable);

(ii) *Amendment 80 vessel operator information.* If a person other than the Amendment 80 QS holder operated an Amendment 80 vessel owned by that Amendment 80 QS holder during a calendar year, provide the following: Name of company, partnership, other business entity, and business telephone number, business fax number, and e-mail address (if available);

(2) *Vessel characteristics.* (i) Home port, U.S. gross registered tonnage, net tonnage, length overall, beam, shaft horsepower, fuel capacity, year built;

(ii) Vessel survey value: most recent survey value, date of last survey value, did survey reflect value of permits and processing equipment;

(iii) Freezing capacity: maximum freezing capacity of this vessel in pounds per hour and freezer space (measured in pounds of product);

(iv) Fuel consumption: total consumption for the calendar year and average fuel consumed per hour from fishing and processing, transiting, and in shipyard.

(v) Vessel activity during calendar year: number of days the vessel was engaged in fishing, processing, steaming empty, offloading, and inactive or in shipyard. Report separately for Amendment 80 fisheries and all other fisheries; and

(vi) Processing capacity: Record each type of product processed on the line in the Amendment 80 fishery, the number of processing lines of similar type (equipment and/or product mix), and the vessel's maximum average throughput in pounds (round weight) per hour under normal operating conditions (assuming quantity of raw fish and other inputs is not limiting), totaled over all processing lines of this type.

(3) *Calendar year revenues.*

(i) Total fishery product sales volume and FOB Alaska revenue; and

(ii) All other income derived from vessel operations: tendering, charters, cargo transport, etc.

(4) *Calendar year costs.* (i) Fishing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(ii) Processing labor expenses (including bonuses and payroll taxes, but excluding benefits and insurance);

(iii) Labor expenses for all other employees aboard the vessel;

(iv) Food and provisions not paid by crew;

(v) Recruitment, travel, benefits, and other employee related costs;

(vi) Lease expense for this vessel and onboard equipment;

(vii) Purchases of fishing gear (nets, net electronics, doors, cables, etc.);

(viii) Expenditures on processing equipment;

(ix) Product storage equipment;

(x) Expenditures on vessel and onboard equipment (other than fishing, processing, or storage equipment);

(xi) Fishing gear leases;

(xii) Repair and maintenance expenses for vessel and processing equipment;

(xiii) Freight storage and other sales costs;

(xiv) Product packaging materials;

(xv) Fuel and lubrication;

(xvi) Observer fees and monitoring costs;

(xvii) General administrative costs;

(xviii) Insurance;

(xix) Fisheries landing taxes;

(xx) Total raw fish purchases; and

(xxi) All other costs related to vessel operations not included in the preceding list.

(5) *Calendar year labor.* Average number and total number of employees for fishing, processing, and other activities on this vessel.

(i) Average number of hours worked per day by processing line employee; and

(ii) Crew revenue share system used for some processing, all processing, some non-processing, and all non-processing crew.

(c) *Permit revenues or expenditures.* An Amendment 80 QS holder or his designated representative will record revenues and expenditures for any tradable fishing or processing privilege. Attribute those revenues or costs to a specific Amendment 80 vessel or Amendment 80 LLP as applicable.

(1) *Permit revenues.* (i) Income from sale or lease of fishery licenses, permits, harvesting or processing rights: record license or permit number and revenue for each asset sold; and

(ii) Royalties received from leasing allocations including metric tons and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased crab PSC, and any other species leased.

(2) *Permit expenditures.* (i) Fishery licenses, permits, harvesting or processing rights: record license or permit number and cost for each asset purchased;

(ii) Royalties paid for leases of catcher/processing quota, including metric tons, and dollars for Amendment 80 yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific ocean perch, Pacific cod, Amendment 80 leased halibut PSC, leased king crab PSC, and any other species leased;

(iii) Cooperative costs including lawyer and accountant costs, association fees, and other fees charged by harvest cooperative; and

(iv) Any other costs incurred from the use of fishery licenses, permits, harvesting or processing rights not included in the preceding list.

(d) *EDR audit procedures.* (1) NMFS will conduct verification of information with the Amendment 80 QS holder or designated representative, if applicable.

(2) The Amendment 80 QS holder or designated representative, if applicable, must respond to inquiries by NMFS within 20 days of the date of issuance of the inquiry.

(3) The Amendment 80 QS holder or designated representative, if applicable, must provide copies of additional data to facilitate verification by NMFS. The NMFS auditor may review and request copies of additional data provided by the Amendment 80 QS holder or designated representative, including but not limited to, previously audited or

reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

■ 17. Tables 31 through 41 are added to part 679 to read as follows:

TABLE 31 TO PART 679—LIST OF AMENDMENT 80 VESSELS AND LLP LICENSES ORIGINALLY ASSIGNED TO AN AMENDMENT 80 VESSEL

Column A: Name of amendment 80 vessel	*Column B:* USCG Documentation No.	*Column C:* LLP license number originally assigned to the Amendment 80 vessel
ALASKA JURIS	569276	LLG 2082
ALASKA RANGER	550138	LLG 2118
ALASKA SPIRIT	554913	LLG 3043
ALASKA VOYAGER	536484	LLG 2084
ALASKA VICTORY	569752	LLG 2080
ALASKA WARRIOR	590350	LLG 2083
ALLIANCE	622750	LLG 2905
AMERICAN NO I	610654	LLG 2028
ARCTIC ROSE	931446	LLG 3895
ARICA	550139	LLG 2429
BERING ENTERPRISE	610869	LLG 3744
CAPE HORN	653806	LLG 2432
CONSTELLATION	640364	LLG 1147
DEFENDER	665983	LLG 3217
ENTERPRISE	657383	[1] LLG 4831
GOLDEN FLEECE	609951	LLG 2524
HARVESTER ENTERPRISE	584902	LLG 3741
LEGACY	664882	LLG 3714
OCEAN ALASKA	623210	LLG 4360
OCEAN PEACE	677399	LLG 2138
PROSPERITY	615485	LLG 1802
REBECCA IRENE	697637	LLG 3958
SEAFISHER	575587	LLG 2014
SEAFREEZE ALASKA	517242	LLG 4692
TREMONT	529154	LLG 2785
U.S. INTREPID	604439	LLG 3662
UNIMAK	637693	LLG 3957
VAERDAL	611225	LLG 1402

[1] LLG 4831 is the LLP license originally assigned to the F/V ENTERPRISE, USCG Documentation Number 657383 for all relevant purposes of this part.

TABLE 32 TO PART 679.—AMENDMENT 80 INITIAL QS POOL

Amendment 80 species	Management area	Amendment 80 initial QS pool in units
Atka mackerel	BS/541 542 543	Σ Highest Five Years in metric tons in the Amendment 80 official record as of December 31, 2007, for that Amendment 80 species in that management area.
AI Pacific ocean perch	541 542 543.	
Flathead sole	BSAI.	
Pacific cod	BSAI.	
Rock sole	BSAI.	
Yellowfin sole	BSAI.	

TABLE 33 TO PART 679.—ANNUAL APPORTION OF AMENDMENT 80 SPECIES ITAC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS (EXCEPT YELLOWFIN SOLE)

Fishery	Management area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka Mackerel	543	All years	100	0
	542	2008	98	2
		2009	96	4
		2010	94	6
		2011	93	8
		2012 and all future years	90	10
	541/EBS	2008	98	2
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
Aleutian Islands Pacific ocean perch	543	All years	98	2
	542	2008	95	5
		2009 and all future years	90	10
	541	2008	95	5
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0
Flathead sole	BSAI	All years	100	0

TABLE 34 TO PART 679.—ANNUAL APPORTIONMENT OF BSAI YELLOWFIN SOLE BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Row No.	If the yellowfin sole ITAC is between . . .	and . . .	then the yellowfin sole ITAC rate for the Amendment 80 sector is . . .	and the amount of yellowfin sole ITAC allocated to Amendment 80 Sector is . . .	and the amount of yellowfin sole ITAC allocated to the BSAI trawl limited access sector is . . .
	Column A	Column B	Column C	Column D	Column E
Row 1	0 mt	87,499 mt	0.93	ITAC × Row 1, Column C	ITAC—Row 1, Column E.
Row 2	87,500 mt	94,999 mt	0.875	(Amount of ITAC greater than 87,499 mt and less than 95,000 mt × Row 2, Column C) + Row 1, Column D.	ITAC—Row 2, Column D.
Row 3	95,000 mt	102,499 mt	0.82	(Amount of ITAC greater than 94,999 mt and less than 102,500 mt × Row 3, Column C) + Column D, Row 2.	ITAC—Row 3, Column D.
Row 4	102,500 mt	109,999 mt	0.765	(Amount of ITAC greater than 102,499 mt and less than 110,000 mt × Row 4, Column C) + Column D, Row 3.	ITAC—Row 4, Column D.
Row 5	110,000 mt	117,499 mt	0.71	(Amount of ITAC greater than 109,999 mt and less than 117,500 mt × Row 5, Column C) + Column D, Row 4.	ITAC—Row 5, Column D.
Row 6	117,500 mt	124,999 mt	0.655	(Amount of ITAC greater than 117,499 mt and less than 125,000 mt × Row 6, Column C) + Column D, Row 5).	ITAC—Row 6, Column D.
Row 7	125,000 mt and greater		0.6	(Amount of ITAC greater than 124,999 mt × Row 7, Column C) + Column D, Row 6.	ITAC—Row 7, Column D.

TABLE 35 TO PART 679.—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS

Fishery	Year	Halibut PSC limit in the BSAI	Zone 1 Red king crab PSC limit . . .	*C. opilio* crab PSC limit (COBLZ) . . .	Zone 1 *C. bairdi* crab PSC limit . . .	Zone 2 *C. bairdi* crab PSC limit . . .
			as a percentage of the total BSAI trawl PSC limit after allocation as PSQ			
Amendment 80 sector	2008	2,525 mt	62.48	61.44	52.64	29.59
	2009	2,475 mt	59.36	58.37	50.01	28.11
	2010	2,425 mt	56.23	55.3	47.38	26.63
	2011	2,375 mt	53.11	52.22	44.74	25.15
	2012 and all future years	2,325 mt	49.98	49.15	42.11	23.67
BSAI trawl limited access	All years	875 mt	30.58	32.14	46.99	46.81

TABLE 36 TO PART 679.—PERCENTAGE OF CRAB AND HALIBUT PSC LIMIT ASSIGNED TO EACH AMENDMENT 80 SPECIES

For the following PSC species . . .	The percentage of the Amendment 80 sector PSC limit assigned to each Amendment 80 species is . . .					
	Atka mackerel	AI Pacific ocean perch	Pacific cod	Flathead sole	Rock sole	Yellowfin sole
Halibut	3.96	1.87	24.79	13.47	24.19	31.72
Zone 1 Red king crab	0.14%	0.56%	6.88%	0.48%	61.79%	30.16%
C. opilio crab (COBLZ)	0%	0.06%	6.28%	17.91%	9.84%	65.91%
Zone 1 *C. bairdi* crab	0%	0%	17.01%	3.13%	56.15%	23.71%
Zone 2 *C. bairdi* crab	0.01%	0.03%	7.92%	37.31%	7.03%	47.70%

TABLE 37 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR GROUNDFISH FOR THE AMENDMENT 80 SECTOR

In the following management areas in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season . . .	The sideboard limit for . . .	Is . . .
Area 610	Pollock	0.3% of the TAC.
Area 620	Pollock	0.2% of the TAC.
Area 630	Pollock	0.2% of the TAC.
Area 640	Pollock	0.2% of the TAC.
West Yakutat District	Pacific cod	3.4% of the TAC.
	Pacific ocean perch	96.1% of the TAC.
	Pelagic shelf rockfish	89.6% of the TAC.
Central GOA	Pacific cod	4.4% of the TAC.
	Pacific ocean perch	Subject to regulations in subpart G to this part.
	Pelagic shelf rockfish	Subject to regulations in subpart G to this part.
	Northern rockfish	Subject to regulations in subpart G to this part.
Western GOA	Pacific cod	2.0% of the TAC.
	Pacific ocean perch	99.4% of the TAC.
	Pelagic shelf rockfish	76.4% of the TAC.
	Northern rockfish	100% of the TAC.

TABLE 38 TO PART 679.—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit in each season as those seasons are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	0.48%	1.89%	1.46%	0.74%	2.27%
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	1.15%	10.72%	5.21%	0.14%	3.71%

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA

Column A: Name of Amendment 80 vessel	*Column B:* USCG Documentation No.
ALLIANCE	622750
AMERICAN NO I	610654
DEFENDER	665983

TABLE 39 TO PART 679.—AMENDMENT 80 VESSELS THAT MAY BE USED TO DIRECTED FISH FOR FLATFISH IN THE GOA—Continued

Column A: Name of Amendment 80 vessel	*Column B:* USCG Documentation No.
GOLDEN FLEECE	609951
LEGACY	664882
OCEAN ALASKA	623210
OCEAN PEACE	677399
SEAFREEZE ALASKA	517242
U.S. INTREPID	604439
UNIMAK	637693
VAERDAL	611225

TABLE 40 TO PART 679.—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined in § 679.21(e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	887
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/other flatfish [1]	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish [2]	N/A	2
Pollock/Atka mackerel/other species	N/A	5

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, flathead sole, yellowfin sole, and arrowtooth flounder.
[2] Applicable from July 1 through December 31.

TABLE 41 TO PART 679.—BSAI CRAB PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

For the following crab species in the following areas . . .	The AFA catcher/processor crab PSC sideboard limit is equal to the following ratio . . .	The AFA catcher vessel crab PSC sideboard limit is equal to the following ratio . . .	Multiplied by . . .
Red king crab Zone 1	0.007	0.299	The PSC amount in number of animals available to trawl vessels in the BSAI after allocation of PSQ established in the annual harvest specifications for that calendar year.
C. opilio crab (COBLZ)	0.153	0.168	
Zone 1 *C. bairdi* crab	0.14	0.33	
Zone 2 *C. bairdi* crab	0.05	0.186	

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Friday,
September 14, 2007

Part IV

The President

Executive Order 13444—Extending Privileges and Immunities to the African Union Mission to the United States

Federal Register
Vol. 72, No. 178
Friday, September 14, 2007

Presidential Documents

Title 3—

The President

Executive Order 13444 of September 12, 2007

Extending Privileges and Immunities to the African Union Mission to the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7(a)(2) of the Department of State Authorities Act of 2006 (Public Law 109–472), I hereby extend to the African Union Mission to the United States of America, and to its members, the privileges and immunities enjoyed by diplomatic missions accredited to the United States, and by members of such missions, subject to corresponding conditions and obligations.

This extension of privileges and immunities is not intended to abridge in any respect privileges and immunities that the African Union Mission to the United States of America and its members otherwise may have acquired or may acquire by law.

THE WHITE HOUSE,
September 12, 2007.

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H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to

an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

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CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the ''Willye B. White Post Office Building''. (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the ''Staff Sergeant Omer T. 'O.T.' Hawkins Post Office''. (Aug. 9, 2007; 121 Stat. 570)

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